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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 84

(JULY 15, 2008 – FEBRUARY 10, 2009)

(PAGES: INDEX – 477)

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Name of the board, council, department, or agency:

City Council

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Exact dates of the records included:

7/5/2008 – 8/13/2013

Records are: ☒ Minutes ☐ Resolutions ☐ Ordinances

Other: **Includes index pages**

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Tuesday – July 15, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (arrived in meeting at 4:39 p.m.) Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brownie W. Newman

CONTINUATION OF A PUBLIC HEARING TO CONSIDER ADOPTION OF THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT

Mayor Bellamy explained that this public hearing (which was originally scheduled on January 15, 2008) was continued to this date. The following letter dated July 3, 2008, was received from Mr. Marty Kocot, PE, from Land Design: "The ownership group (Foster Shriner, Chris Peterson, and Cam Pace) representing the proposed "Horizons" Urban Village project on Merrimon Avenue have asked me to formally make request for a three month extension on the Urban Village rezoning currently in progress. This request has become necessary due to the recent economic conditions. The ownership group is currently exhausting opportunities to secure financing and/or additional partners to help with the project economics."

When Mayor Bellamy asked for public comments, no one spoke.

Councilwoman Jones moved to continue the public hearing to October 28, 2008, to consider adoption of the Master Plan and rezoning for the project identified as Horizons, located at 136, 176 and 180 Merrimon Avenue and 17 and 23 Eloise Street from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Urban Village District for a mixed use development. This motion was seconded by Vice-Mayor Davis and carried unanimously.

WORKSESSION MEETING TIME

Mayor Bellamy initiated discussion regarding the change of the worksession time from 5:00 p.m. to 3:00 p.m. She said we have been starting worksessions for the last few months at 3:00 p.m. and was following up to see if that time was satisfactory to Council members.

Councilwoman Jones felt this item should be revised when all of Council is present.

Upon inquiry of Councilman Mumpower, City Manager Jackson said that worksessions in general are helpful and productive for staff. He said that staff at worksessions largely consist of executive staff that are on salary. In general, the 3:00 p.m. worksession time is convenient for staff, but they would be happy to adjust their schedules per Council's direction.

Mayor Bellamy asked that this time be calendared for discussion in 60-90 days and until such time as a change is made, the worksessions will remain at 3:00 p.m.

PACK SQUARE CONSERVANCY UPDATE

Ms. Carol King, Chair of the Pack Square Conservancy, updated Council on the cost estimates for Pack Square Park from 2004-2008. In 2004, based on the final design, the

Conservancy's new project managers from Hanscomb, Faithful & Gould carry out a detailed cost estimate for the park and determine that it will cost approximately $10.5 Million to build. Early in 2005, lead landscape architect Fred Bonci presents the 100% design development drawings to the Conservancy's Board of Trustees. The plans are approved. Based on the final design development drawings, and material cost increases over the preceding year, project managers from Hanscomb, Faithful & Gould boost the construction estimates to $12.5 Million. Material costs continue to escalate over the course of 2005 and in November, the project managers raise the construction estimate to $15.1 Million. The Conservancy makes several modifications in the park to control costs. The water feature in mid-park is simplified and made much smaller, the planned pavers for Spruce Street are eliminated, and plans are developed for the street to be paved with concrete. In 2006, the costs for construction materials continue to escalate. Two primary causes are hurricane relief on the Gulf Coast and massive construction projects abroad, particularly in China. In 2007, the Conservancy becomes increasingly concerned about cost estimates for the park and decides to hire an independent professional estimator to determine what costs will be base don new material prices. After a month-long study, the estimator sets the cost estimate for the park improvements phase at $8.1 Million, including factors for inflation and cost escalation. The Board approves a new project construction budget of $20,002,864. In September of 2007, the Conservancy puts the all-encompassing park improvements contract out to bid. The winning bid, from Valley Crest Landscape Development, is $7,254,700, which is slightly under the 2007 estimate for that phase of construction. Material costs continue to rise, with the added burden of skyrocketing gasoline prices. The Conservancy revisits the plan for the park pavilion and makes several material modifications to reduce the cost of the building. The Board of Trustees approves a pavilion budget of not more than $2.4 Million. In July, the Conservancy begins construction on the Pack Square Park with assurance that its 2007 cost estimates, including contingencies, will cover construction of the park improvements. She then highlighted the Pack Square Park timelines from 1999 to present.

Ms. King showed and explained pictures of (1) the Roger McGuire Green with water feature, performance stage and entry court; (2) the Reuter Terrace with pavilion and observation point; and (3) a viewscape of the named features in Pack Square Park.

Mr. Charles Russell, CPA, reviewed the Conservancy's accountant's review report and financial statements for the year ended December 31, 2007; budget vs. actual figures at December 31, 2007; Conservancy's balance sheet as of March 31, 2008; budget vs. actual figures as of March 31, 2008; and profit and loss from January – March, 2008.

Ms. King then reviewed the Conservancy's fundraising effort. She said the Conservancy needs to raise close to $5 Million to complete construction of the Pack Square Park and another $1.5 Million to complete initial funding for the endowment. Ms. Cary Owen and Mr. Larry McDevitt are working to obtain a number of lead and major gifts by the end of 2008 and in 2009 the Conservancy will carry out a public phase of the campaign. She noted that two important naming opportunities remain in the park for gifts of at least $500,000. She reviewed a chart showing 6% ($300,000) of gifts in kind; 10% ($500,000) for the public phase; 24% ($1.2 Million) for the major gift phase; and 60% ($3 Million) of the lead gift phase, for a total of $5 Million. Ms. King then briefly reviewed the fundraising report as of July 7, 2008.

Ms. King then reviewed the timeline for the Park. She said that completion of the park is scheduled for September 2009. Construction in Pack Square is part of the park improvements phase and is expected to begin by August 18 and should be completed by the end of March 2009, weather permitting. Once it is complete and the work approved, Pack Square will be turned over to the City. The pavilion will be built under a separate contract. The contractor, Beverly-Grant Inc., has requested a building permit and construction should begin in late summer or early fall of 2008. The pavilion is expected to take 10 months to build and completion is expected in June or July of 2009. She then reviewed some specifics on the pavilion.

Ms. King then reviewed various communications including City Council representation and City staff participation.

Mr. Kelly Miller, member of the Pack Square Conservancy, outlined the ongoing communication efforts and the importance of City participation at all levels.

Ms. King and Mr. Miller responded to various questions/comments from Councilman Davis, some being, but are not limited to: how large is the endowment and is it largely for capital improvements; will there be an advisory committee with major stakeholders to answer questions, such as long-term maintenance, operations, programming, security, etc.; how will the programming of the Park take place; and is there an opportunity for Buncombe County to contribute to programming for the Park.

Mayor Bellamy duly noted Councilman Mumpower's personal request that when packets of information are provided to Council, that they be delivered to Council through the normal courier fashion, even if the information is provided on-line.

Upon inquiry of Councilman Mumpower regarding delays, Ms. King said some of the biggest hurdles were (1) the Conservancy developing alternative designs if a private developer were to build on a piece of land in the center of the Park for a mixed-use building; (2) the N.C. Dept. of Transportation contract; and (3) fundraising was inhibited by the controversy related by the Parkside Condominiums.

When Councilman Mumpower asked what Council and the citizens can do to help the Conservancy's efforts, Ms. King replied (1) emotional support; (2) a financial contribution; and (3) for Council to do the best they can with the Parkside Condominium project.

Councilwoman Jones noted that, as seen by this presentation, the Conservancy has a clean bill of financial health.

Mayor Bellamy thanked the Conservancy for agreeing to send their minutes (and quarterly financial reports) to the City Clerk for distribution to the City Council. She was also pleased that Ms. King and City Manager Jackson have worked out a management agreement about how the construction will move forward.

On behalf of Council, Mayor Bellamy thanked the Conservancy for their hard work on this big project, especially since change in Asheville is never easy. She feels the public, in general, is satisfied with the direction of the Park. She did note that it would be difficult this year for any financial support. She was pleased with the increased communication between the City and the Conservancy and also noted the Conservancy's willingness to work with the Parade Committee.

CITIZENS POLICE OVERSIGHT COMMITTEE

Vice-Mayor Davis said that this item was reviewed by Council on January 15, 2008, and briefly reiterated the highlights from the report on the current process for Internal Affairs and other avenues that are in place to ensure the accountability of the Asheville Police Department employees. He said the request arose from citizens in the community who wanted a Police Oversight Committee. The Public Safety Committee met with the existing Citizens-Police Advisory Committee to see how they could offer a better conduit for communication and strengthening in the complaint process. Since the existing members' terms were to expire soon, the outgoing members presented Council with the following insights for Council's consideration before empanelling a new Citizens-Police Advisory Committee. As defined in the resolution establishing said Committee (Resolution No. 94-186), they feel the "Committee (1) has outlived its original purpose; (2) is constrained by a large, unwieldy committee structure resulting in sporadic attendance by a majority of committee members; (3) has become redundant in light of other active and competing committees; and (4) needs a clearly defined purpose if it is to function

into the future." They believe that Asheville needs a citizens-police panel and are hopeful that the facilitated planning process under consideration by the Police Department to address community-police relationships will lead to a clearly defined role for a new Citizens-Police Advisory Committee. They wanted to affirm that, if asked, they would be willing to participate in the planning process and to serve the City of Asheville and its Police Department in any other capacity. "Our respect continues to grow for Chief Hogan, his officers and staff, and we will continue to support them. We are proud of our Police Department and applaud their extraordinary efforts and accomplishments." This letter was signed by Tim Flora, Davidson Jones, Ed Taylor and Mary Ann LaMantia. He said that the newly established Committee will strengthen those communications, as we continue on our way to being one of the safest cities.

Police Chief Hogan assured Council that the Asheville Police Department has made great strides in improving the complaint process. He said that complaints are taken very seriously, investigations are thorough and corrective disciplinary action is taken, if necessary. He said that there are multiple avenues for people to go if they so choose in terms of a complaint against the Police Department.

Police Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: is downtown a high crime area due to the concentration of population in the daytime and nighttime; and how has the citizen complaint procedure been revamped to make it more user friendly.

In response to Councilman Mumpower, Vice-Mayor Davis said that the Public Safety Committee will schedule on their agenda again (with adequate notice) a meeting with advocates of a Police Oversight Committee.

Mayor Bellamy felt the Police Department has been transparent on the procedures for anyone who interacts with police officers. She reiterated the following information from the January 15, 2008, report regarding internal investigations: "It is the APD's policy to investigate all reports of employee misconduct, including anonymous complaints. The Office of Professional Standards is responsible for coordinating such investigations. Complaints can be made to the on-duty supervisor 24 hours a day to the Office of Professional Standards during weekday business hours, or via the City's website, where a complaint form is downloadable." Regarding claims of violations of Constitutional Rights, "When a private citizen believes his or her constitutional rights have been violated by a police officer, the citizen has the following resources:

Municipal

1. File a complaint with the APD's Professional Standards Division (Internal Affairs).
2. File a civil claim for money damages with the City's Risk Management Division.

State

1. File complaint with the N.C. Attorney General.
2. Contact a civil attorney and file a lawsuit in state court.

Federal

1. File a complaint with the federal government (http://www.usccr.gov/filing/flndx.htm) U.S. Department of Justice or the local office of the Federal Bureau of Investigation (FBI)
2. Contact a civil attorney and file a 42 U.S. 1983 lawsuit in federal court."

Councilman Russell commended the Police Chief on (1) their beat patrol; (2) the downward trend of violent crime in the downtown area; and (3) their efforts in educating people to secure their belongings in the trunk of their cars, especially when parking in public places.

Mayor Bellamy clarified that City Council cannot handle any personnel matters in open session that pertain to employees, except for the City Manager, City Attorney and City Clerk. If anyone has personnel issues with any other staff members, they must contact the City Manager.

The public can contact Council; however, they will only direct you in the right direction. If there is a complaint with the City Manager, City Attorney or City Clerk, she requested the public set up a meeting with Council so that the matter can be addressed.

SECTION 287 (G) OF THE IMMIGRATION & NATIONALITY ACT PROGRAM

Police Chief William Hogan said that this is in response to a request for the Asheville Police Department (APD) becoming involved in the Immigration & Nationality Act (ICE) 287-G program.

At City Council request, contact was made with Paige Edenfield, Assistant Field Office Director of ICE / Detention and Removal Office. Ms Edenfield is responsible for implementation and management of 287-G programs and ICE Detention and Removal efforts within North Carolina. Ms. Edenfield was asked about the feasibility of APD entering into a 287-G agreement with ICE and if so, would ICE have to maintain direct supervision over APD Officers. Ms. Edenfield responded that even if APD was interested in entering into a 287-G agreement, that ICE would not authorize it. ICE has learned that the jail module of 287-G is the most efficient way to implement 287-G and that field investigations conducted by municipal law enforcement are not nearly as effective. It is mandatory that an ICE Agent maintain direct supervision over trained 287-G Officers and ICE does not currently have the staff to increase the 287-G program.

Ms. Edenfield continued that Henderson County is now the operational hub in Western North Carolina for ICE Detention and Removal. Nine Henderson County Detention Deputies have been trained by ICE to screen individuals entering the Henderson County Detention Center on criminal charges and determine their immigration status. Those that have active deportation orders or other ICE warrants are held and transported to Atlanta for deportation hearings. Ms. Edenfield said that Buncombe County had applied for and been considered for the 287-G Jail Module program, but that Buncombe County did not have the available jail space to qualify for the program. ICE also did not have the available staff to directly supervise a Buncombe County program. Buncombe County will participate in a pilot program that will allow Detention Center staff to access the ICE database and check for ICE deportation orders or criminal warrants on individuals brought to the detention center on other criminal charges. APD has worked recently with the Buncombe County Sheriffs Department and City-County Identification Bureau to implement a program where all individuals entering the Buncombe County Detention Center on criminal charges are fingerprinted and photographed. This was done to eliminate the increasing number of individuals using false names to evade criminal prosecution and to quickly identify fugitives and other wanted persons.

APD continues to participate with ICE in human trafficking cases where individuals are trafficked throughout our region as part of prostitution enterprises or enslaved for other work. APD has received training and has initiated three cases where young women were rescued from prostitution houses and where enslaved workers were rescued from Mexican "coyotes" who were transporting the workers through Asheville. In all these cases, the criminally responsible parties were prosecuted in federal court and imprisoned and / or deported. There have also been cases where APD Interstate Criminal Enforcement Officers have stopped suspected human traffickers and ICE assistance was requested, but unavailable. In these cases, APD Officers document the involved parties, photograph the individuals and vehicles, and send that documentation to ICE for intelligence purposes.

APD also cooperates with ICE in drug trafficking cases through the DEA Task Force. Individuals who are charged and prosecuted as part of federal drug trafficking investigations are imprisoned and then deported for their felony crimes.

In cooperation with the District Attorney's Office, APD has been assisting on Obstruction of Justice and Identity Theft cases where individuals who are in the United States illegally, use false names to evade criminal prosecution. The District Attorney's Office has used a full-time

intern to assist in identifying people who continually come through the court system using a number of false names. After resolving the name issue and determining the correct name, an APD Detective then charges the person with Identity Theft, if the name or names used were that of a real person or Obstruction of Justice if the name or names used were not of a real person and used to evade criminal prosecution. Both charges are felonies and result in the person serving time in prison and subsequently being deported. This program has been very effective in reducing the number of Latino individuals using false names to escape criminal prosecution.

APD works cooperatively with ICE on issues of criminal activity, identity theft, and endangerment. At this point in time, ICE is unable to expand its involvement with municipal law enforcement into field investigations due to limited ICE staffing and the emphasis on the successful 287-G Jail Module. With Henderson County being the approved and active 287-G site, APD would not be considered as a 287-G program.

Vice-Mayor Davis said that the Public Safety Committee had some representation from the Latino community. He said there are numerous good legal immigrants in this area and there were people at that meeting advocating that group as well.

Police Chief Hogan responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: what kind of direct supervision is Henderson County receiving; how many primary drug distributors that are illegal aliens has the Police Department connected to the ICE program; if we catch three illegal aliens in drug trafficking, does ICE become involved; what instances does ICE become involved; and does the Police Chief have plans to work more closely with Henderson County with the ICE 287 (g) program.

There was discussion regarding the City's efforts on E-Verify system. Vice-Mayor Davis said that a congressional representative met with Chamber of Commerce members so they could learn more about the E-Verify system. He suspected there will be other opportunities to do educational outreaches and would be open to hear comments on whether this should be done on a municipal government level. Councilman Mumpower felt that since the City has E-Verify information on its website, that that it be made more accessible for the public to access.

There was considerable discussion, initiated by Councilman Mumpower, about what type of verification do we use for our own employees, contractors and subcontractors. He felt we should not use taxpayer dollars to subsidize illegal immigrants in that statistically in North Carolina estimates vary from 40-70% of the people who do not speak English are illegal immigrants. He felt the City should be a model on this issue of immigration.

Mayor Bellamy said that the City should see how we can partner with Congressman Shuler's effort regarding the E-Verify system on the federal level.

City Manager Jackson said that we do require employees to verify their citizenship. If the question is whether or not we should require contractors and subcontractors to provide us with a list of employees and we manually go through and verify each and every employee, that would probably need more discussion. What we are doing now, with the guidance of the City Attorney's Office, is that every contractor is required to meet all state and federal laws regarding purchasing, sexual harassment, Americans with Disabilities Act, etc. We would investigate any unusual circumstances brought to our attention, but we do not have the administration in place to go in and audit each and every contract or subcontract and itemize compliance with each and every law of state and federal government. To do that would be a discussion with the Chief Financial Officer regarding the cost of the resources associated with that.

At this time (4:39 p.m.), Councilwoman Cape arrived at the meeting.

At the request of Councilman Mumpower, City Manager Jackson said that he would provide Council with a memorandum in 1-2 weeks on what we currently do to verify conformance

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with the state and federal laws, how we verify our employment, and how participating in the E-Verify system would impact the City.

Councilman Mumpower asked that this discussion be followed up in another worksession if new information is brought forward from the City Manager's memorandum. In response to Councilwoman Jones, Mayor Bellamy said that if a Council member requests an item be on the agenda, it is placed on an agenda. At Mayor Bellamy's request, City Attorney Oast said that there is a provision in the Council's rules whereby reconsideration of an item can be prevented for up to six months. He read, from Council's rules, "The motion is in order immediately following the defeat of a substantive motion and at no other time. The motion requires, for adoption, a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats." Mayor Bellamy said that unless there is a motion to not place this item back on the agenda for six months, she will honor the request by Councilman Mumpower.

Regarding Councilman Mumpower's request to send a resolution to our state and federal representatives requesting that they begin enforcing existing laws and grant local authorities greater enforcement support and flexibility, Mayor Bellamy said that this was done on the federal level. Councilman Mumpower said that he will bring this back up again when discussion occurs on the state legislative program.

Regarding Councilman Mumpower's request that the City Attorney monitor federal and state legislation affecting local government's ability to respond to illegal immigration concerns and make ongoing recommendations on potential initiatives, City Attorney Oast said that he has provided Council with a partial list of legislative actions he is monitoring.

Regarding Councilman Mumpower's request to explore city regulation of day labor agencies by requiring confirmation of citizenship for temporary employment, City Attorney Oast said that our ability to enforce immigration and naturalization laws without enabling authority from the state and federal government are extremely limited.

VETERANS MEMORIAL AT MEMORIAL STADIUM UPDATE

Parks & Recreation Director Roderick Simmons said that upon request of the City Council, staff is providing an update on the development of the Veterans Memorial at Memorial Stadium.

Due to a lack of funding for the entire Memorial Stadium renovation project in the fall of 2007, the City Council agreed with and directed staff to proceed with constructing the Veteran's Memorial component of the project which is funded via a Housing and Urban Development grant of $247,000. The Veteran's Memorial is being designed and implemented within the grant's sum. Any additional elements that enhance this design beyond this basic project are to be designed, funded and implemented through other private fundraising efforts.

The cost of the previous Veteran's Memorial design (as designed within the entire Memorial Stadium project) was in excess of the federal grant funds so the design of the project is being revisited. Site Works Studios designed the original memorial and has been hired to redesign the memorial with Parks, Recreation & Cultural Arts Department staff.

Staff and the consultant have initiated new design work of the Veterans Memorial and preliminary designs are currently being explored as well as associated costs. The alternative design will be brought before the Memorial Stadium Committee that is being newly reformed.

Pending the planning and design process, the project will be constructed by the spring of 2009. He reviewed with Council the design and construction timetable, along with the Veteran's Memorial funding.

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City staff is providing an update pertaining to the development of the Veterans Memorial at Memorial Stadium and is not making a recommendation for City Council action.

Mr. Simmons responded to Councilwoman Jones when she hoped that we are not spending more money than we've raised in order to incorporate the new design features.

There was discussion, initiated by Councilman Mumpower, about reconstituting the Memorial Stadium Committee soon. He felt that we need a group in place to raise money in that there is a lot more work that needs to be done. When he was chair of the Committee, they made a commitment not to take City dollars but to raise funds by private donations.

Councilwoman Jones wanted to make sure this was in order with all the other projects that we have. She would love the people who care about this issue to become involved, but doesn't want to send a mixed message that this will trump the master planning process but that it will all be looked at as one.

It was the majority consensus of Council that Councilman Mumpower be Chair of the Memorial Stadium Committee and that he provide the Boards/Commissions Committee a list of potential members. They also asked that he update Council as they move forward.

City Manager Jackson said that he will set up a meeting with Councilman Mumpower and appropriate staff in the Parks & Recreation Department to come up with a plan.

REVIEW AND DISCUSSION OF CITY & COUNTY PROPOSALS FOR DEVELOPMENT ON THE SOUTH SIDE OF CITY-COUNTY PLAZA

Mr. Stewart Coleman, representing S.B. Coleman Construction Co., LLC, requested the City grant a temporary construction easement for the construction and/or continuation of Court Plaza – a new street in front of Parkside Condominiums. He showed Council a basic footprint of their plan. He showed the property lines for the property and the new building footprint. He said that Marjorie Street is 14-feet wide. The new Court Plaza would allow the street to continue through in front of the City Hall and preferably exit out onto South Spruce Street. The sidewalks along South Spruce Street and Marjorie Street will be widened. He said the drawing he provided to Council was the drawing from the design architects for the Park. He received it from Buncombe County Manager Greene and Buncombe County Attorney Frue. He said that he attempted to find the drawing in the City's archives but was unable to find it. He was told by Mr. Frue that this was the only drawing that the City Council and County Commissioners ever reviewed, and it was provided to Council by the Pack Square Conservancy. He said it was presented to the Council members on March 23, 2004, and in this original drawing it clearly shows a street. The design architects for the Park recommended the street be implemented even though they did recognize that they did not own the property that the street crossed. When they started designing their building, they took this drawing and implemented their design features into their architectural design to design the building that they are trying to place on this piece of real estate. If they are allowed to use this particular street, it will allow a clear view corridor of the City Hall Building from the Vance Monument (stepping their building back from the north property line of the Park 25-29 feet). The Downtown Commission requested that this street be put in place when they, at one time, reviewed the project and requested retail on the first floor of the building. They agreed it would be very difficult to have retail on the first floor that did not front on a street. The City's Traffic Engineer recommended that the street be one-way traveling west only. He also recommended a loading area so as not to block the street during early morning deliveries. The Fire Department recommended the street for a fire apparatus staging platform in accordance with Appendix D of the Asheville Fire Code. He quoted a statement from the Fire Marshal in the Technical Review Committee's Staff Report as follows: "This required fire lane can be provided on other building sides so its location is up to the designer." He said they have only one option if the street is not approved and that option is to use Marjorie Street as the fire apparatus staging

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platform and in order to make Marjorie Street qualify, they will be forced to move their building 15 feet north, on their property. That has a tremendous affect on the view corridor in doing so. He said the new street would service the building, the Courthouse, the City Hall and relive the bottleneck presently in existence with the cul-de-sac. They would ultimately give the new street back to the City for their maintenance. The Park has streets surrounding the entire Park and they feel that a review of this nature should be considered.

Mayor Bellamy said that at the last time they had a formal meeting, Council voted to have the City Manager speak with Mr. Coleman to talk about some options for consideration by City Council. Mr. Coleman then requested to speak to Council regarding the options. Since we have heard those options, City Attorney Oast has suggested Council go into closed session before Council asks questions or have a discussion about what was presented.

At 5:16 p.m., Councilwoman Jones moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; Buncombe County; Louise Pack Metcalf; Barbara Pack Holcombe; Michael Lawrence; and Black Dog Realty, LLC. The statutory authorization is contained in N.C.G.S. 143-311(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on Eagle Street. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Mumpower and carried unanimously.

At 6:07 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy said that at Council's last formal meeting City Council adopted a resolution asking the City Manager speak with Mr. Coleman about this issue. Mr. Coleman asked that he or his representative have an opportunity to come before Council. Tonight we allowed that to happen and she thanked Mr. Coleman for presenting the alternatives he is seeking as a resolution. She said that this is a worksession where Council gathers information and hears from the staff on issues. City Council would like to reaffirm the resolution previously adopted as City Council strongly believes that Buncombe County should reacquire the public property that they chose to sell. It is the City Council's position that Buncombe County do that. We stand beside our resolution. She did offer as the next step that if there are other alternatives, that include a land swap that we can get behind, we would like that to be a public process – not a long drawn out public process. We want to be open to that, but we do feel like Buncombe County should be the significant driver in this seat and we want to be supportive of Buncombe County re-acquiring the property.

BOARDS & COMMISSIONS

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Dr. Dean Kahl to the WNC Regional Air Quality Agency. In addition, it was the consensus of Council to explore the possibility of shortening the existing 6-year terms, which would require legislative action.

It was the consensus of Council to (1) readvertise the east vacancy on the Citizens-Police Advisory Committee; (2) appoint Charlie Hume (south); (3) appoint Bob Smith (Central); and (4) interview Ada Volkmer and Angelica Reza Wind for the north vacancy.

There was a brief discussion regarding the next steps regarding the vacancy on the Civil Service Board. It was implied that there would be no appointment made to the vacant seat at this time. Councilman Mumpower said it was anticipated that the litigation would have been resolved

in a timelier manner; however, he felt Council should honor their commitment for Council to meet with staff, the Civil Service Board and representatives from both sides of the equation to have further discussion. City Attorney Oast noted that the reason the litigation is moving slowly is due to the judicial terms and the motion could be heard within the next 10 days. He would notify Council with a hearing date tomorrow. It was the consensus of the majority of Council to postpone any meetings regarding this issue until they get a report from City Attorney Oast.

It was the consensus of Council to ask the Film Commission staff liaison make a recommendation to the Boards & Commissions Committee regarding the future of the Commission and that no interviews or appointments take place until such time as the report is given consideration.

It was the consensus of Council to (1) readvertise vacancies on the Recreation Board; (2) reappoint Scott Barnwell and Geoffrey Ferland; (3) appoint Lonnie Gilliam; (4) interview Wanda Hawthorne; and (5) proceed with the interviews of Betty Young and Davidson Jones.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Cindy Weeks, Darryl Hart and Jerome Jones to the Planning & Zoning Commission.

It was the consensus of Council to interview Gregory Sills and Terry Meek for the vacancy on the River District Design Review Committee.

OTHER ITEMS

There was a brief discussion of Councilman Mumpower's request that the City Manager provide him information on how much money the City has spent in Fiscal Year 2007-08 on planning, studies and consulting costs. City Manager Jackson explained that he would be happy to provide that information to Councilman Mumpower; however, he requested Council's consent due to the amount of staff resources it will take to make sure the report is accurate. Mayor Bellamy felt that this request has come about because of a report (which was misquoted by the reporter) which ran recently in the newspaper about the City prioritizing its streets. She emphasized that the Council has been investing in basic City services. When Councilman Mumpower questioned what recourse he had to obtain this information if the majority of Council does not support his request, City Attorney Oast said that anyone can review the Council minutes. City Manager Jackson also noted that he could make a request for available documents and the City would honor that request; however, the document he is requesting does not exist. Councilwoman Cape clarified that when people make a document request, it is not a document request that staff has to fabricate – it's a request for existing documents. Mayor Bellamy also suggested a review of the Minority Business Report which covers all contracts. Councilman Russell supported Councilman Mumpower's request regarding consulting costs.

RESOLUTION NO. 08-154 – RESOLUTION OPPOSING THE PROPOSED STATE OF NORTH CAROLINA HOUSE BILL 2499, DROUGHT/WATER MANAGEMENT RECOMMENDATIONS

City Attorney Oast said that there has been some legislation proposed (House Bill 2499) that essentially would allow the State, in some emergency situations or low water situations to assume some regulatory authority over our own management of the water system. Our Director of Water Resources Director has recommended Council oppose the bill as drafted.

Mayor Bellamy said that this item was scheduled for Council consideration on July 22, 2008, formal meeting but is before Council today because a vote on this is imminent.

Water Resources Director David Hanks reviewed the staff report he had prepared to report to Council on July 22 as follows: "This bill as proposed is a wide ranging bill that would take away local control of our most valuable natural resource – water. Lawmakers have

proposed the following: (1) Water systems in exceptional drought to reduce water use by 20% and those in extreme drought by 10%; (2) Give the governor emergency powers to force systems with extra water to share it; (3) Provide powers for cities and counties to limit the use of wells for watering lawns and plants, as long as they have the same rules for residents on public water; and (4) State shall develop guidelines for water rate structures, including rates that support water conservation.

"Asheville has two pristine lakes that contain over 6.5 billion gallons of water that is surrounded by a 22,000 acre protected watershed as well as a state-of-the-art ozone water treatment plant that can draw water from both the Mills River and the French Broad River.

"The City of Asheville has taken many positive steps to ensure that water is available to residents in the City of Asheville, and in Buncombe and Henderson Counties. Below is a list of some of the progressive steps that have been taken:

- Spent approximately $1 million on creating a Drought Model and updating our Emergency Action (Flood) Plan. The Drought Plan uses historic data, the forecast of rainfall for the next 10 weeks, and the level of our lakes to determine when conservation measures should take place. During last year's drought, we found that the information the drought model provided us was very accurate.
- The Asheville City Council approved $40 million of revenue bond projects which is being used to upgrade some old problematic water lines, provide back-up generator power when power is lost, and other water capital investments include upgrades to North Fork and Bee Tree Water Treatment Plants.
- Implemented an Asset Management Program which provides us with a computerized replacement and refurbishment model to identify funding needs of the water system, life cycle cost and business case evaluations for new projects.
- The City of Asheville Water Resources Department became the first certified water utility in the State of North Carolina and the first in the entire nation to be totally (all divisions of department) certified and registered under ISO 14001. This is an Environmental Management System that helps us systematically manage and improve every aspect of our environmental performance.
- The City of Asheville is a regional team player in the water arena. We are the sole source water provider for Biltmore Forest, and provide water to Black Mountain, Woodfin, and Hendersonville. We also have connection to the Town of Weaverville and have emergency help agreements with area water utilities. When requested, Asheville has never refused to provide water or repair assistance to our neighbors.

"The City Council Strategic Operating Plan and Water Master Plan actions are not applicable.

Pro:

- Comprehensive and regional water planning is desired for the entire State and Western North Carolina region.

Cons:

- This bill if adopted will take away the ability of local policy makers and utilities to make decisions concerning their communities, including various drought stages and water rates.
- The bill refers to various actions that will require additional staffing to implement and ensure compliance, especially during designated drought events.

"There is no immediate fiscal impact but future impacts could be tremendous if water rates, including drought surcharges are set by another policy board and not at the local level.

"Staff recommends that the City of Asheville oppose any legislation that would take away the local authority to manage local water conditions by approving the attached resolution. Asheville has done a superior job managing its water resources. We know what is occurring within our system, and our governing board and professional staff should be the ones making decisions and being held accountable for this most important natural resource."

He said that this version of the bill did take out some of the concerns or moved items to a "study" status. The two areas that may come back on the municipalities are (1) gives the governor emergency powers to force systems with extra water to share it; and (2) State shall develop guidelines for water rate structures, including rates that support water conservation. The main area of contention was the private well monitoring and that was one of the items that was moved to a study status.

Mayor Bellamy highlighted that Asheville has spent money on drought management and flood management for our water system to ensure that we are doing the best practices possible for our water system; and to have the state supersede us is disappointing by them using an across the board measure that might not be the best for our community for drought management.

Councilman Mumpower moved to waive the rules and take formal action on this item at this meeting. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilwoman Jones felt it was too bad that our legislative delegation did not put in some kind of exemption in the bill that really recognizes the best practices that some communities are doing and the systems that have been proactive. If the bill does not pass, maybe this is something that can be explored. City Attorney Oast felt that idea is certain worth conversation, if possible.

When Mayor Bellamy asked for public comment, no one spoke.

After Mayor Bellamy read the resolution, Councilman Mumpower moved for the adoption of Resolution No. 08-145. This motion was seconded by Vice-Mayor Davis.

Councilwoman Cape asked for a friendly amendment to the third paragraph in the resolution to read as follows: "City staff has recommended the City of Asheville oppose this bill and encourage local and State legislators to allow local policy makers to make decisions that affect their local communities concerning drought conditions and water rate guidelines <u>with those communities who have exhibited best practice management with their systems</u> (underlining to denote change)." Councilman Mumpower and Vice-Mayor Davis did not accept the amendment in that the State does not pay for the water, they don't pay for the system, they don't have any responsibility for the system but they just want some control over our system.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-1 vote, with Councilwoman Jones voting "no."

In that Councilwoman Jones wishes the vote to be unanimous, she asked her vote be changed to support the resolution.

Therefore, the motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried unanimously.

SENIOR OPPORTUNITY CENTER, REID CENTER AND MUNICIPAL GOLF COURSE

Mayor Bellamy stated that the City of Asheville is not closing the Senior Opportunity Center on Grove Street; is not closing the Reid Center; and is not selling the Municipal Golf Course.

ADJOURNMENT

Mayor Bellamy adjourned the meeting at 7:09 p.m.

Magdalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – July 22, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Ms. Rikki Walker, recipient of the Make A Wish Foundation, led City Council in the Pledge of Allegiance and briefly explained her experience in the program. Ms. Caroline Harrison, representing the Make A Wish Foundation, thanked Mayor Bellamy for proclaiming Friday, July 18, 2008, as "Make A Wish Day."

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower Consent Agenda Items "K", "P" and "Q" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "L" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JUNE 24, 2008, AND THE WORKSESSION HELD ON JULY 15, 2008

B. RESOLUTION NO. 08-146 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH R & W INCORPORATED TO SUPPLY AND CONSTRUCT A NEW HVAC SYSTEM FOR THE BURTON STREET RECREATION CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with R & W Incorporated to supply and construct a new HVAC System for the Burton Street Recreation Center for an amount not to exceed $111,655.00.

The Parks, Recreation and Cultural Arts Department obtained approval for the creation of a budget amendment in the amount of $215,000 in October of 2007. This budget amendment consisted of a $60,000 appropriation from the Fiscal Year 2007-2008 general capital improvement budget and an additional $155,000 from a Community Development Block Grant (CDGB).

These funds were needed to renovate the Burton Street Recreation Center. Renovations included new energy efficient doors and windows, a new handicap access ramp, new flooring, new kitchen and bathroom fixtures and a new HVAC System for this community recreation facility.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services. It is part of the park development program to make facility improvements. It is also a Green focus area by making an energy efficient capital improvement decision and supporting energy efficient funding for facilities and operations.

Pros:

- Provide funds to supply and construct a new HVAC System at the Burton Street Recreation Center.
- Fulfill commitment to the Burton Street neighborhood to make improvements to the facility.
- Reduce energy consumption.

Con:

- An additional HVAC System to maintain.

Funding provided by budget amendment of $215,000 in October of 2007.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with R & W Incorporated to supply and construct a new HVAC System for the Burton Street Recreation Center for an amount not to exceed $111,655.00.

RESOLUTION BOOK NO. 31 – PAGE 244

C. RESOLUTION NO. 08-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A 5-YEAR SERVICE AGREEMENT WITH MCQUAY FACTORY SERVICE FOR MAINTENANCE AND REPAIR OF THE CIVIC CENTER CHILLER

Summary: The consideration of a resolution authorizing the City Manager to enter into a 5 year service agreement, in the amount of $100,000, with McQuay Factory Service for maintenance and repair of the Civic Center chiller.

The Civic Center Chiller has been under a lease and maintenance agreement for the past ten years with ePlus. The agreement expires at the end of July. After financial analysis, it was determined by staff to purchase the chiller and enter into an agreement directly with McQuay Factory Service. This company has maintained the chiller during the past ten years as a subcontractor.

The Civic Center Commission unanimously passed a resolution supporting staff's recommendation to purchase the chiller and contract directly for the Chiller's maintenance.

Pros:

- Purchase of chiller and direct maintenance agreement saves $15,000 over 5 years
- Experts that have maintained chiller for 10 years will continue in that capacity

Con:

- None identified

The fiscal impact would be $15,000 saving over 5 year period

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a 5 year service agreement, in the amount of $100,000, with McQuay Factory Service for maintenance and repair of the Civic Center chiller.

RESOLUTION BOOK NO. 31 – PAGE 245

D. RESOLUTION NO. 08-148 – RESOLUTION AUTHORIZING THE MAYOR TO EXCHANGE REAL PROPERTY LOCATED ON HUNT HILL PLACE FOR PROPERTY LOCATED ON ARDMION PARK ROAD PLUS ADDITIONAL MONETARY CONSIDERATION

Summary: The consideration of a resolution authorizing the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road plus additional monetary consideration.

The City of Asheville and Satchel's Development, Inc. have negotiated an exchange of real property at Hunt Hill Place for property on Ardmion Park Road along with additional monetary consideration. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on June 27, 2008, describing the exchange of properties on the following terms:

"The City-owned property on Hunt Hill Place is 1.0592 acres +/- in size and is a portion of tax PINs 9648.07-57-5714 and 9648.11.57-5224. The area is zoned Institutional and is mostly vacant land. This area is a portion of the larger Mountainside Park. The appraised value, as appraised by Underdown Ball & Associates, LLC, equals $130,300.

The property to be exchanged on Ardmion Park Road is an 0.854 +/- acre parcel zoned RM 8 and is a portion of tax PIN 9648.07-57-9853. This property is mostly wooded with steep to rolling grades and has road frontage on Ardmion Park Road. The appraised value as appraised by Underdown Ball & Associates, LLC, equals $120, 900. To provide that the exchange is full and fair, monetary compensation will be provided along with the exchange in the amount of $9,400 in cash; paid by the property owner, Satchel's Development, Inc."

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

This action complies with the Strategic Operating Plan in that it promotes sound land management per the Parks and Recreation Master Plan.

Pros:

- The exchange will be a fair exchange of property for property plus consideration.
- Additional pedestrian access to the Mountainside Park will be gained from Ardmion Park Road.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council adopt a resolution authorizing the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road and additional consideration.

Mayor Bellamy said that she did not support this item originally due to the number of affordable units planned even with a density bonus and a land exchange. However, the developer has increased the number of affordable units dramatically and she would therefore support this action.

E. RESOLUTION NO. 08-149 - RESOLUTION GRANTING AN EXTENSION FOR A TERM ON THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: The term of Barbara Field, as a member of the Asheville Alcoholic Beverage Control Board, expired on November 13, 2007.

As the Board moves forward with the development of architectural plans for new stores on Tunnel Road, Leicester Highway and US 74A in the Reynolds area and as they continue their program of remodeling existing locations, Ms. Field's training as an architect will continue to prove useful.

Ms. Barbara Field, 33 Haywood Street, Asheville, N.C., be and she is hereby granted an extension of her term until April 1, 2009, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 247

F. RESOLUTION NO. 08-150 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SISTER CITY AGREEMENT WITH OSOGOBO, NIGERIA

Summary: The Asheville City Council supports the Asheville Sister Cities Program, administered by Asheville Sister Cities International, which encourages cultural exchanges, strengthens friendships and goodwill between nations, and increases the collaboration for the mutual benefit of both cities. The addition of Osogbo, Osun, Nigeria as a new Sister City will expand the opportunities available to the people of City of Asheville to experience Nigerian culture, and offer the people of Osogbo the opportunity to exchange with citizens in Asheville, creating benefits for both communities. Asheville Sister Cities representatives will travel to Osogbo, Osun, Nigeria in August 2008 to meet with head governmental officials to sign official documentation designating Osogbo, Osun, Nigeria and Asheville, North Carolina as Sister Cities under the auspices of Sister Cities International. The Asheville City Council supports the recognition of Osogbo, Osun, Nigeria, as an official Sister City of the City of Asheville, North Carolina in order to promote and encourage cross-cultural exchange through the goodwill practices of Asheville Sister Cities International. The Asheville City Council officially recognizes Osogbo, Osun, Nigeria as a Sister City of the City of Asheville and hereby authorizes the Mayor to enter into the Sister City Agreement with Osogbo, Osun, Nigeria.

RESOLUTION BOOK NO. 31 – PAGE 248

G. RESOLUTION NO. 08-151 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED PORTION OF PEACE STREET AND SETTING A PUBLIC HEARING ON AUGUST 26, 2008

Summary: The consideration of a resolution of intent to close an unopened portion of Peace Street and request a public hearing for August 26, 2008, regarding this issue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close an unopened portion of Peace Street.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property

- The closure would allow for more efficient use of the adjacent residential properties for residential development

Con:

- The Greenway Commission at their meeting of June 10, 2008, recommended the unopened portion of Peace Street be retained as future opportunities for greenways, or other bike, pedestrian or vehicular connections.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for August 26, 2008, to close an unopened portion of Peace Street.

RESOLUTION BOOK NO. 31 – PAGE 249

H. RESOLUTION NO. 08-152 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Summary: The terms of Scott Barnwell, Geoffrey Ferland and Jim Drummond, as members on the Recreation Board, expired on June 30, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Mr. Scott Barnwell, Mr. Geoffrey Ferland and appoint Mr. Lonnie Burton to each serve a three-year term respectively, terms to expire June 30, 2011, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 250

I. RESOLUTION NO. 08-153 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES, PLLC, FOR AUDITING SERVICES FOR FISCAL YEAR 2007-08

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2007-2008.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

Based on our review of a proposal submitted by Dixon Hughes, staff recommends retaining their services for Fiscal Year 2007-2008. We have previously worked with Dixon Hughes and they have consistently provided a thorough and high quality audit for the City.

Pro:

- Allows us to meet NC General Statute sec. 159-34.

Con:

- None noted.

The base fee has been proposed at $98,900.00 and is appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2007-2008.

RESOLUTION BOOK NO. 31 – PAGE 251

J. RESOLUTION NO. 08-154 - RESOLUTION ACCEPTING HUNTINGTON CHASE DRIVE AS A CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept Huntington Chase Drive as a city-maintained street as outlined in the 2002 Annexation Services Plan for the Huntington Chase Area.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

Huntington Chase Drive is a developer-constructed street that has an average width of 20 feet and a length of 0.37 mile.

Transportation and Engineering Department staff and Public Works Department staff have inspected this street and recommend its change of ownership from a privately-maintained street to a city-maintained street.

Huntington Chase Drive is a street listed in the 2002 Annexation Services Plan that the City would take over for maintenance.

Following City Council's approval of this resolution, Huntington Chase Drive will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the street.
- Homes constructed along the subject street increase the tax base for the City.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.

There should be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to $1,886 per mile compared to the City's maintenance cost of $8,200 per mile.

Staff recommends that City Council adopt the resolution to accept Huntington Chase Drive as a city-maintained street with an effective date of July 31, 2008.

RESOLUTION BOOK NO. 31 – PAGE 252

K. BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

L. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN THE RIVER RAFT RACE ON AUGUST 2, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

M. RESOLUTION NO. 08-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENTERPRISE LICENSE AGREEMENT WITH ESRI INC. FOR GEOGRAPHIC INFORMATION SYSTEMS SOFTWARE LICENSING

Summary: The consideration of a resolution authorizing the City Manager to sign a Enterprise License Agreement with ESRI, Inc. in the amount of $150,000 over 3 years payable in $50,000.00 yearly installments for Geographic Information Systems (GIS) software.

The City of Asheville has used ESRI GIS software for 10+ years as a keystone software information system. Many internal processes including asset management, code enforcement, public safety dispatch, stormwater utility billing, infrastructure maintenance, sanitation service, etc., rely on GIS expertise and software. Citizens also rely on GIS for Internet information portals such as the mapAsheville applications (Development Mapper, Crime Mapper, and Priority Places). City Council also relies on the City's GIS via planning and development decision visualizations.

Annual maintenance payments are required in order to keep software in a reliable and supported state. From Fiscal Year 2002 to Fiscal Year 2008, this critical maintenance increased by 282%. To reduce the risk of further significant increases, staff has negotiated with ESRI the ability to lock in a set maintenance payment for a three year period (renewed yearly). A contracted agreement also means that the City may provide unlimited staff installations of this software.

Specific City Council Strategic Operating Plan priority areas with goals that are supported by GIS technology include Community Building, Critical Services & Infrastructure, Natural & Built Environment, Economic Development, and Growth, Development & Land Use

Pros:

- Increased support of departmental business requirements via greater options for GIS software licensing.
- Ability to install additional software without additional purchases.
- Hold the line on increasing software maintenance costs.

Con:

- If continued funding for future years is not appropriated, some staff will lose ability to utilize some GIS software.

Based on trend analysis, this agreement represents a 3 year savings of $21,600.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an Enterprise License Agreement with ESRI, Inc.

RESOLUTION BOOK NO. 31 – PAGE 256

N. RESOLUTION NO. 08-157 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Summary: The term of Dean Kahl, as a member on the WNC Regional Air Quality Agency Board, expired on July 1, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Dr. Kahl to serve a six-year term, term to expire July 1, 2014, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 257

O. RESOLUTION NO. 08-158 - RESOLUTION APPOINTING MEMBERS FO THE PLANNING & ZONING COMMISSION

Summary: The terms of Cindy Weeks, C. Jerome Jones and Darryl Hart, as members on the Planning & Zoning Commission, expire on August 14, 2008.

On July 15, 2008, it was the consensus of Council to reappoint Ms. Weeks, Mr. Jones and Mr. Hart to each serve an additional three-year term respectively, terms to expire August 14, 2011, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 258

P. ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR PERSONS APPLYING FOR EMPLOYMENT WITH THE CITY OF ASHEVILLE

ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN DETERMINING THE SUITABILITY OF AN APPLICANT FOR AN ADULT BUSINESS OR ADULT ENTERTAINER LICENSE

ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN MAKING RECOMMENDATIONS ON THE SUITABILITY OF A PERSON OR OF A LOCATION FOR AN ABC PERMIT

These items were removed from the Consent Agenda for discussion and/or an individual votes.

Q. UPSET BID RECOMMENDATION FOR THE HOLIDAY INN AT THE AIRPORT PROPERTY

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

K. ORDINANCE NO. 3637 - BUDGET AMENDMENT TO APPROPRIATE DEPT. OF JUSTICE BULLETPROOF VEST REIMBURSEMENT FUNDS FOR THE PURCHASE OF POLICE PATROL SAFETY EQUIPMENT

Summary: The consideration of a budget amendment, in the amount of $23, 018, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Reimbursement Program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected $23,018 from the Department of Justice Bulletproof Vest Reimbursement Program. Adding these funds into the Police Patrol Division safety equipment budget line would assist in the purchase of additional vests for Asheville police officers.

This action complies with the City Council Strategic Operating Plan in that it supports efforts to hold the line on taxes and find areas for tax and fee relief.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville police officers.

Con:

- None

City staff recommends City Council adopt the budget amendment, in the amount of $23,018, to appropriate Department of Justice Bulletproof Vest reimbursement funds for the purchase of police patrol safety equipment.

Councilman Mumpower felt that the City should pay for their own vests and not accept the money from the federal government, which has a trillion dollar national debt.

Mayor Bellamy noted that the City did purchase the bulletproof vests, but there was an opportunity for reimbursement of their primary purchase.

Councilwoman Jones moved for the adoption of Ordinance No. 3637. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 1

L. RESOLUTION NO. 08-155 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN THE RIVER RAFT RACE ON AUGUST 2, 2008

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin the River Raft Race on August 2, 2008.

Riverlink, Inc. has requested, through the City of Asheville Parks, Recreation & Cultural Arts Department, that City Council permit them to serve beer and/or unfortified wine at the Rockin the River Raft Race and allow for consumption at this event.

The Rockin the River Raft Race will be held on Saturday, August 2, 2008, from 9:00 a.m. – 6:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on the accompanying site map.

This action does not tie-in with the Strategic Operating Plan, nor does this action does not comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

The fiscal impact would be for overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin the River Raft Race.

Councilman Russell moved for the adoption of Resolution No. 08-155. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Councilman Mumpower suggested hearing Mayor Bellamy's thoughts on voting against these alcohol at event resolutions at another time.

RESOLUTION BOOK NO. 31 – PAGE 253

P. ORDINANCE NO. 3638 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR PERSONS APPLYING FOR EMPLOYMENT WITH THE CITY OF ASHEVILLE

ORDINANCE NO. 3639 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN DETERMINING THE SUITABILITY OF AN APPLICANT FOR AN ADULT BUSINESS OR ADULT ENTERTAINER LICENSE

ORDINANCE NO. 3640 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS FOR USE IN MAKING RECOMMENDATIONS ON THE SUITABILITY OF A PERSON OR OF A LOCATION FOR AN ABC PERMIT

Summary: This is the consideration of adoption of ordinances authorizing Asheville Police Department to access the State Bureau of Investigation's Division of Criminal Information Network (DCI) database for criminal history checks involving applicants for employment, persons applying for adult business and adult entertainer licenses, and persons applying for alcohol permits with the City.

Pursuant to City Code Sec. 2-187, the City shall conduct a criminal background check for all final candidates for City employment. Pursuant to City Code Chapter 9, Article IV, the City of Asheville through the Asheville Police Department is required to conduct a criminal background investigation for any person wishing to obtain an adult business license or an adult entertainer license. Pursuant to N.C.G.S. § 18B-904(f), the Chief of Police on behalf of the City is required to report to the ABC Commission whether an applicant and/or location is suitable for possessing an Alcohol Permit. Currently, the City is doing limited criminal history checks through City/County Bureau of Investigation. However, the City/County database only deals with crimes adjudicated by the State of North Carolina.

The Asheville Police Department has access to the State Bureau of Investigation's DCI database which contains criminal background information for the entire country. The State of North Carolina has strict requirements for using this criminal database for non-criminal employment and licensing. In order to access the state database, City Council must pass an

ordinance requiring the criminal history checks and the consequences for failing the criminal background check. City staff has presented the proposed ordinances to the SBI and the SBI has approved said ordinances.

Pros:

- The City will be able to access the DCI network to conduct criminal history checks on applicants for non-sworn employment with the City, adult business licenses, adult entertainer licenses, and alcohol permits.

Cons:

- None

City staff recommends City Council adopt the ordinances authorizing the APD to conduct criminal history checks for employment with the City, adult business and entertainment licenses and alcohol permits.

Police Chief Bill Hogan responded to various questions from Councilman Mumpower regarding the City's ability to use this resource in their efforts to address illegal immigration.

Councilman Mumpower moved for the adoption of Ordinance No. 3638, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE NO. 3638 - ORDINANCE BOOK NO. 25 – PAGE 3

Councilman Mumpower moved for the adoption of Ordinance No. 3639, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE NO. 3639 - ORDINANCE BOOK NO. 25 – PAGE 5

Councilman Mumpower moved for the adoption of Ordinance No. 3640, requesting feedback on how quickly the Police Chief, Sheriff and Judicial System are able to get an consistent pattern of checking the fingerprints of the parade of people who don't have identification but are brought into our jail for DUI's or other misbehaviors. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE NO. 3640 - ORDINANCE BOOK NO. 25 – PAGE 7

Q. UPSET BID RECOMMENDATION FOR THE HOLIDAY INN AT THE AIRPORT PROPERTY

Economic Development Director Sam Powers said that this is the consideration of an offer by W&K Hotels, LLC to purchase the 10.37 acres of land owned by the City of Asheville located at 550 Airport Road.

The City owns approximately 10.37 acres of land at the intersection of Airport Road and Interstate 26. In the 1980's the City entered into a 60 year ground lease and a hotel, currently operating as a Holiday Inn (HI), was constructed on the site. The ground lease has approximately 36 years remaining. The City currently receives an annual revenue stream from the lessee of approximately $130,000, and the lease has gradual revenue escalation clauses. The current owner of the HI has made an offer to purchase the land for $2,450,000. A letter was

received from David E. Matney, III, attorney for W&K Hotels, LLC, on June 11, 2008. The hotel owner has indicated he has interest in developing the site to a higher intensity to include a possible upscale hotel addition and conference center, retail and office space, and structured parking. The hotel owner has indicated that in order for him to invest in his new facilities, his ownership interest in the property must change. In addition to an offer to purchase, the hotel owner has also indicated that he is willing to modify the terms of the lease to a new period of 99 years. A team of city staff, including the Chief Financial Officer, City Attorney, Real Estate Manager, and Economic Development Director have been assessing the prospect of disposition of the property. City staff had an appraisal done on the site in 2006. The owners of the HI had an appraisal done in 2007. There are major differences in the value conclusions of the two appraisals. The City's CFO has provided a memo to Council explaining the City's analysis of the value of the property.

Airport Road has seen tremendous growth as a retail and hospitality corridor in the last two years. Staff has reviewed the land appraisals on which the $2,450,000 offer is based, and staff has concluded that the offer does not reflect the value of the land to the City or to the Lessee. The offer tendered is based upon a sale in the open market. The value of the property to the open market includes the existing lease which survives a transaction of the property. It should be noted that the value to the open market is not considered as the City has not initiated plans to sell the land on the open market; instead the hotel owners approached the City with an offer.

It should also be noted that the hotel owner's proposed concepts would have a positive economic effect should the development occur, and selling the property would result in increased property taxes to the City. However, previous discussions have centered around a real estate transaction, and the owner has not indicated a desire to execute a development agreement that would govern the terms and conditions of the development of the site and set conditions for build out prior to closing on the real estate.

Based upon staff analysis of the property, growth potential for the Airport Road corridor, terms of the existing ground lease, the desire to provide effective asset management, and the interest in promoting economic development and smart growth in the area, staff believes it is in the best interest of the City to offer the property at the Fair Market Value established by the City staff of $5,932,500 ($5.65 MM escalated to 2008 dollars). If Council desired other alternatives, Council could authorize the City Clerk to advertise for upset bids based on the current offer of $2,450,000 with the understanding that City Council has the right and authority to reject any and all bids received if the price is not in the City's best interest. City Council could also offer the property for sale at a beginning price of $5,932,500.

The sale of city owned property is consistent with Council strategic goals and is contemplated in the adopted 2008-09 budget as a method to provide funding for anticipated capital projects.

Pros:

- City would receive a lump sum payment from sale of the property which could be utilized for capital projects.
- Sale of the property would allow the hotel owner to redevelop the property to a higher level of density, thus creating more property tax revenue, sales tax revenue, hotel occupancy tax revenue, and payroll.

Cons:

- City currently has a consistent revenue stream from the lease of the property which would be extinguished at closing.
- The existing ground lease encumbers the property and would survive transfer of ownership thus limiting the interest in the open market for the property to niche purchasers.

The fiscal impact would be the estimated proceeds from the sale, plus any additional tax revenues, less the current annual lease payments.

City staff recommends that City Council rejects the offer of $2,450,000 by W&K Hotels LLC to purchase the property at 550 Airport Road; and further recommends offering the property for sale in an upset bid process. The suggested offering price is $5,932,500.

Mr. David Holcombe, representing W&K Hotels, said that he is authorized by Mr. Dennis Hulsing to obtain this site, either by lease or purchase. He showed Council a conceptual plan for everything around the existing hotel. Mr. Hulsing is known for purchasing and then immediately improving, with his own staff, his properties to two and three times their value. He would like the City to look at the original offer made on June 11, 2008, which said either purchase or lease and they would recommend that this go to a long-term lease, which would benefit both parties.

Chief Financial Officer Ben Durant said that staff recommends the City get market value for the property and that we advertise it publicly and see what the market is willing to pay. Short of that, if Council directs us, we can go back and negotiate further and see if there is some type arrangement that can be worked out that would be in the best interests of both parties.

City Attorney Oast said if Council decides to dispose of this property, whether by sale or long-term lease, it will have to go through some sort of competitive process, e.g., an upset bid process, sealed bid process, etc.

Mr. Jesse Junior felt that the conceptual plan presented was vague and Council should ask for something definite in terms of plans for the property.

Throughout discussion, Mr. Powers, Mr. Holcombe and City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: does staff believe it's realistic that someone would pay approximately $6 Million on the open market for this property; what is the property currently zoned; is the lease for the entire 10.37 acres; is the Lessee free to do what they want (in normal development parameters) on the property in the remaining 36 years of the lease; what is the life of a hotel; is it possible to consider the lease and sale at the same time; how long does an upset bid process take; and when an existing business has an existing 36 year lease, under those circumstances how common is it to receive an upset bid.

In response to Councilman Newman, Mr. Powers said there are four kinds of transactions available (1) asset management and an income stream; or (2) a real estate transaction; or (3) an economic development deal; or (4) some combination thereof. Up to this point, the owners have not indicated an interest in an economic development deal. If we did a development agreement and there was due diligence and certain milestones in terms of design and construction that were accomplished before the City closed on the land that we knew would ultimately result in a much higher tax base, as was outlined by Mr. Holcombe, then that would affect the value. However, in absence of that, he believed we are looking at the real estate transaction. For the real estate transaction, we have (1) a value to the City; (2) a value to the Lessee; and (3) a value to the open market. The value to the open market is the least favorable for us.

In response to Councilman Russell, Real Estate Manager Nikki Gunter said that the appraisal done for the City by Richard Jacobs in 2006 was $2.92 Million and the appraisal performed by BB&T for W&K Hotels LLC was $2.05 Million, but that was for the lease fee interest only – not the fee simple value.

When Councilman Russell asked if the City has clear title, City Attorney Oast said that the property was acquired as part of the initial Airport purchase and when I-26 was built, this remnant remained. Back in the early 1980's we obtained a release of that property from the

Federal Aviation Administration (FAA) restrictions on our ability to apply the income to non-aeronautical projects. He felt we can get verification from the FAA that the City does have clear title to the property. He said that would be verified before we sold the property.

In response to Councilman Russell, Mr. Powers said the proposal we have now basically indicates a new lease pretty much at the existing terms of $130,000 a year. However, staff is not in favor of that, and there are many provisions in the lease that City staff would want to renegotiate.

Because there was an offer made to either purchase the property at $2.4 Million or extend the lease, Mr. Holcombe said it appears we will not come to an agreeable price at $5.9 Million. He said Mr. Hulsing is agreeable to a 99 year lease at a fixed rent rate of $130,000, noting that this year with the slumping economy and reduced travel, Mr. Hulsing estimates the rent will likely be closer to $115,000. Mr. Hulsing would then do a Consumer Price Index (CPI) increase of 2%-5%, with perhaps a cap which will be up for negotiations. He felt that the fixed rent of $130,000 a year with the CPI increase and Mr. Hulsing improves the site for an upscale convention hotel, he felt the City would double their money because the taxes on the property is about $130,000. If the City does not accept this offer, the rent will probably go down and Mr. Hulsing will not make any improvements on the property.

In response to Councilman Newman, Mr. Holcombe felt that Mr. Hulsing would not be willing to pay an outside consultant to take six months for a detailed plan. However, if Council wanted Mr. Hulsing to refine the conceptual plan given in detail, he would be willing to do that.

Mayor Bellamy said that in the absence of a motion, Council will send the matter back to City staff to talk with the existing Lessee.

City Manager Jackson asked if the motion is to send it back to City staff for the development agreement option if the Lessee is interested in that, that is new information and would be worth pursuing. If the Council is talking about putting the property on the market in an upset bid process for the $2.4 or $5.9 Million, or putting it on the market place for a 99-year lease, we still need an upset bid process to go in that direction. The options before Council, short of a development agreement, are (1) to merely set an offering price and begin a public process for placing it on the market; or (2) whether it's a lease or sale, but it if's a sale, at what offering price. The Council is not bound by the offering price.

Councilwoman Cape said if we have a $130,000 ground lease for 36 years, that's $4.7 Million. It's not as if we're not getting income on this property. As we go out and evaluate this project, she asked staff to give Council an assessment of the difference between City-owned property, taxes, rent incomes, how the rent would be negotiated, etc. She felt that would give Council information to make a good decision. Getting all the money at once may have some value, but we're getting $4.7 Million over 36 years with a lease we can negotiate. It's not as if the property is just sitting there. She asked for more information from City staff.

In response to City Manager Jackson, Mr. Holcombe said that said he can provide City staff with a detailed pro forma that shows what the site will allow - a certain amount of square footage which was done by an architect in detail. City Manager Jackson said that having that information available to staff (confidentially) would help expedite their process of analysis.

It was the consensus of the majority of Council to ask staff to work with Mr. Holcombe in an expeditious manner on the options available, and to provide Council with an e-mail update prior to placing it on the agenda in August.

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO AN APPROVED CONDITIONAL USE PERMIT TO INCLUDE THE PROJECT IDENTIFIED AS LANDMARK AVIATION – FIXED BASE OPERATION AND AIRPORT HANGAR, LOCATED AT 275 WRIGHT BROTHERS WAY, FOR A 23,100 SQUARE FEET AIRCRAFT STORAGE HANGAR AND 5,500 SQUARE FEET OF OFFICE SPACE

ORDINANCE NO. 3641 - ORDINANCE AMENDING AN APPROVED CONDITIONAL USE PERMIT TO INCLUDE THE PROJECT IDENTIFIED AS LANDMARK AVIATION – FIXED BASE OPERATION AND AIRPORT HANGAR, LOCATED AT 275 WRIGHT BROTHERS WAY, FOR A 23,100 SQUARE FEET AIRCRAFT STORAGE HANGAR AND 5,500 SQUARE FEET OF OFFICE SPACE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:00 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. Councilman Newman specifically pointed out that he currently serves on the Airport Authority and they have discussed general development plans but would base his decision solely on what is before Council at this hearing.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of an amendment to an approved conditional use permit to include the project identified as Landmark Aviation – Fixed Base Operation Office and Airport Hangar, located at 275 Wright Brothers Way, for a 23,100 square feet aircraft storage hangar and 5,500 square fee of office space.

The applicant is requesting review of site plans for a new airplane storage hangar and fixed base operation office at the Asheville Airport (Attachments to City Exhibit 3 – Site Plan, Aerial Map and Aerial Map with Amendment). This project is being considered as an amendment

to the previous Conditional Use Permit (#08-1395) which was considered as a Level III review pursuant to Section 7-5-9(a)(1)b. of the Unified Development Ordinance (UDO), which states "properties located within 1,500' of each other, under the same ownership and/or developed by the same developer over a period of 3 years or less shall be considered to be one development and reviewed as such."

The project site is a leased portion of a 535 acre parcel (according to submitted site plans) containing the Asheville Regional Airport. The site is located at the northwest corner of Wright Brothers Way and Lindbergh Lane, north of the Asheville Regional Airport passenger terminal and the previous hangar project. The site and surrounding properties are zoned Industrial. The applicant is proposing to construct a 23,100 square foot aircraft storage hangar with a 5,500 square foot office space. The structure will be 38 feet in height (Attachment to City Exhibit 3 – Conceptual Site Layout).

Landscaping on the site includes a street buffer, street trees along Wright Brothers Way, vehicular use and building impact landscaping. A small parking lot is included and plans as proposed include 44 spaces, which exceeds the maximum parking range by 14 spaces, however staff is supportive of this excess as the lot will accommodate not only the new structure but also supports other buildings in the vicinity.

Ordinarily this project would be considered as a Level 1 on its own, however due to Section 7-5-9(a)(1)b. listed above and the projects approved in the past three years (Level 1 - May 2007; Level 2 - August 2005; Level 2 – March 2005; CUP – May 2008), this proposal is being considered as an amendment to the previous CUP.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   All land in the immediate vicinity of the site is also operated by the Asheville Regional Airport and supports private and public aviation. The proposed airplane storage hangar and FBO will support and complement adjacent uses. There are no significant or topographic features on the site that raise any conflict other than the need to plant some of the required landscaping offsite, due to the nature of the bulk of the parcel as paved apron area for flight craft.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   Abutting property is also owned by the Asheville Regional Airport. The proposed airplane storage hangar and FBO supports and complements the existing uses, especially due to existing storage hangars being currently filled to capacity. It should not injure the value of abutting or adjoining property.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed airplane storage hangar and FBO is similar to other storage hangars in the immediate vicinity and is compatible with the adjacent public airport. This proposal is in harmony with the scale, bulk, coverage, density and character of the other uses in the area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The 2025 Plan identifies that the airport is a "major economic generator for the community, with an estimated $199.8 million in annual direct, indirect and multiplier benefits, creating an estimated 2,956 jobs." Improvements to the airport, such as this one, assist in maximizing the efficiency and success of this regional transportation hub. General aviation additions are specifically stated as a needed long-term improvement of the Plan (pg. 146). Improvements to the Asheville Regional Airport indirectly support the City's goals relating to Economic Development and Sustainability, as maximizing the efficiency of the airport will make it easier for visitors (and residents) to travel to and from the area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
The proposed hangar and FBO is located just off I-26 at the Airport Road exit within the Asheville Regional Airport, which places the project in an easily accessible and appropriate location. The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.
Based on the proposed use of the subject project, it is reasonable to conclude that it would probably generate very little new traffic. The project will provide basic office use and covered storage for airplanes and it will more than likely serve the airplanes that already exist. Therefore, the overall traffic impact in the immediate area of the subject project should be minimal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

As an amendment to a Conditional Use Permit, this project was not required to be reviewed by the Planning & Zoning Commission. It was approved with conditions by the Technical Review Committee on June 16, 2008.

Pros:
- Proposal contributes to the efficiency of operations at the Asheville Regional Airport.
- Parking lot will serve the needs of other existing storage hangars on the site and assist in complying with federal regulations.

Con:
- None identified

Staff recommends approval of the airplane storage hangar and fixed base operation subject to the standard conditions.

Mr. Alan Ditmore spoke against the amendment to the conditional use permit in that aviation is doomed as it wastes tremendous amounts of oil.

Mayor Bellamy closed the public hearing at 6:07 p.m.

After finding that the request is reasonable based on information provided in the staff report and stated in the staff recommendation, Councilman Newman moved to adopt Ordinance No. 3641 to approve the amendment to the Conditional Use Permit adopting the proposed master plan for the Landmark Aviation FBO & Aircraft Hangar, subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 9

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS

ORDINANCE NO. 3642 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS

Mayor Bellamy opened the public hearing at 6:08 p.m.

Urban Planner Julia Cogburn said that this is the consideration of many amendments to the Unified Development Ordinance (UDO) for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance as it relates to sign regulations. This public hearing was advertised on July 11 and 18, 2008

Working with the UDO on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use. She reviewed the various set of amendments which deal with sign regulations.

Regarding the Strategic Operating Plan, this ordinance supports the Council goal of completing UDO amendments to improve clarity and address community goals.

Pros:

- Codifies past staff interpretations on issues concerning sign standards.
- Adds language to address sign regulations on which the code is now silent.
- Adds language to aid in clearer enforcement actions.
- Changes standards to make consistent with other City regulations.

Con:

- None Noted.

The Planning and Zoning Commission of the City of Asheville, at a meeting on July 2, 2008, unanimously (6-0) recommended that City Council adopt the ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville with one minor clarification. No one spoke on the proposed amendment.

City staff recommends City Council adopt the amendments to the UDO for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance as it relates to sign regulations.

Mayor Bellamy closed the public hearing at 6:15 p.m.

Throughout discussion regarding the various amendments, the following two amendments were agreed upon by the majority of Council: (1) In Section 7-13-02 (d) (1), Signs Exempt from Permit Requirements, Real Estate Signs be amended by adding the following sentence at the end of (1): "A minimum setback of five (5) feet is required."; and (2) Section 7-13-3 (3), Signs Prohibited in All Zoning Districts, Signs on Vehicles, be amended by deleting the last sentence ("Such vehicles must also be used periodically during the normal course of business") and replacing it with the following: "Such vehicles must also be used weekly during the normal course of business." (underlining denotes changes)

Councilman Newman moved for the adoption of Ordinance No. 3642, with the two amendments noted above. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "no."

City Attorney Oast noted that because of the vote, this ordinance would need to come back to Council at their next formal meeting for a second and final reading.

ORDINANCE BOOK NO. 25 – PAGE 14

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE NEW ALLOWANCES FOR THE EXPANSION OF EXISTING OR PLANNED GATED COMMUNITIES

ORDINANCE NO. 3643 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE NEW ALLOWANCES FOR THE EXPANSION OF EXISTING OR PLANNED GATED COMMUNITIES

Mayor Bellamy opened the public hearing at 6:31 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of many amendments to the Unified Development Ordinance (UDO) to create new allowances for the expansion of existing or planned gated communities. This public hearing was advertised on July 11 and 18, 2008

Ms. Tuch said that this amendment is brought forward for your consideration at the request of Biltmore Farms. In 2007, City Council reviewed and approved a prohibition on gated communities in Asheville's jurisdiction. Once made effective, this prohibition applied to all properties not already developed as gated communities or otherwise approved and permitted as a gated community; the prohibition did not contemplate property that was in possession, marketed, or otherwise encumbered for the purpose of developing or expanding a gated community. This amendment seeks to offer relief for those rare instances. Staff is only aware of two situations where this amendment would be exercised and they are both Biltmore Farms developments.

The amendment would add the following explicatory sentence to the following prohibited use: "Gated Communities. This shall not include those gated communities lawfully established

prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community master plan."

Regarding the Strategic Operating Plan, this report's recommendation most appropriately addresses the goal of *sustainability* by supporting a variety of housing choices.

Pros:

- Accommodates a legitimate economic interest and expectation
- Supports another form of housing and community choice for residents

Cons:

- Somewhat contrary to the prohibition – allows for the expansion of gated communities that are not approved or otherwise permitted
- Documenting ownership of property and record of master plan can prove challenging and may be subject to appeal

The Planning & Zoning Commission reviewed this amendment at their July 2, 2008, meeting where it was approved unanimously by a 6-0 vote, with one member absent.

Supporting this amendment will have a positive fiscal impact through higher valuations of new properties that are supported minimally by City services.

City staff recommends City Council adopt the amendment to the UDO to create new allowances for the expansion of existing or planned gated communities.

Mr. Alan Ditmore felt there are only two groups that have the need for gated communities for heightened security, those being abortionists and gays.

Mr. Chad Lloyd, representing Biltmore Farms, spoke in support of this proposed amendment and explained how this amendment is necessary to prevent an unfair and injurious application of the existing ordinance to neighborhoods, homeowners and developers who have a legitimate economic, personal, health and welfare interest in preserving their gated communities as they were when they were proposed, developed (and continue to be developed), sold (and continue to be sold) and occupied.

Mr. Jesse Junior was concerned about what a gated community says about Asheville.

Mayor Bellamy closed the public hearing at 6:40 p.m.

Councilman Newman moved for the adoption of Ordinance No. 3643. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 17

V. UNFINISHED BUSINESS:

A. MOTION TO ACCEPT THE WATER LINE EXTENSION INCENTIVES PARTICIPATION AND EVALUATION FORM FOR AFFORDABLE HOUSING AND INFILL DEVELOPMENT

Water Resources Director David Hanks said that on November 27, 2007, City Council approved participation in funding water line upgrades and/or extensions for promoting affordable housing and infill development in areas where the current water lines or no water lines exist to support new development. At that time, Council directed the Sustainability Advisory Committee

on Energy and the Environment (SACEE) to review the form and add energy and environmental elements to the proposed form.

After a sub-committee of SACEE drafted changes to the original form (with informal approval), on February 29 2008 Water and Public Works staff met with representatives from Mountain Housing Opportunities, Habitat for Humanity and Pisgah Legal Services to review the SACEE's draft form and scoring criteria. Based on these stakeholder's input, staff made further revisions to the form to include scoring 'weights' which provide a flexible means to attain necessary points. Subsequent follow up dialogue never resulted in unanimous consensus by the stakeholders.

On June 13th staff presented the revised form to the full SACEE for review and disposition. They added areas for smart growth, affordability, water conservation and energy efficiency and recommends acceptance of the participation and evaluation form. Following discussion the SACEE unanimously approved the form as revised for presentation to Council.

> "SACCE supports the Water Line Application and Evaluation Form for Affordable Housing and Infill development in recognition that long term community sustainability involves economic, environmental, and social considerations and that this form provides a good first step towards balancing the aforementioned tenants of sustainability."

On June 19th staff provided the revised form to the Mayor's Affordable Housing Taskforce for review and comment. The Task Force provided no comments or questions regarding the form.

This action complies with the City Council Strategic Operating Plan in that it addresses the following goals: (1) Pursue strategies to increase the supply of sufficient, safe and affordable workforce housing opportunities; (2) Reduce energy consumption in privately owned buildings; and (3) Promote sustainable, high-density, infill growth that makes efficient use of existing resources

Pro:

- This application and evaluation form will address affordability of projects, land use, water conservation and energy efficiency of new projects.

Con:

- These requirements could add cost to projects which could affect the affordability of housing units.

The fiscal impact is $500,000 annually to the Water Fund.

Staff recommends City Council accept the Water Line Cost Participation Application and Evaluation Form

Ms. Cindy Weeks, representing Mountain Housing Opportunities, supported the program and said that if the program is approved, they plan to use the proceeds, they get through the incentive monies, to increase the affordability of their units. She did have some mixed feelings about the results, especially in the definitions of affordable and green building, but staff has made numerous compromises. She felt that with this point system, there will be some changes that need to be made as they move forward. She asked for Council's consideration, if there are adjustments to the point system or some definitions after approved, that it be allowed to be done by the Housing & Community Development Committee.

Councilwoman Cape said that the Housing & Community Development Committee talked about the various incentives that were put forward. And, the SACEE Committee is looking at

incentives for energy efficiencies. She felt this document is a good start but it's not the end product. She felt the end product will be a comprehensive program that offers a variety of incentives and rebates and supports achieving the strategies Council has put forward. Those strategies are not only affordability and green, but safety incentives as well.

Councilman Mumpower could not support the motion as he felt the water customers will be paying for Council initiatives.

Councilwoman Jones felt the City Council owns their own water system and they can promote the public goals – one of which is affordable housing. She felt that one of the biggest barriers for affordable housing is the running of water lines. She also pointed out that one of the best things we can do for the environment and sustainability of our community is to be able to build closer in, so we are not traveling back and forth. She hoped this program will be a model for other communities in North Carolina.

Councilman Newman supported the program as well in that people want to see Asheville remain a place for people who work here to live here.

Vice-Mayor Davis supported the program but noted why there may not have been consensus on some of the items. If the program is approved, he asked that staff track the performance of the program to see if more units are on the ground and that this issue be revisited in one year to see that progress.

Councilwoman Cape moved for the adoption of the Water Line Cost Participation Application and Evaluation Form and that staff track the performance of the program to see if more units are on the ground and that this issue be revisited in one year to see that progress. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

B. RESOLUTION NO. 08-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORT ARCHITECTURAL GROUP, P.A. TO PROVIDE CONSTRUCTION PLANS AND DOCUMENTS, AND CONSTRUCTON ADMINISTRATION SERVICES TO REPLACE THE EXISTING ROOF ON THE CIVIC CENTER ARENA AND CONCOURSE WITH AN ENVIRONMENTALLY SENSITIVE HIGH EMISSIVITY ROOF

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA in the amount not to exceed $132,099 plus a contingency of $20,000 to provide construction plans and documents, and construction administration services to replace the existing roof on the Civic Center arena and concourse with an environmentally sensitive high emissivity roof.

In July 2007, Council authorized Cort Architectural Group, PA to complete a structural analysis to determine if the existing truss system on the Civic Center arena and concourse could support a living roof. The analysis determined the existing structure could not support the load necessary to support a living roof without additional reinforcement. The cost of the additional reinforcement is estimated at $36,500. This price does not include the removal of lead primer paint that will need to be removed prior to reinforcing the members. Even with the additional reinforcement, the consultant could not with certainty say that truss tees used would support an intensive living roof.

During this evaluation period, the Civic Center roof has continued to deteriorate. Patrons at several events over the past few months have been relocated due to leaks in the roof. Due to the need to replace the Civic Center roof as soon as possible, staff recommends that construction plans and documents be completed to begin the replacement of the roof. Staff recommends that the existing roof be replaced with an environmentally sensitive high emissivity roof.

The Civic Center Commission unanimously approved the resolution.

This recommendation complies with City Council's 2008-09 Strategic Plan by providing a green alternative roof option and sustainability of addressing capital needs of the Civic Center.

Pros:

- The development of the plans and specifications can begin within the next four weeks. The construction phase of the project could begin spring 2009, pending the scheduled events at the Civic Center.
- The cost of the project continues to increase due to rising oil prices. Expediting the project will help keep these increases to a minimum.
- An environmentally sensitive high emissivity roof reflects light thus reducing cooling costs.
- The recommended roof decreases the heat island effect in downtown.
- A living roof is expected to cost an additional $1.3 million, which is not currently budgeted.

Con:

- Staff had hoped to replace the existing roof with a living roof. Due to the uncertainty of our ability to structural support a living roof and the continued deterioration of the existing roof, we recommend moving forward with the environmentally sensitive high emissivity roof.

Funds for the development of the construction plans, specifications and construction administration have been budgeted in the Civic Center Capital Budget.

City staff recommends City Council consider of a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA in the amount not to exceed $132,099 plus a contingency of $20,000 to provide construction plans and documents, and construction administration services to replace the existing roof on the Civic Center arena and concourse with an environmentally sensitive high emissivity roof.

Mr. Alan Ditmore spoke against the resolution in that the building is for entertainment which is not a human need. He felt the site should be used for high density affordable housing.

Mr. Dennis Justice supported the resolution. He felt that regardless of what is done with the facility, the roof has to be replaced.

Councilwoman Cape was frustrated that it has taken a year to have someone look at the question of whether it was feasible for a green roof on the Civic Center. In addition, from the beginning no one thought an extensive roof would work and always believed if there was going to be a green roof, it would be a light-weight green roof. And, to have this report come back and say it won't support an extensive roof was nothing new. She felt that green roofs are seen as a viable an important resource in many communities. In the future, she hoped that when Council asks for a fair analysis to come back, that it be done in a timely fashion. She would continue to push for new technologies to see if they are applicable in our community.

In response to Councilman Mumpower, Mr. John Cort, representing Cort Architectural Group, P.A., explained the different kinds of roofs.

In response to Councilman Mumpower, Ms. Ball said that the City has spent $18,000 (this contract with Cort Architecture) on studies related to a living roof. Regarding delays, she said there was about a 4-month delay in getting the contract to Mr. Cort to execute and the green roof issue has taken approximately six months.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 08-159. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 259

C. DIRECTION FOR NEXT STEPS IN THE CITY-OWNED PROPERTY REQUEST FOR PROPOSAL PROCESS

Economic Development Director Sam Powers said that this is the consideration by City Council of direction for next steps in the City owned property Request for Proposals (RFP) process for Eagle Market properties and for Park Maintenance properties.

The City has engaged in a Request for Qualifications/Proposals (RFQ/RFP) for potential redevelopment of three city owned/controlled properties to achieve strategic economic and community development goals. At the April 22, 2008, City Council meeting, staff was directed to proceed with negotiations for a draft development agreement on the Haywood Street properties. Staff expects to return to Council in the next 90 days with an update on Haywood Street site. At the April 22nd meeting Council also directed staff to continue due diligence on the Eagle Market site and the Park Maintenance site. Status and recent activities are outlined below.

The RFP process addresses multiple goals of the 2008-09 Strategic Plan. Specific goals include: (1) Promote sustainable, high density infill growth that makes efficient use of existing resources; (2) Develop and implement the comprehensive affordable housing plan and proactively pursue strategies, including completing the city-owned land redevelopment process, to increase the supply of workforce housing; (3) Support diversified job growth and small business development; (4) Reduce energy consumption in privately owned buildings; and (5) Increase downtown cleanliness and beautification efforts.

Pros:

- Provides reinforcement to the RFP process.
- Proposals meet multiple Council Strategic Goals.
- Proposals meet multiple goals of 2025 Plan.
- Job creation (construction and permanent).
- Proposals received are consistent with Asheville's moderate, stable growth market.
- Proposals received are in the small to mid-scale range.

Cons:

- Extends the time frame for possible work force housing at Park Maintenance site.
- Cost-benefit of relocation of municipal facilities.

There is no immediate impact. Intermediate and long term impacts include: (1) Tax base enhancement by returning public sites to private sector; (2) City Council has indicated that proceeds from sale of land be directed to provide workforce housing opportunities; and (3) Relocation of existing city facilities at Park Maintenance to other city property will require up fit for Parks Department use, but will allow site development thereby eliminating negative equity of Park Maintenance site.

City staff recommends City Council approve a motion to move forward with recommended next steps: (1) Allow staff and Eagle Market Street Development Corporation (EMSDC) to enter negotiations with Eagle Market Renaissance LLC to draft a development agreement that outlines roles and responsibilities of City, EMSDC, and developer Eagle Market Renaissance; and (2) Allow staff to enter into negotiations with MHO to draft a development

agreement, including a Purchase and Sale Agreement, that outlines roles and responsibilities of City and MHO.

Councilwoman Cape moved to excuse Councilwoman Jones from participating in the Eagle-Market Street properties matter due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously. At this time, Councilwoman Jones left the Chamber.

Eagle-Market Street Properties: The development group, Eagle Market Renaissance LLC, (EMR) has proposed a mixed use residential project with street level commercial sites. The proposal is an intensified use of the existing site. There would be limited on site parking. The developer proposes historic preservation of existing facades, and to provide retail space to anchor the cultural heritage of the area. The proposal is responsive to the RFP in the following criteria: diversity of development team; proposed sustainable job creation and business incubator space; equity involvement with Eagle-Market Street Development Corporation (EMSDC); enhanced tax base; increased site density.

In summary, it has (1) mixed use, multi-family residential with street-level commercial; (2) anchors cultural heritage district; (3) African American development team; (4) EMSDC directly involved in developer discussions; (6) equity partnership between EMR and EMSDC; and (7) desire to use Section 108 and Community Development Block Grant (CDBG) funds.

Mr. Alan Ditmore felt that if developments are taller, they could provide more affordable housing with more mixed income.

Councilman Mumpower felt that due to the economic downturn and real estate market he felt we may be setting ourselves up for failure.

In response to Councilman Mumpower, Mr. Powers said that the amount of staff time involved will probably be pretty intensive. They do, however, understand this has been a high priority of Council for a long time and it's important to the community and residents of the South Pack Square area.

In response to Vice-Mayor Davis, Mr. Powers said that they will continue to conduct and open and inclusive project.

In response to Mayor Bellamy, Mr. Powers said that the City has up-to-date information posted on their website regarding these projects and initiatives.

Councilwoman Cape moved to allow staff and Eagle Market Street Development Corporation (EMSDC) to enter negotiations with Eagle Market Renaissance LLC to draft a development agreement that outlines roles and responsibilities of City, EMSDC, and developer Eagle Market Renaissance. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no" (with Councilwoman Jones being excused). At this time, Councilwoman Jones returned to the Chamber.

Councilman Mumpower moved to excuse Mayor Bellamy from participating in the Park Maintenance properties matter due to a conflict of interest. This motion was seconded by Councilwoman Cape and carried unanimously. At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Davis to conduct the remainder of the meeting.

Park Maintenance Properties: This is an optimal site for workforce housing to support and link downtown, the hospital/community college district, and the river area due to the land cost basis and consistency with the neighborhood plan. The City received a proposal on May 30 from Mountain Housing Opportunities (MHO) to develop a mixed income, multifamily residential project with limited street side commercial/community space. The residential mix would include rental

and ownership. There would be potential for future phases of additional units. MHO is proposing green and sustainable design. The proposal is responsive and meets adopted neighborhood plans.

In summary, it has (1) mixed income, multi-family residential with limited street-side commercial; (2) 54 residential units (for rent and potentially for sale affordable workforce and market rate housing); (3) potential for additional units in future phase; (4) goals for green and sustainable design; (5) community room planned; (6) sustainable job creation; (7) local business involvement; and (8) consistent with West End/Clingman Avenue Neighborhood Citizens Master Plan and Clingman Forest Greenway Plan.

When Vice-Mayor Davis asked for public comments, he received none.

Councilman Mumpower reiterated his earlier comments relative to the economic downturn and real estate market.

There was a brief discussion, initiated by Councilman Mumpower, about relocating the existing Park Maintenance facilities to another location. Mr. Powers responded that staff will be making a presentation on August 19 regarding all the City's facilities, with a specific staff recommendation to move forward with relocating the Park Maintenance facilities to property already owned by the City at the Armory site on Shelburne Road.

Councilman Mumpower did not see the urgency of a Council decision on surrendering this property to a development initiative, however good, before we know the details of the proposed transition of the facility.

In response to Councilman Russell, Mr. Powers explained that part of the Park Maintenance site has topography challenges. How we utilize the remainder of the land for future phases is very much a part future discussions. He did note that part of it has been proposed for the Clingman Forest Greenway.

Councilman Russell felt ideally it would be nice to get more than just 50 units on this large site. Due to our economic climate, he wondered if this is something that should be tabled for a couple of years.

Councilman Newman supported staff moving forward on this good opportunity for quality infill development.

In response to Vice-Mayor Davis, City Manager Jackson said that the City is not boxing itself in with moving forward to the next step and that City staff is prepared to discuss the facilities master plan in August.

Councilwoman Cape moved to allow staff to enter into negotiations with MHO to draft a development agreement, including a Purchase and Sale Agreement, that outlines roles and responsibilities of City and MHO. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no" (with Mayor Bellamy being excused).

VI. NEW BUSINESS:

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 13 - 26, 2008: David Albertson (Water), Bruce Fitchett (Fire), Rod Brombacher (Police), Hugh R.

Trent (Transit Services), Brenda Banks (Parks & Recreation), Timothy J. Carter (Sanitation), Ashley Bolen (Transit Services), Marian Chambers (Transit Services), Elizabeth Maskell (Police), AT&T (Water), Terry Clark (Streets), Cindy Plemmons (Streets) and Valarie Menard (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Pam Stewart presented Council with several concerns regarding the operation of the Asheville Transit System, summarized as follows: (1) Asheville Transit System is operating understaffed with presents concerns; (2) there is a serious lack of communication between the Transit Director and her staff and the transit staff; (3) bus operators are expected to maintain the time schedule on routes that are too tight to make safely; (4) members of City staff are improperly involving themselves in personnel issues concerning Union Represented Transit employees; and (5) the Transit Director, Transit Manager and Parking Manager met once a week over the past three years to report matters of concerns, but this has not happened with new Transit Director. She then described maintenance concerns including (1) upper side of Transit Center is sinking; (2) concrete in bus washer at the Haywood Street garage is deteriorating; (3) roof in the shop area of the Haywood Street garage facility needs to be replaced; and (4) damaged bus stops due to lack of communication. In addition, she raised several personnel issues regarding the Asheville Transit System.

Councilman Mumpower said that Mayor Bellamy has scheduled the transit issues to be discussed at the September 16 worksession but felt that due to the urgency of these items, that Council give some consideration to advancing this matter.

City Manager Jackson said that City staff has attempted to open the lines of communication. He said that after the presentation on June 24, 2008, staff provided Council with follow-up memo to the transit issues. Because he has not received a copy of what Ms. Stewart just presented to Council, he cannot respond without consulting with the Director of Transportation and Engineering to see if there are new issues, ones that have been addressed, if there are policy matters; or matters of contract administrative procedures. He is, however, committed to a timely response. Once he receives a copy of the material presented, he will delineate those things that are time sensitive, urgent and operational. Regarding the policy related matters, he will leave it to the Mayor's judgment as to whether or not those should be combined with the policy briefing on September 16.

Mr. Mike Fryar outlined his concerns while presenting Council with the various contracts and documents regarding the transit management contract. He then questioned a Transit Committee member's address being located in Buncombe County and not in the City of Asheville.

City Manager Jackson felt there are three issues involved (1) the verification of Mr. Yuri Koslen address (which will be addressed); (2) the contractual framework and the authorization to extend the contract (which is being addressed with the City Attorney); and (3) the protest in the middle of the contract process (which caused the City to conduct individual opportunities for the 3 finalists to make presentations which resulted in a changing of the ranking of the companies).

After a brief discussion, Vice-Mayor Davis asked that the City Manager address these matters honestly, fairly and expeditiously.

IX. ADJOURNMENT:

Vice-Mayor Davis adjourned the meeting at 8:37 p.m.

Magdalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – July 29, 2008 - 5:00 p.m.
Civic Center – Thomas Wolfe Auditorium

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

RESOLUTION NO. 08-160 - RESOLUTING AMENDING THE 2008 CITY COUNCIL MEETING SCHEDULE

Councilman Mumpower moved to adopt Resolution No. 08-160 amending the 2008 City Council Meeting Schedule to cancel the August 12, 2008, formal meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 260

CLOSED SESSION

At 5:03 p.m., Councilwoman Cape moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; and Buncombe County/ The statutory authorization is contained in N.C.G.S. 143-311(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 6:05 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

ADJOURNMENT

At 6:05 p.m., Mayor Bellamy adjourned the special meeting.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – August 19, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

EMPLOYEE RECOGNITONS

City Manager Jackson recognized the following City Employees: (1) Greg Grayson – Outstanding Executive Manager; Michael L. Coggins – Outstanding Technical Assistant or Aide; Erika Germer – Co-Winner for Outstanding Contribution to Improvement Diversity; Sergeant Stony Gonce – Outstanding Heroic Act Award - Excellence in Public Service Awards Program; (2) Michelle Massey, Brenna Cook, Pam Carter, Sonia Salgado and Phillip Buckner – Trainer - Women's Champion Water Line Tapping Team; Erail June and Det. Mike Downing – Asheville Police Department Employees of the Year; Captain Mike McCoy - Optimist's Firefighter of the Year; Allen Dunlap - Optimist's Police Officer of the Year; and Battalion Chief Barry Hendren - Chief Fire Officer Designation.

Mayor Bellamy announced that we have a professional organization and it's Council's goal to promote our organization. She was pleased that we have new police officers that have been trained in-house; and was pleased to hear of our assistance with the Town of Brevard. She was proud of City staff and looked forward to highlighting more accomplishments.

WATER DROUGHT AND CONSERVATION UPDATE

Mayor Bellamy said that Water Resources Director David Hanks has accepted a position in Florida and it will be a great loss to our community. On behalf of City Council, Mayor Bellamy wished Mr. Hanks much success in his future endeavors.

Superintendent of Water Production Leslie Carreiro updated City Council on the water drought and Conservation Plan. The Conservation Plan includes the computerized drought model which looks at (1) historic and current precipitation and lake levels; and (2) North Fork Water Treatment Plant consumption demand. It also monitors the North Fork lake level and precipitation daily and runs the drought model twice weekly.

Current water levels and capacities include (1) system-wide capacity of 43.5 million gallons per day; (2) system-wide safe yield of 31.5 million gallons per day; (3) average daily consumption of 21.5 million gallons per day; (4) current (8-15-08) North Fork lake level is 2588.58 feet – 12.42 feet below full capacity; (5) current Bee Tree lake level is near full; and (6) Mills River Water Treatment Plant is unlimited (draws from Mills River and French Broad River).

Regarding area water usage, customers of the Asheville Water System conserve water: (1) average residential customer uses 5 CCF's per month; (2) continue to encourage customers to conserve water; (3) no large industrial users; and (4) largest customer by volume is the City of Hendersonville – wholesale customer – currently buys 1 million gallons per day – could supply up to 3 million gallons per day. The City of Asheville is continuing their conservation education program and focus on proactive media and customer awareness plan of water conservation efforts.

She said when she ran the drought model on August 14, it showed that in 10 weeks we could potentially be down 26 feet. However in 10 weeks it will be the end of October and typically with the cooler weather demands drop off and we get more precipitation.

Throughout discussion, Ms. Carreiro responded to various questions/comments from Council, some being, but are not limited to: how does Asheville citizens use of 5 CCF's per month compare to other water distribution systems; and what does the City's conservation education program consist of.

Council members voiced pleasure in noting that Asheville has been very proactive and invested in a plan that has a good drought model. In addition, Asheville's residents are very good at conserving.

When Councilwoman Jones asked about the City's conservation education program, City Manager Jackson said that he will provide Council with a status report containing the work plan for the water conservation staff person and when they will be hired. He said that staff will be coming to Council for guidance regarding public relations and marketing plan for transit and other services as well.

Councilwoman Jones said that the Revenue and Finance Committee will look at our water rate structure of the more you buy, the less it costs. She felt that that issue needs to be reviewed and some decisions made before the state imposes their standards upon us.

Mayor Bellamy stressed that Asheville is willing to sell water to the City of Hendersonville noting that we have the capacity to provide 3 Million gallons per day to them.

City Manager Jackson said that Asheville has been in regular conversations with Henderson County and the City of Hendersonville, both of whom are aware that Asheville has the ability to sell additional water to them. He noted that he has also spoken with the Town of Marshall regarding their options regarding water.

Councilwoman Cape noted that Asheville has undertaken a huge water conservation program of repairing major water lines.

UPDATE ON I-26 CONNECTOR PROJECT

Mr. Derrick Weaver, N.C. Dept. of Transportation (NCDOT) Project Engineer, updated Council on the latest alternative. He said that earlier this year Figg and Lockner presented the N.C. Dept. of Transportation an alternative that was an attempt to bring the original Asheville Design Center (ADC) alternative to the same design standards as the other alternatives in Section B. Regarding the revised ADC alternative, several iterations were made to address design and capacity concerns. On June 28, 2008, the NCDOT did accept the Figg and Lockner design, called Alternative 4-B, with the acknowledgement that is still a need for future refinements, particularly at some of the ramp intersections. As further refinements are made, the NCDOT will discuss them with the Technical Review Committee. In order to proceed with project development, they will hold a public hearing on September 16, 2008, at the Renaissance Hotel and will show Alternative 4-B, as well as the other alternatives in the draft Environmental Impact Statement (EIS). There will be a local officials meeting at 11:00 a.m., followed by a public open house from 3-6:30 p.m. and then the formal presentation at 7 p.m. – all on September 16. He said that Figg and Lockner delivered quantities for their alternative to the NCDOT last week and they are currently working to prepare a cost estimate for the September 16 public hearing, so that alternative will be comparable with the other alternatives. They will have a map displaying this alternative as well as the other alternatives. At the public hearing there will also be visualizations on all of the alternatives, including Alternative 4-B. They are giving the Aesthetics Advisory Committee an opportunity to have input on the visualizations. The next step in the process is to hold the September 16 public hearing. After the public hearing they will review the public

comments and reassess the schedule. However, currently they are on track to meet the currently funded Transportation Improvement Plan (TIP) right-a-way and let schedules. Once they have the cost estimates and the preliminary designs for Alternative 4-B, they will be able to address the human and natural environment impacts so they will be comparable with the other alternatives. At that time, they will determine if they need to include that in a supplemental draft EIS.

Throughout discussion, Mr. Weaver and Mr. Alan Thornburg, Board Member on the N.C. Dept. of Transportation, responded to various questions/comments from Council, some being, but are not limited to: why Alternative 4-B isn't already included in the draft EIS; Alternate 4-B originally had the intersection with Patton Avenue going under it and now the current plans envision it going over Patton Avenue; will economic opportunities for the City be considered with Alternative 4-B; is there any change in the timeline; is there an informal cost estimates of Alternate 4-B; what is the revenue picture for the NCDOT going forward with this project; what is the revenue drop this quarter compared to this quarter last year; when will the community know what pieces of property will be acquired and the date for the preferred alternative; and has Buncombe County been updated on this project by the NCDOT.

Mr. Weaver said that they have worked hard and close with the team of Figg and Lockner to make sure that this project stays on schedule.

Mayor Bellamy noted that the 21st Century Transportation Committee recently met and they heard that the funding for the first phase for this project is in place.

Councilwoman Cape felt we will be seeing dramatic changes in the role of transportation.

In response to Mayor Bellamy, Mr. Weaver said that the preferred alternative will be chosen next year and then a final design public hearing will be held in 2010. Then right-of-ways will be acquired in 2011.

Mayor Bellamy noted that information is available to the community on the NCDOT website at www.ncdot.org along with information on the City's website at www.ashevillenc.gov.

FACILITIES MASTER PLAN UPDATE

Assistant City Manager Jeff Richardson reviewed with Council the following PowerPoint presentation:

Facilities master planning is planning to provide for the orderly growth and location of municipal services to best serve citizens. It addresses immediate needs while remaining flexible enough to respond to future changes. It's purposes are (1) it identifies opportunities to improve delivery of services to citizens; (2) it evaluates land values and land use compatibility in the context of overall community development goals; and (3) it's a long-term financial planning tool.

We are proceeding with the facilities master planning now in order to (1) achieve City Council's strategic goals (a) sustainable – develop a long-term plan to address the city's aging infrastructure including facilities; (b) sustainable – reform and streamline the development review process to improve the customer's experience; (c) affordable – support redevelopment of city-owned land to achieve affordable housing goals; and (d) green – support energy efficient facilities and operations; and (2) align with Council's policy direction (a) facilities master planning is a component of the comprehensive capital planning effort kicking off this fall; and (b) the effort also aligns with planning efforts necessary to achieve Council's redevelopment goals of city-owned property.

Based on Council's strategic plan, policy direction and immediate facility needs in the organization, staff has started a three-phase project to comprehensively evaluate municipal facilities. Phase I is the critical needs assessment and recommendations. Phase II is a

comprehensive facility analysis included in capital planning project. And, Phase III is implementation planning for mid – and long-term needs.

Project goals include (1) achieve Council's strategic goals & policy direction (a) City Council's Strategic Plan, redevelopment goals for city-owned property, Downtown Master Plan, 2025 Plan, etc.; and (b) align with upcoming comprehensive Capital Improvements Analysis; (2) enhance service delivery/accessibility; (3) provide services at lowest possible cost; (4) emphasize proper maintenance of existing buildings; (5) plan for staffing and security needs; and (6) incorporate citizen input throughout the project.

Phase I – Complete a space needs analysis for critical areas: (1) focus on facilities where lack of space for staffing and/or public access is expected to have a negative impact in the next 12-24 months; (2) develop recommendations for mitigating space constraints while improving customer service and aligning with long-term strategic goals; and (3) timeline - (a) space needs analysis complete; (b) develop recommendations complete; and (c) planning for Fiscal Year 2009 implementation during August 2008 – June 2009.

Phase II – In conjunction with the capital planning project, evaluate all city facilities on current condition, best use, and future community needs based on growth: (1) examine facility needs in the next 5-10+ years including fire stations, police substations, recreation facilities, and other municipal facilities; (2) develop recommendations and prioritize capital projects; (3) identify funding source(s) to support facility improvements, relocation and/or deferred maintenance where necessary; and (4) timeline – capital planning project – July 2008 – Fiscal Year 2009 budget process.

Phase III – Develop implementation plan for addressing mid-term and long-term facility needs identified through capital planning project: (1) timeline and implementations will be based on findings and Council direction from capital planning project; and (2) identify opportunities to co-locate functions where appropriate and beneficial.

The purpose of this presentation is to share findings and recommendations from Phase I only and seek Council feedback on preliminary recommendations. The Phase I update includes (1) critical space needs analysis completed; (2) short-term priority projects to mitigate space and citizen service constraints identified; and (3) feasibility analysis, project planning and stakeholder input underway.

From the Phase I findings, the following are near-term priority areas. The analysis showed significant constraints in the following facilities: (1) City Hall (all floors) – impacts customer service division, development services, internal support services; (2) Public Works Building (Department of Public Works and Building Safety) – impacts development services and Public Works administrative operations; (3) Municipal Building (Police & Fire) – impacts downtown public safety operations; (4) Oakley Police Community Center – inadequate space with critical building code issues; (5) Parks Maintenance Facility (Aston area property) – inadequate space to maintain location and achieve redevelopment goals; and (6) Hunt Hill Purchasing Facility (McCormick Heights area) – inadequate space to maintain location and achieve redevelopment goals.

Regarding City Hall, the current challenges include inadequate customer parking and citizen access; space constraints; inadequate meeting space; loading/unloading challenges; long-term deferred maintenance issues; and building security.

Regarding the Public Works Facility, the current challenges include employee office space constraints; customer parking constraints; development services is fragmented between several city buildings; no opportunity to co-locate services due to space constraints; lack of storage; and lack of plans review/meeting space.

Regarding the Municipal Building, the current challenges include forty additional police personnel since Fiscal Year 2002-03; existing building space inadequate to meet service demands; inadequate storage space; inadequate customer parking; inadequate employee offices; no ability for future growth; and renovated in 1998.

The Oakley police community center is a 1910 residential structure – 1200 usable square feet; serves as northeast district office; 40 assigned sworn personnel; structural issues – space compatibility issues; and renovation analysis underway.

Regarding the Parks Maintenance Facility, the current challenges include (1) address land use compatibility issues with surrounding properties; and (2) pursue housing affordability and other strategic goals through redevelopment.

Regarding the Hunt Hill Purchasing Facility, the current challenges include (1) address land use compatibility issues with surrounding residential neighborhood; and (2) potential to pursue housing affordability and other strategic goals through redevelopment.

Phase I recommendations include (1) One-Stop Citizen Service Center (a) relocate Customer Services Division; and (b) complete planning for relocating development services in one location; (2) optimize police substation locations (a) pursue location for downtown police substation; and (b) complete renovation analysis for Oakley substation; and (3) consolidate maintenance and purchasing facilities (a) complete master development plan for Aston area property; and (b) complete master development plan for Armory property as potential relocation site for maintenance and purchasing facilities.

The One-Stop Citizen Service Center would be located in the Innsbrook Mall (a) customer services and water administration; (b) development services "one-stop-shop"; and (c) property remains past of tax base with City leasing space.

Step 1 for the One Stop Citizen Service Center would be relocation of key citizen services (1) customer service (City Hall First Floor) – citizen access for utility payments, establishing water service, processing business privilege licenses, paying parking tickets, etc.; (b) water maintenance staff dedicated to development services; (c) 60 staff total; and (d) estimated completion of Spring, 2009.

Step 2 for the Development Services One Stop Shop: (1) development review center to house key staff from Planning, Engineering, Building Safety, Fire, and Water Resources; (2) 10,180 square feet office space to Customer Service Center; (3) development review process based on improved customer experience; and (4) planning and recommendations completed June2009 and budgeting and physical implementation in Fiscal Year 2009-10.

Regarding optimizing police substation locations (1) pursue location for downtown substation; (2) complete renovation analysis for Oakley substation; and (3) evaluate all police substations in Phase II.

Regarding consolidating the maintenance and purchasing facilities (1) complete Aston area development master plan in December 2008; (2) complete Armory site development master plan in March 2009; and (3) budgeting and physical implementation is to be determined.

Next steps include (1) receive Council feedback on Phase I recommendations; (2) prepare project plans for Phase I recommendations and schedule ongoing updates; (3) incorporate implementation with upcoming capital planning project and Fiscal Year 2009-10 budget process; and (4) incorporate ongoing public participation in planning and implementation phases.

Mr. Richardson responded to various questions/comments from Council, some being, but are not limited to: is this an opportunity to eliminate some of the redundancy in the 911 PSAP; hope that we give consideration to police substations in public housing; how does Asheville measure up with other cities our population in terms of square footage that we use for City services; and are we being realistic financially in restoring the armory and moving City facilities.

Councilwoman Jones supported the next steps and hoped the One Stop Shop can proceed quickly as it will be good for the community. City Manager Jackson explained that when you change work places, lines of supervision, communication flows and business processes, it's easy to under-estimate the challenges that has and we don't want an impact on the customers. As this will be a significant change for the organization, he felt that it will take approximately 12 months to do it right, borrowing from best practices in other states and the commitment of key staff members.

In response to Councilman Mumpower, City Manager Jackson said that in terms of water customer service, there is a lease involved. They currently lease space in City Hall so it should be a neutral impact on the water rate customer. We have good negotiations with the Innsbrook Mall property and staff will be bringing that to Council with what they have offered to the City. There is an impact for moving the One Stop Shop to the Innsbrook Mall and a cost for implementing the software systems. The Park Maintenance Facility and the Hunt Hill Facility are on our own land so we are not acquiring land to relocate these facilities. We are freeing up land that we hope will go back on the tax rolls. We will also be doing as much design and master planning as we can in-house, but there will have to be some structure modifications to accommodate these facilities.

In response to Councilman Mumpower, City Manager Jackson said that we used City employee project teams in bringing this to Council.

Councilwoman Cape felt this is the right move and supported the next steps; however, she hoped to see the costs as we move forward.

Councilman Newman supported looking at these opportunities and other opportunities to put City land back into the private sector and back on the tax rolls.

Mayor Bellamy said that staff has received support from Council to move forward to the next steps. She said that accessibility and communication between departments is important to the community. Access to parking is important as well. She said that a lot of the land that we are looking at freeing up was done with redevelopment dollars and personally she will not be supportive of any additional sale. She would be open to seeing some land leases and creativity with that issue, but a lot of public dollars were used to acquire land in the East End. City Manager Jackson said that private development on long-term leases is taxable as well.

At 5:00 p.m., Mayor Bellamy announced a short recess.

TRANSIT POLICY ISSUES

Director of Transportation and Engineering Cathy Ball provided council with a memorandum dated July 15, 2008, of follow-up to transit issues from the Council's June 24, 2008, meeting; staff report and minutes of the June 10, 2008, meeting where City Council approved the professional service agreement with First Transit Inc. for management of the City's transit system; the Asheville Transit System's start-up plan action items from the new management company; and the minutes from the Asheville Transit Commission's retreat on November 9, 2007.

She explained that the Transit System's key values are (A) environmentally sustainable (1) environmentally sensitive operations; (2) response to dynamic transportation needs; and (3)

support air quality and land use goals; (B) fiscally responsible (1) reduce expenses/increase revenues; (2) accountable; and (3) effective and efficient operations; and (C) increase mobility (1) coordinate integrated transportation planning; and (2) support economy.

The system aligns itself with the Council's Strategic Operating Plan with action plans as follows: (A) affordable (1) maintain or reduce taxes (a) increase efficiency of system (new management company and Transit Master Plan); and (b) develop alternate funding sources (Transit Master Plan); (B) green (1) reduce emissions by 2% (a) evaluate current routes for efficiency (Transit Master Plan); (b) replace buses; and (c) continue implementation of PassPort Program; (2) sustainable funding sources (a) identify additional funding sources (Transit Master Plan); and (3) environmentally efficient decisions (a) develop an environmentally sustainable operations plan (environmental/management system grant and new management company); and (C) sustainable (1) leverage funding for transportation initiatives (a) increase ridership (Transit Master Plan and increase marketing initiative); and (b) identify additional funding sources (Transit Master Plan); and (2) comprehensive growth management plan (a) integrated transportation planning.

Next steps include (1) consider revised rate structure for advertising – September 2008; (2) capital purchasing – bus technology analysis – October 2008; (3) receive six-month progress report on management company transition – October 2008; (4) approve transit budget – July 2009; and (5) review and approve Transit Master Plan transition – October 2009.

Councilman Mumpower suggested seeking public input from the people that are closest to reality and encouraged the City, as part of the Transit Master Plan to ask those people to provide input. City Manager Jackson said that this is a contract and transit service employees are unionized employees. We are open to further guidance on that but previous advice would caution him against dialoging directly with the unionized employees or not holding the contractor responsible. If we are doing strategic planning and if Council is suggesting that as we do long-range planning that we encourage the contractor to gather input from the drivers, dispatch operators, etc. and feed that input into the transportation planning, he would want to be clear that would be the limit. There has been some misunderstanding about dialoging, day-to-day reporting, maintenance, etc. by the unionized employees directly to City Council. The transit employees are not City employees – they are contract employees for a management company.

In response to Councilman Mumpower, Ms. Ball clarified that the general manager for the former management company was part of the Steering Committee and was present when the Request for Proposals were being developed.

City Manager Jackson said that the new management company is systematically going through every aspect of the operation as seen on the start-up plan of action items provided to Council. They have already identified some "low-hanging fruit" problems and have remedied those. They have also identified issues with documentation internal to that operation in claims and benefits. Some of these questions were raised and looked at prior to the change of management company and were a factor in the decision to go with a new management company. There is a comprehensive transition that is taking place. Their initial work has been to manage the transition with the employees and deal with the concerns the employees had about their benefits, their compensation, supervisory relationships, etc. This is a wholesale change of a management company and we need to give them an opportunity to address the issues. If there are specific things, under collective bargaining, that union employees need to grieve and bring forward to the management company, they've had the meetings to communicate on how that occurs. If there are specific issues with the new management company's performance, those concerns can be forward to him or Ms. Ball for follow-up.

Mayor Bellamy supported the next steps outlined by Ms. Ball and supported a budget amendment being brought to Council to purchase the fare boxes.

Ms. Ball responded to Mayor Bellamy when she asked if a consolidation effort with Mountain Mobility is part of the master planning process.

When Mayor Bellamy asked if there has been any consideration to Sunday bus service, Ms. Ball said that was the Transit Commission's number one request but it was very difficult to fund due to increases already experienced as a result of gas prices. She said that it basically comes down to an economically decision. Mayor Bellamy asked for more information on that and maybe phase it in.

Mayor Bellamy supported the continuation of the route on Leicester Highway out to the Land-of-Sky Regional Council. There are great number of new residents along that route that could benefit from bus service. There is also a need that goes beyond our master planning process and that is a truly integrated transportation plan for our area. She encouraged Council to be supportive of a true multi-modal system for our region.

Councilwoman Jones spoke in support of the next steps outlined by Ms. Ball and looked forward to the updates.

Councilman Newman supported the next steps and said that a lot of positive things have been happening in the transit system. Management transitions are inherently challenging, even in the best of circumstances. Last month the ridership was 22% higher this year than 12 months ago. Some of our challenges come from our success. The community involvement process will help us tweak our system in good ways and help determine where the best places are to strategically invest in the system that will have a good return on investment.

RESOLUTION NO. 08-161 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSIONAND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Goombay Festival on August 22-24, 2008.

The YMI has requested, through the City of Asheville Parks, Recreation & Cultural Arts Department, that City Council permit them to serve beer and/or unfortified wine at the Goombay Festival and allow for consumption at this event.

The Goombay Festival will be held on Friday, August 22, 2008, from 12:00 PM – 10:00 PM, Saturday August 23, 2008, from 12:00 PM – 10:00 PM and Sunday, August 24, 2008 from 1:00 PM – 6:00 PM within the boundaries of Eagle Street, South Market Street & Wilson Alley, as per the event area limits referenced on the accompanying site map.

This action ties into the previously approved plan for event co-sponsorships.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

The fiscal impact would be the overtime pay for Asheville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Goombay Festival.

When Mayor Bellamy asked for public comment, no one came forward.

Councilwoman Jones moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Bellamy said that members of Council have received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-161. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no".

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BOARDS/COMMISSIONS

It was the consensus of Council to re-advertise for the east vacancy on the Citizens-Police Advisory Committee.

It was the consensus of Council to hold interviews for the Civil Service Board.

It was the consensus of Council to interview Matthew Menne, Matthew Raker, Herbert Kupfer and Ryan Blau for a vacancy on the Sustainable Advisory Committee on Energy & the Environment.

It was the consensus of Council to interview Betty Young, Mildred Nance-Carson, John Metcalf and Sara Manuel for vacancies on the Recreation Board. It was noted that Davidson Jones was previously interviewed and Wanda Hawthorne will be an interviewee as well. On behalf of the entire City Council, Vice-Mayor Davis expressed City Council's deepest sympathy to the family of Sam Camp who was a very valuable member on the Recreation Board.

It was the consensus of Council to reappoint Eric Scheffer to the Buncombe County Tourism Development Authority.

At the request of Councilman Newman, it was the consensus of Council to reschedule the Transit Commission restructuring to the September 16, 2008, worksession as he would like some additional time to prepare some materials.

Regarding the filling of a vacant Council seat, Vice-Mayor Davis submitted the following proposal: "There currently is no clear guideline to fill unexpired terms of Council members because of resignation and fourth seat replacement created by Mayoral election. There is provision for the unexpired term to be filled by approval of Council. The Boards and Commissions Committee recommends consideration of a process similar to the way other important board seats are filled, i.e., the School Board, Planning & Zoning Commission and Board of Adjustment. The opening will be advertised, applications taken, the applications interviewed by Council and finally a selection by Council vote. The individual selected will then complete the term of the resigning Council member." The Board recognized there was a lot of open-endedness in this proposal but the seat needs to be filled very quickly. It was the consensus of the Committee that the applications contain essay questions; the interviews be longer than 10 minutes; and that person vacating the seat not vote on their replacement.

Councilman Mumpower suggested the existing Boards & Commissions Committee, along with the City Attorney's input, flesh the proposal out.

There was a brief discussion about the timing of the applications, interviews and appointment of the new member. City Attorney Oast said that he would investigate when other bodies hold their swearing in ceremonies.

Councilwoman Cape felt this is an opportunity to reach out to the community in another way than an election. She felt this would be an interesting process and would like to investigate that and see what other options are.

It was the consensus of Council to ask the Boards & Commissions Committee flesh out the specifics of this proposal.

Other Items

Grove Park Inn Area Traffic Calming Project

Councilman Mumpower asked for Council discussion on the staff report on the Grove Park Inn area traffic calming project. He felt to wait until the next worksession on this item will close a window of opportunity.

Councilman Newman did not support discussing this item as he would like to have the materials first to review and be prepared.

When Vice-Mayor Davis recalled asking for this topic to be discussed in the worksession, Mayor Bellamy refreshed his memory with a telephone conversation in which he said he would wait and not request the item be placed on a worksession agenda.

In response to Councilwoman Cape, City Manager Jackson said that the only policy direction Council could give would be to reconsider the contract and stop the project.

Mayor Bellamy instructed City Clerk Burleson to place this item on the August 26, 2008, formal meeting for community input as well as Council discussion. It was the consensus of Council that the project proceed as scheduled and not stop.

City Manager Jackson said that the City has been very deliberate in getting appropriate input.

E-Verify

Councilman Mumpower asked for Council discussion on the staff report regarding the E-verify tool being made more visible on the City's website.

Councilman Newman did not support discussing this item as he would like to have the materials first to review and be prepared.

Councilman Mumpower wondered if it was possible for old issues to be automatically placed on an agenda if it is a prior open-ended issue. Mayor Bellamy recalled discussing this under the issue of illegal immigration. She said there was not policy direction other than to make people aware of this system and to make E-verify system available on the City's website. Councilman Mumpower recalled it differently in that staff was asked to develop a report for Council so they could act on that report in terms of some of the concerns raised regarding the utility of the E-verify availability on the website. Staff has now given Council the report and he felt that Council should act on the report.

City Manager Jackson felt the staff report answered the question about how the City could use the E-verify system and how it might interface with the current screening that we do. He said the second question was to look at how we make it available on our website. He felt staff

answered the questions by Council. If that suggests policy direction from Council, he would be open to that, but he didn't recall a request to develop a staff report with a recommendation for Council action.

Mayor Bellamy felt there was Council support for the E-verify link on our website and for staff to use it in the way they felt it was appropriate. She didn't recall anything having to come back to Council. She asked City Clerk Burleson to review the minutes for clarification.

Councilman Mumpower requested this item be placed on the agenda.

2008 Ambassadors for Cities Award

Mayor Bellamy was pleased to acknowledge that the National Association of Realtors presented the City of Asheville and the Asheville Board of Realtors the 2008 Ambassadors for Cities Award on August 14, 2008, in recognition of excellence in promoting housing opportunities through public-private partnerships for the work of the Mayor's Task Force on Affordable Housing and the U.S. Conference of Mayors.

She said that one of the things coming out of the report from the Mayor's Task Force on Affordable Housing was the faces of affordable housing. The Board of Realtors working with Mission Hospitals have already put together a public service announcement to talk about who needs affordable housing in our community to dispel some of the myths out there about affordable housing. She said that the Realtors are working on a plan to really look at affordable housing in our community and some alternative products for financing affordable housing.

Closed Session

At 6:23 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina and County of Buncombe. The statutory authorization is contained in G.S. 143-318.11(a) (3); and (2) To establish or to instruct City staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on Swannanoa River Road. The statutory authority is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilwoman Cape and carried unanimously.

At 7:25 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 26, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape (Sister City visit to Osogbo, Nigeria)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "D", "F", "G", "J", "K" and "N" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "O" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JULY 22, 2008; THE SPECIAL MEETING HELD ON JULY 29, 2008; AND THE WORKSESSION HELD ON AUGUST 19, 2008, AS AMENDED

At Mayor Bellamy's request, she asked that the August 19, 2008, minutes be amended and brought back to the next formal meeting for consideration.

B. RESOLUTION SETTING A PUBLIC EHARING ON SEPTEMBER 23, 2008, TO CONSIDER AN ECONOMIC DEVELOPMENT GRANT TO UNISON ENGINE COMPONSENTS (FORMERLY SMITHS AEROSPACE)

This item was removed from the Consent Agenda for discussion and/or individual vote.

C. RESOLUTION NO. 08-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE AGREEMENT WITH CORESOURCE FOR THIRD PARTY ADMINISTRATOR SERVICES FOR THE CITY OF ASHEVILLE'S HEALTH INSURANCE PLAN

RESOLUTION NO. 08-164 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE AGREEMENT WITH CAREMARK FOR PHARMACY BENEFIT MANAGER SERVICES FOR THE CITY OF ASHEVILLE'S HEALTH INSURANCE PLAN

Summary: The consideration of resolutions authorizing the City Manager to enter in to service agreements with the City of Asheville and CoreSource for Third Party Administrator services and Caremark for Pharmacy Benefit Manager services for the City of Asheville's health insurance plan.

The City of Asheville is required to provide health insurance for our City employees. In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective benefit plan and providers for our employees, the City of Asheville utilized a formal bidding process for health insurance providers as Third Party Administrators (TPA) and Pharmacy Benefit Managers (PBM). The City utilized our brokerage firm, The Ferguson Employee Benefit Agency, to facilitate this process. We received 11 proposals and 4 declinations in response to our Request for Proposals. The Health Insurance Committee, which consists of members from Finance and Human Resources, rated each proposal on the following criteria: experience doing business in Western North Carolina, cost, ability to move the Asheville Project to the next level, ability to provide data and reporting, access to predictive modeling tools and customer service.

After a thorough review, the Health Insurance Committee heard 4 presentations from TPAs and 3 presentations from PBMs. The following vendors were unanimously selected after careful deliberation and consideration of the Committee: CoreSource and Caremark.

Pros: Enhanced services to include:

- D-2 Hawkeye, the leading software for health analysis to be used in conjunction with the Asheville Project. This software will also integrate pharmacy data.
- Frequent reporting on plan experience, cost and utilization indicators.
- Performance guarantees for claims processing.
- Web and phone support tools for employees to include online disease management and cost comparison tools.

Cons:

- Possible transition issues that normally may occur when switching providers of these services.

The projected administrative costs for the new TPA and PBM service contract is $609,580 for 10 months, which represents a 15.6% increase over last year. This increase is due primarily to CoreSource's ability to provide expanded financial reporting and employee benefits management services. All bidders for these contracts proposed typical increases in administrative costs including our current provider.

City staff recommends City Council adopt resolutions authorizing the City Manager to enter in to service agreements with the City of Asheville and CoreSource for Third Party Administrator services and Caremark for Pharmacy Benefit Manager services for the City of Asheville's health insurance plan.

RESOLUTION NO. 08-163 - RESOLUTION BOOK NO. 31 – PAGE 265
RESOLUTION NO. 08-164 - RESOLUTION BOOK NO. 31 – PAGE 266

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH PAYNE, MCGINN & CUMMINS INC. FOR THE INSTALLATIO OF A NEW 12-INCH WATERLINE ON CLINGMAN AVENUE

This item was removed from the Consent Agenda for discussion and/or individual vote.

E. RESOLUTION NO. 08-166 - RESOLUTION AMENDING THE 2007 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

ORDINANCE NO. 3644 – BUDGET AMENDMENT TO AMEND THE 2007 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Summary: The consideration of a resolution amending the Fiscal Year (FY) 2007-08 Consolidated Action Plan for Community Development Block Grant (CDBG) and HOME Program funding to reduce an anticipated amount of program income, and revise the program descriptions to which these funds were assigned; and associated budget amendment.

The approved 2007-08 Action Plan included an estimated program income amount of $274,000 from an anticipated sale of City-owned land on Ralph Street to Mountain Housing Opportunities (MHO). This sale did not occur in FY 2007-08, and while a future sale date is anticipated, that date is unknown at this time. MHO has also redesigned the project intended for this site to include additional land; however, the project start date is also currently unknown.

As part of the 2007-08 Action Plan process, this anticipated program income was allocated in the plan to three programs, with the proviso that funds would not be available for use until the sale was actually completed. Anticipated program income was allocated in the 2007-08 Action Plan as follows:

Agency	Program	CDBG Grant	Land Sale Revenue	Total
1. MHO	Emergency Repair Tier II	$110,000	$40,000	$150,000
2. MHO	Direct Homebuyer Assistance	$392,238	$50,000	$442,238
3. Mtn. BizCapital	Small Business Loan Pool	$68,000	$40,000	$108,000
4. --	CDBG Contingency	--	--	$144,000

In the end, each agency's program met its performance goals without needing this anticipated program income.

When a date for the land sale has been established, the revenue can be re-allocated in a future Action Plan to meet the needs identified in the City's Strategic Operating Plan and the 5-year Consolidated Strategic Plan for Housing and Community Development.

Pros:

- Corrects the Action Plan so that it accurately reflects the fiscal and programmatic reality for FY 2007-08; and
- Describes how the future land sale revenue program income will be assigned when these funds are available.

Con: None noted.

City staff recommends City Council adopt a resolution amending the FY 2007-08 Consolidated Action Plan to delete this anticipated program income and revise the plan's programs to which it was assigned; and associated budget amendment.

RESOLUTION BOOK NO. 31 – PAGE 268
ORDINANCE BOOK NO. 25 – PAGE 19

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAM OF THE DEPT.

OF JUSTICE FOR TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

BUDGET AMENDMENT TO ACCEPT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAM OF THE DEPT. OF JUSTICE FOR TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

These items were removed from the Consent Agenda for discussion and/or individual vote.

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT TO A CONTRACT WITH MCGILL ASSOCIATES TO COVER APPLICATION FOR CLEAN WATER MANAGEMENT TRUST FUND GRANT AND ADDITIONAL SURVEY WORK FOR THE DINGLE CREEK WATERSHED ENGINEERING ANALYSIS

This item was removed from the Consent Agenda for discussion and/or individual vote.

H. RESOLUTION NO. 08-169- RESOLUTION ACCEPTING LOVERS LANE IN THE SKYLAND AREA OF SOUTH ASHEVILLE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Lovers Lane as a city-maintained street in the Skyland Area of South Asheville.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

Lovers Lane is a developer-constructed street beginning at Maple Lane and ending at Pond Street that has an average width of 18 feet, a length of 0.04 mile, and a recorded 45-foot right-of-way. Since Lovers Lane was constructed several years ago, the exact timeframe is unknown, there will be no warranty period associated with its acceptance as a city-maintained street. The purpose of accepting Lovers Lane as a city-maintained street is to provide access to another city-maintained street, Maple Lane, without traveling along a privately-maintained street.

Transportation and Engineering Department staff and Public Works Department staff inspected this street and determined that its current maintenance condition is acceptable and it will not require any upgrading or improving to meet current City standards.

This action complies with the City Council Strategic Operating Plan in the sustainable focus area by adding to the street infra-structure to better serve the citizens of Asheville.

Following City Council's approval of this resolution, Lovers Lane will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the street.
- Residential development along the subject street enhances the tax base for the City.
- The street provides connectivity within an existing residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to $1,886 per mile compared to the City's maintenance cost of $8,200 per mile.

City staff recommends that City Council adopt a resolution accepting Lovers Lane as a city-maintained street.

RESOLUTION BOOK NO. 31 – PAGE 271

I. RESOLUTION NO. 08-170 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 9, 2008, TO CONSIDER THE VOLUNTARY ANNEXATION OF 131 OLD CHARLOTTE HIGHWAY, ASHEVILLE, N.C.

Summary: The consideration of a resolution fixing the date of a public hearing on September 9, 2008, for the voluntary annexation of properties located at 131 Old Charlotte Highway.

The City of Asheville Board of Alcoholic Beverage Control Board has petitioned the City of Asheville for the annexation of one parcel located at 131 Old Charlotte Highway containing a total of approximately .85 acres. The area is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in N. C. Gen. Stat. sec. 160A-58.1.

Pursuant to N.C. Gen. Stat. sec. 160A-58.2 such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be December 31, 2008.

This action complies with the Council goal of working to enable voluntary annexation to support healthy growth of the City.

Pros:

- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Cons:

- Marginal increase in service costs.

While the property is not taxable since owned by a governmental entity, the City will receive a distribution from the profits of the store. Information from the Chief Financial Officer of the local ABC Board states that "early projections indicate that the Fairview area store would generate sales at between $1,250,000 and $1,800,000 annually. At these levels we would project the initial net income before distributions of approximately $30,000, since the Board would incur debt for the construction of the building. We believe that the benefit to the City from a store in this location will only increase in future years." Service costs will be limited to fire and police service and are not significant.

City staff recommends City Council adopt a resolution setting the date for a public hearing on the annexation petition.

RESOLUTION BOOK NO. 31 – PAGE 273

J. **RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH HICKORY CONSTRUCTION COMPANY FOR THE IMPROVEMENTS AT THE NORTH FORK AND WILLIAM DEBRUHL (BEE TREE) WATER TREATMENT PLANTS**

BUDGET AMENDMENT FOR CHANGE ORDER REGARDING IMPROVEMENTS AT THE NORTH FORK AND WILLIAM DEBRUHL (BEE TREE) WATER TREATMENT PLANTS

These items were removed from the Consent Agenda for discussion and/or individual vote.

K. **RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN CHANGE ORDERS INCREASING THE PROJECT BUDGETS AND CONTRACT AMOUNTS FOR ELEVEN WATER SYSTEM IMPROVEMENT PROJECTS**

BUDGET AMENDMENT TO INCREASE THE PROJECT BUDGETS AND CONTRACT AMOUNTS FOR ELEVEN WATER SYSTEM IMPROVEMENT PROJECTS

These items were removed from the Consent Agenda for discussion and/or individual vote.

L. **RESOLUTION NO. 08-173- RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Summary: The term of Eric Scheffer, as a member on the Buncombe County Tourism Development Authority, expires on August 30, 2008.

At the August 19, 2008, worksession, it was the consensus of Council to reappoint Mr. Sheffer (as the individual who is involved in the tourist business and who has demonstrated an interest in tourism development but who does not own or operate a hotel, motel or other taxable tourist accommodation) to serve an additional three year term, term to expire August 30, 2011.

RESOLUTION BOOK NO. 31 – PAGE 278

M. **RESOLUTION NO. 08-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH IKON OFFICE SOLUTIONS TO SUPPLY COPYING AND DUPLICATING EQUIPMENT FOR THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Ikon Office Solutions to supply printing and duplicating equipment for the City of Asheville for an amount not to exceed $66,142.

City Council approved funding in the Fiscal Year 2008/09 budget for the continued lease of printing and duplicating equipment used by various departments of the city.

This contract consolidates the monthly costs of multiple printer and copier leases into a single contract to provide more cost effective operational expenses and improved service and support.

This action complies with the City Council Strategic Operating Plan in that it keeps costs for services to the public as low as possible. It is also a green focus area making use of newer, more energy efficient equipment that supports power save functions.

Pros:

- Provides for the lease of printing and duplicating machines used by city departments.
- Improves cost effectiveness and support provisions for equipment provided under this contract.

Con:

- None noted

Funding for this lease has already been approved by City Council in the 2008/09 Fiscal Year budget. This action simply seeks City Council approval of the contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Ikon Office Solutions for an amount not to exceed $66,142.

RESOLUTION BOOK NO. 31 – PAGE 279

N. RESOLUTION ADOPTING CITY COUNCIL TRAVEL AND TRAININIG POLICY

This item was removed from the Consent Agenda for discussion and/or individual vote.

O. RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR THE FUNDRAISER FOR THE APPALACHIAN SUSTAINABLE AGRICULTURE PROJECT

RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR THE ORGANICFEST FESTIVAL

RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-162 - RESOLUTION SETTING A PUBLIC HEAERING ON SEPTEMBER 23, 2008, TO CONSIDER AN ECONOMIC DEVELOPMENT GRANT TO UNISON ENGINE COMPONSENTS (FORMERLY SMITHS AEROSPACE)

Summary: The consideration of a resolution setting a public hearing on September 23, 2008, to consider an economic development incentive grant to Unison Engine Components.

Unison Engine Components is an internationally recognized leader in the manufacture of aerospace components with a facility in Asheville. The company is proposing new, taxable, capital investment of $15,000,000 for additional production equipment and facility improvements. Unison Engine Components has requested consideration for an incentive grant under the City of Asheville Economic Development policy. The City of Asheville is considering offering Unison Engine Components a performance-based grant totaling $236,250.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

The economic development incentive grant to Unison Engine Components ties into City Council's Strategic Operating Plan as it addresses the Affordability Strategic Plan focus area by meeting the objective to support diversified job growth and small business development. The grant also addresses the Sustainability Strategic Plan focus area by promoting sustainable, high density infill development that makes efficient use of existing resources.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of 75% of value of new incremental tax revenue for a 5 year period.

The project has a positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 25% of the new incremental ad valorum revenues from the project, in addition to the current taxes paid by the company. After 5 years, the City will henceforth receive 100% capture of new taxes.

City staff recommends Council approve a resolution setting a public hearing on September 23, 2008, on an economic development incentive grant to Unison Engine Components.

Councilman Mumpower spoke against the action in that he felt the City is granting special deals to corporations.

Councilman Newman moved for the adoption of Resolution No. 08-162. This motion was seconded by Vice-Mayor Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 264

D. RESOLUTION NO. 08-165 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH PAYNE, MCGINN & CUMMINS INC. FOR THE INSTALLATION OF A NEW 12-INCH WATERLINE ON CLINGMAN AVENUE

Summary: The consideration of a resolution authorizing the City Manager to sign a change order increasing the original contract amount of $509,623 to $590,000 with Payne, McGinn & Cummins, Inc. for the installation of a new 12-inch waterline on Clingman Avenue.

At the November 13, 2007, City Council meeting, Payne, McGinn & Cummins, Inc., was selected as the contractor to install a new 12-inch waterline on Clingman Avenue at an estimated project cost of $509,623. The contractor had to navigate the new 12-inch waterline along a different route than originally anticipated due to encountering more utility lines and rock in the ground on Clingman Avenue. These conditions caused the need to purchase unexpected and additional materials, which have lead to a necessary increase in the original contract amount from $509,623 to $590,000.

This project is part of the City Council strategic plan to improve City infrastructure.

Pro:

- The new 12-inch waterline on Clingman Avenue will replace an old and undersized waterline, will coincide with planned street improvements, and will improve fire protection and the City's fire insurance rating.

Con:

- Failure to approve the increase in contract amount will result in a time delay to complete the project.

Cost of the Clingman Avenue project was initially estimated at $509,623. The $80,377 change order will increase the project budget to $590,000. These funds are available within the project budget and will not have an additional impact on the budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a change order increasing the original contract amount of $509,623 with Payne, McGinn & Cummins, Inc. for the installation of a new 12-inch waterline on Clingman Avenue to $590,000.

Councilman Mumpower was concerned that the City has no procedure to hold contractors accountable, in a meaningful way, to hiring legal workers.

Councilwoman Jones moved for the adoption of Resolution No. 08-165. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 267

F. RESOLUTION NO. 08-167 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAM OF THE DEPT. OF JUSTICE FOR TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

ORDINANCE NO. 3645 - BUDGET AMENDMENT TO ACCEPT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAM OF THE DEPT. OF JUSTICE FOR TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of the Department of Justice (JAG); and the associated budget amendment, in the amount of $19,068.

The City of Asheville has been awarded a grant from the JAG in the amount of $19,068 to be shared with Buncombe County Sheriff's Department. The Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding and APD will be the grant funds administering agency. There is no local match and the City of Asheville's portion of the grant is $12,712. The purpose of the grant program is to make technological Improvements in the area of police radios for the Asheville Police Department.

Motorola, Inc. is the vendor and below is the description of the products:

XTS2500 Model III Handheld Radio:	$3,382
Extra batteries (One per radio):	$87
Noise canceling speaker microphones:	$76
Total per Radio:	$3,545
Total for three (3) complete radios:	$10,635
Total of Federal grant funds:	$12,712

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Will contribute to the reduction of crime by improving the effectiveness of police officers while working special events.
- By reducing injures to law enforcement as well as the public, this will aid in quality of life issues.
- By using these grant funds for this needed equipment, APD officers will have the items they need to properly respond to violent group incidents, that budget constraints would not allow otherwise.

Con:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment, replacing equipment when needed.

There is no fiscal impact with this grant as there is no match required.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the North Carolina Office of Justice Programs of the Department of Justice for grant monies; and (2) the associated budget amendment, in the amount of $19,068.

Councilman Mumpower felt the State should fix the dysfunctional court system. Acceptance of these funds is a misinvestment of dollars as the City can't fix the court system, but they can provide for their police officers.

Vice-Mayor Davis moved for the adoption of Resolution No. 08-167. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Vice-Mayor Davis moved for the adoption of Ordinance No. 3645. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 269
ORDINANCE BOOK NO. 25 – PAGE 21

G. RESOLUTION NO. 08-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT TO A CONTRACT WITH MCGILL ASSOCIATES TO COVER APPLICATION FOR CLEAN WATER MANAGEMENT TRUST FUND GRANT AND ADDITIONAL SURVEY WORK FOR THE DINGLE CREEK WATERSHED ENGINEERING ANALYSIS

Summary: The consideration of a resolution authorizing the City Manager to sign an amendment with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of $21,000 for additional survey work and application of a Clean Water Management Trust Fund grant. This amendment will increase the project cost by an additional $21,000 from the original cost of $321,000. The total amount of the contract including this amendment will be $342,000.

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate $2 million of

expected revenue, $200,000 per year was programmed to prepare stormwater master plans for watersheds. The total amount of the contract, including this amendment will be $342,000.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected McGill Associates to perform this work.

Staff has developed the following question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis:

- What is a Stormwater Engineering Analysis? A stormwater engineering analysis is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the study, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analyze the capacity of the system. The model will indicate which pipes, ditches and/or streams need repair and in what priority. The study also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

- What are the goals of a Stormwater Engineering Analysis? The goals of completing this study include the following:

    - Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
    - Prioritizing the storm drainage needs within the watershed;
    - Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
    - Assisting in the justification for funding from available grants.

- What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this study include:

    1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
    2. Hydraulic Model of the Watershed;
    3. Capital Improvement Program of water quality and water quantity needs; and,
    4. Detailed cost estimates for the improvements.

- How do we prioritize what Watersheds get done in what order? Watershed are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

While performing this analysis it was necessary to complete $14,000 additional survey work. This additional survey work will allow us to complete our stormwater inventory for the Dingle Creek Watershed. The additional amount of $7,000 is to apply for a Clean Water Management Trust Fund Grant to complete construction of wetlands in the Dingle Creek Watershed.

This action complies with the City Council Strategic Operating Plan in the focus area of sustainable and green. This project develops a plan for needed infrastructure replacements/upgrades in the Dingle Creek Watershed. This project develops a long term plan to address the city's aging infrastructure and provides improved water quality to the area, by constructing wetlands.

This action complies with the Dingle Creek Watershed Master Plan in that the engineering analysis conducted is necessary in order to apply and obtain the Clean Water

Management Trust Fund Grant in which will be used to implement a portion of the watershed master plan.

Pros:

- Implement a portion of the watershed master plan through the Clean Water Management Trust Fund Grant
- Improve water quality to the area

Con:

- None

The original amount of the project of $321,000 was funded in a prior year budget from the stormwater utility enterprise fund. The amendment increases the contract amount by $21,000 for a total project cost of $342,000. This additional $21,000 will be funded in the 2008-2009 Fiscal Year from the stormwater utility enterprise fund.

Staff recommends City Council authorize the City Manager to sign an amendment with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of $21,000 for additional survey work and application of a Clean Water Management Trust Fund grant.

Councilman Mumpower said that he made a request for an itemized list of how much money the City has spent on planning documents, consultants, etc. and until he gets clear information on our investment of dollars, he would vote against this action.

Councilwoman Jones moved for the adoption of Resolution No. 08-168. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 270

J. RESOLUTION NO. 08-171 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH HICKORY CONSTRUCTION COMPANY FOR THE IMPROVEMENTS AT THE NORTH FORK AND WILLIAM DEBRUHL (BEE TREE) WATER TREATMENT PLANTS

ORDINANCE NO. 3646 - BUDGET AMENDMENT FOR CHANGE ORDER REGARDING IMPROVEMENTS AT THE NORTH FORK AND WILLIAM DEBRUHL (BEE TREE) WATER TREATMENT PLANTS

Summary: The consideration of a resolution authorizing the City Manager to sign a change order increasing the original contract amount of $6,362,500 to $6,432,261.43 with Hickory Construction Company for the improvements at the North Fork and William DeBruhl (Bee Tree) Water Treatment Plants; and the associated budget amendment.

At the March 20, 2007, City Council meeting, Hickory Construction Company was selected as the contractor to make improvements to the North Fork and William DeBruhl water plants at an estimated project cost of $6,362,500.00. During construction, defects in chemical feed lines and piping was discovered and added to the project scope. This caused a slight time delay and the purchase of additional materials, which have lead to a necessary increase in the original contract amount from $6,362,500.00 to $6,432,361.43. This is an increase of $69,861.43.

This project is part of the City Council strategic plan to improve City infrastructure.

Pro:

- This project will enhance the water system, provide better safety for employees working around water treatment chemicals, and ensure all federal and state mandated clean water drinking act regulations are met.

Con:

- Funding for this change order increase requires $69,861.43 to be reallocated from another capital project.

Cost of the Water Plant Upgrades project was initially estimated at $6,362,500.00. The $69,861.43 change order will increase the project budget to $6,432,361.43. These funds are not available within the project budget and will be reallocated from another capital project.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a change order increasing the original contract amount of $6,362,500.00 with Hickory Construction Company for the improvements at the North Fork and William DeBruhl (Bee Tree) Water Treatment Plants to $6,432,361.43; and the associated budget amendment.

Councilman Mumpower was concerned that the City has no procedure to hold contractors accountable, in a meaningful way, to hiring legal workers. It is his personal believe that the sub-contractors are hiring illegal immigrants to work on these projects.

Councilwoman Jones moved for the adoption of Resolution No. 08-171. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilwoman Jones moved for the adoption of Ordinance No. 3646. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 276
ORDINANCE BOOK NO. 25 – PAGE 23

K. RESOLUTION NO. 08-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN CHANGE ORDERS INCREASING THE PROJECT BUDGETS AND CONTRACT AMOUNTS FOR ELEVEN WATER SYSTEM IMPROVEMENT PROJECTS

ORDINANCE NO. 3647 - BUDGET AMENDMENT TO INCREASE THE PROJECT BUDGETS AND CONTRACT AMOUNTS FOR ELEVEN WATER SYSTEM IMPROVEMENT PROJECTS

Summary: The consideration of a resolution authorizing the City Manager to sign change orders increasing the project budgets and contract amounts totaling $35,518,671.67 for the eleven Water System Improvement Projects to $38,331,310.67, or an increase of $2,812,639.00; and the associated budget amendment.

On November 27, 2007, the City Council approved eleven water system improvement projects as part of a $40 million revenue bond. The projects authorized for construction were estimated at $35,518,671.67. The $40 million total also included cost of issuance and engineering design charges of $4,481,328.33 for a total of $40 million.

Numerous issues have arisen since the beginning of construction on the revenue bond projects that were not accounted for in the original project bids. These issues include but are not limited to rerouting lines due to encountering unknown underground utilities; additional easement, right-of-way and property acquisitions; encountering subsurface rock which required removal; changes in N.C. Dept. of Transportation roadway repair requirements; and unsuitable subsurface conditions that required placement of crushed stone backfill. These issues have resulted in

unplanned work requirements and time delays, which lead to a necessary increase in the original contract amount from $35,518,671.67 to $38,331,310.67. Details of the cost increase are outlined in the attached document: Exhibit A.

In Fiscal Year 2007-08, some projects listed on the Water Resources capital projects list were converted to revenue bond projects once the City of Asheville received the bond funding. This freed up $3,320,000.00 in pay-as-you-go and unused funds, which were set aside in a contingency fund and is available for the revenue bond projects anticipating they would go over budget due to the nature and size of the projects. These contingency funds should cover any additional expenses associated with the revenue bond projects. The attached budget amendment appropriates those funds into the revenue bond projects. The water fund will have approximately $500,000 in additional funds available for any other unforeseen project cost increases that may occur.

All projects are funded and on or ahead of schedule. No projects have been decreased or cut due to funding issues.

This project is part of the City Council Strategic Operating Plan to improve City infrastructure.

Pros:

- Approval of the increase in contract amount will allow completion of the eleven water system improvement projects in a timely manner.
- These projects meet the City's goal to systematically repair / replace the aging water system infrastructure, improve the reliability of water service to affected customers, and improve available fire protection.
- The escalation of maintenance and repair costs for the aging water infrastructure will be reduced creating a more efficient system, which will reduce energy costs and the City's overall carbon footprint.

Con:

- Failure to approve the increase in contract amount will result in major changes in the scope of these projects, which would require some of the projects to be only partially completed resulting in failure to achieve the intended goals of the projects.

Cost of the eleven Water System Improvement Projects was initially estimated at a total cost of $35,518,671.67. The $2,812,639.00 total in change orders will increase the total project budget to $38,331,310.67. These funds are available within the revenue bond project budget and will not have an additional impact on the budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign change orders for $2,812,639.00 additional increasing the original total contract amount of $35,518,671.67 for the eleven Water System Improvement Projects to $38,331,310.67 and further allow staff to move the additional funds as needed between the 11 projects as cost estimates come in higher or lower than expected; and the associated budget amendment.

Councilman Mumpower was concerned that the City has no procedure to hold contractors accountable, in a meaningful way, to hiring legal workers. It is his personal believe that the sub-contractors are hiring illegal immigrants to work on these projects.

Councilwoman Jones moved for the adoption of Resolution No. 08-172. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Councilwoman Jones moved for the adoption of Ordinance No. 3647. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 277
ORDINANCE BOOK NO. 25 – PAGE 25

N. RESOLUTION NO. 08-175 - RESOLUTION ADOPTING CITY COUNCIL TRAVEL AND TRAINING POLICY

Summary: This is the consideration of a resolution adopting the City Council Travel Policy and Procedures.

In the past, Asheville City Council training and travel procedures followed the City of Asheville's travel policies for city employees. However, the employee policy did not provide clear guidelines for processing City Council travel forms, authorizations, and expense reimbursements.

In order to clarify specific guidelines for Council members, a new policy was drafted that provides clearly defined administrative steps for processing travel and training requests and related travel arrangements. It also outlines guidelines for incurring and processing payment for reimbursable expenses.

The policy was shared with members of the City Council Revenue and Finance Committee for input prior to its finalization. It has also been reviewed and approved by the City Attorney's Office and the Finance Department to ensure compliance with accounting, audit and legal considerations.

Pros:

- Provides clear guidelines for submitting travel requests, processing travel arrangements, and receiving timely reimbursement of travel expenses.
- Streamlines the travel authorization and reimbursement process.
- Provides more information to Council on a regular basis about the status of the training and travel budget.

Cons:

- Adjusting to changes in administrative procedures, which include the use of new forms and deadlines for processing travel arrangements.

Adoption of the policy does not cause a fiscal impact. During the Fiscal Year 2008-09 budget process, City Council approved a training and travel budget allocation for each Council member. While the attached policy references this allocation, the specific amount will be determined by Council on a year-to-year basis as part of the budget process. Staff will provide Council with a regular accounting of the training and travel budget throughout the year.

City staff recommends City Council adopt a resolution adopting the City Council Travel Policy and Procedures.

In response to Councilman Mumpower, City Manager Jackson said that the designated expense allocation this fiscal year (noting that it is approved annually by City Council) for the Mayor is $9,000 and $3,000 each for the Vice-Mayor and Council Members.

Councilman Mumpower believed this policy is an improvement over past practices; however, he was concerned that the amounts might be excessive.

Councilman Newman felt that the policy may need to be updated periodically and suggested that the policy contain the current designated expense allocations for this fiscal year.

Councilman Newman moved for the adoption of Resolution No. 08-175, amending said policy to include the $9,000 designated expense allocation for the Mayor and $3,000 each for the Vice-Mayor and Council Members for this fiscal year. This motion was seconded by Vice-Mayor Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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O. RESOLUTION NO. 08-176 - RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FUNDRAISER FOR THE APPALACHIAN SUSTAINABLE AGRICULTURE PROJECT

RESOLUTION NO. 08-177 - RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ORGANIC FEST

RESOLUTION NO. 08-178 - RESOLUTION MAKING PROVISINGS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ART & FUN FESTIVAL

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville City Market Fundraiser on August 28, 2008; the Organicfest Festival on September 6, 2008; and the Lexington Avenue Arts & Fun Festival on September 7, 2008.

(1) Appalachian Sustainable Agriculture Project (ASAP) has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Asheville City Market Fundraiser and allow for consumption at this event.

The Asheville City Market Fundraiser will be held on Thursday, August 28, 2008, from 6:00 PM – 9:00 PM within the boundaries of the Public Works Parking Lot, as per the event area limits referenced on the accompanying site map.

(2) Imagine Center has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Organicfest Festival and allow for consumption at this event.

The Organicfest Festival will be held on Saturday, September 6, 2008 from 10:00 AM – 6:00 PM within the boundaries of Battery Park Avenue & Otis Streets, as per the event area limits referenced on the accompanying site map.

(3) Arts2People has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

The Lexington Avenue Arts & Fun Festival will be held on Sunday, September 7, 2008 from 11:00 AM – 10:00 PM within the boundaries of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

These actions tie into the previously adopted plan for event co-sponsorships.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

There is no fiscal impact for the Asheville City Market Fundraiser or the Lexington Avenue Arts & Fun Festival. For the Organicfest Festival, fiscal impact would be overtime pay for the Asheville Police Department officers.

City staff recommends City Council adopt resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville City Market Fundraiser on August 28, 2008; the Organicfest Festival on September 6, 2008; and the Lexington Avenue Arts & Fun Festival on September 7, 2008.

At the request of Councilman Mumpower, City Attorney Oast said that he would confirm that under state law the City is required to authorize the consumption of malt beverages and/or unfortified wine on City streets on a case by case basis.

Councilwoman Jones moved for the adoption of Resolution Nos. 08-176, 08-177 and 08-178. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 08-176 - RESOLUTION BOOK NO. 31 – PAGE 285
RESOLUTION NO. 08-177 - RESOLUTION BOOK NO. 31 – PAGE 288
RESOLUTION NO. 08-178 - RESOLUTION BOOK NO. 31 – PAGE 291

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE AREA CENTER FOR THE PERFORMING ARTS

RESOLUTION NO. 08-179 - RESOLUTION RESERVING PROPERTY FOR A PERFORMANCE CENTER AT PARKSIDE

Project Manager and Executive Director of the Center for the Performing Arts James Baudoin said that the vision of the Asheville Area Center for the Performing Arts' vision for the performance center in Asheville is to build a state-of-the-art performance center to serve all of western North Carolina in order to enhance the unique culture and quality of life of our community.

He explained (1) the City of Asheville passed a resolution that it will continue to evaluate the feasibility of locating a new performance hall within a mixed-use development at Parkside (Resolution No. 06-217 dated December 12, 2006); (2) another resolution passed that the City of Asheville commits to support in principle the design of a facility either in an adaptive reuse or in a stand alone performing arts facility (Resolution No. 07-215 dated November 27, 2007); (3) the recommendation at this meeting is to reserve property south of Parkside and bordered by Spruce Street to the west, Eagle Street to the south and South Charlotte Street to the east, expecting that construction will commence within five years; and (4) all pertinent details will be included in a forthcoming joint development agreement between the City of Asheville and the Asheville Area Center for the Performing Arts, Inc.

Showing pictures, he described (1) the hall will be a new regional landmark for generations to come; (2) state of the art production facilities will support both local organizations and tours; (3) intimate performances by emerging cultural groups will be featured; (4) large banquet and meeting events will be held in the foyer and on stage; (5) banquet setups in lobby and main hall at Cerritos Center for Performing Arts; (6) exterior entry points will be both Parkside and facing South Charlotte Street – The project will support redevelopment along Eagle Street

and be a good partner; (7) this will be a daytime destination: inviting lobby, outdoor café, informal stage and showcase local artists; (8) professional musicians and dancers will engage the area's youth in studio instruction; (9) the center will be a home for student activities; (10) the Asheville music scene will be supported in center programming; (11) the center will be the performance home for a wide variety of artists; (12) the Best of Broadway will be offered each session; and (13) great concerts artists from country, classical and jazz music will be presented.

The site selection criteria includes availability, cost, support (government), site lines, location, access, space, red tape, neighbors, and site preparation.

He said the Parkside site was conceptualized in June of 2006. A massing study program commenced in spring of 2007. Work in the coming year will begin facility designs tailored to the site. Community involvement is a high priority.

He introduced the leadership of the Asheville Area Center for the Performing Arts Board of Directors, Board of Advisors, and Resource Council.

He said that now is the time to approve the site so they will be able to refine cost and financial issues (and cost options); conceptualize the physical layout on site; expand our projections on economic impact; forge future partnerships with our neighbors; clarify the phasing components of our project; define the opportunities for municipal involvement; and identify commercial partners for project development.

The project momentum continues as the Phase 1 fundraising campaign has been successful; the best possible site has been identified; design team selection process is now underway; and construction timeline will be established in the coming year. Process considerations for city owned Parkside site as related to the Asheville Area Center for Performing Arts.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Davis moved to adopt Resolution No. 08-179 to commit to reserve space for a performance center within the area targeted for a multi-use redevelopment project on property bounded by Marjorie Street to the north, Spruce Street to the west, Eagle Street to the south and South Charlotte Street to the east, expecting that construction will commence within five years of the date of this resolution, with all pertinent details to be included in a forthcoming joint development agreement between the City of Asheville and the Asheville Area Center for the Performing Arts, Inc. This motion was seconded by Mayor Bellamy.

When Councilman Mumpower asked if, with this action, we are binding future Councils, City Attorney Oast said that the resolution is an expression of Council's intent to work with the Center for Performing Arts' staff to place a performance center within the area. He noted that any vote tonight would not bind future Council's of this Council's intent. Again, this is not a contract – only an expression of intent.

Mr. Alan Ditmore felt the performance center is unnecessary as it serves no human need.

Mr. Steve Rasmussen felt a performance center is an excellent use of the property. He hoped that (1) the silver maple be preserved; and (2) the Hayes and Hopson Building; the stone jail; and the historic rock wall all be restored and integrated into the project.

Mr. Bill Massey, President-Elect of the Asheville Area Center for the Performing Arts Inc., spoke in support of the performance center in that it will uplift the community.

Ms. Donna Clark, Communications Director for the Pack Square Conservancy, supported the initiative which will enrich our citizens lives and ensure the quality of life for generations to come.

Vice-Mayor Davis said that the silver maple does have challenges; however, the Tree Commission will do an aggressive campaign in order to save the tree. Regarding human needs, children will have the opportunity to see performances by quality touring and local groups that will enrich their lives and provide them an opportunity they may not otherwise have. He noted that there is a lot of entertainment in the Civic Center and we still need to take care of that building.

Economic Development Director Sam Powers briefly reviewed the following staff report: "In early 2006, City Council directed staff to begin a process to review existing city owned properties for possible redevelopment to meet Council strategic goals. Eighteen city owned sites in the greater downtown area were identified as potentially suitable for redevelopment. Staff then reviewed the remaining sites in greater detail and in November 2006 presented the results to Council. Council approved moving forward with seven sites. One of the seven sites was the City Hall employee parking lot which has been referred to as "Parkside."

"The City conducted a market overview of the Asheville area to determine the best recommended approach for the seven sites. This included meetings with over 20 stakeholder groups, in addition to city staff, and quantification of Council member's goals to help prioritize the sites so they reflect highest and best use, maximize residual land values for public purpose, and reflect City Council policy objectives.

"City Council agreed that the Parkside site offered substantial potential for future development, but based on the long term seven to ten year timeline of realizing maximum development potential and public benefit, City Council agreed to withhold the Parkside property from the initial RFQ/RFP process.

"City staff has been asked to review the Parkside city owned site as it relates to a possible Performing Arts Center as a component of redevelopment of the site. City Council has indicated that it has established the existing RFQ/RFP process as an effective mechanism to help achieve City Council strategic goals. Including the AACPA in a RFQ/RFP process offers a number of potential advantages to the City for redevelopment.

Pros:

- Allows the City to author a Joint Development Agreement stipulating roles and responsibilities of various parties.
- Generates multiple responses from qualified development teams to the RFQ.
- Encourages broad range of development experience by respondents.
- City can request specific experience and qualifications/areas of expertise, including development of workforce housing, mixed use development, public performance venues, hotel and conference center development, public parking, and transit oriented development.
- Sets base line values for proposed development of the site to maximize private investment potential from site.
- Allows City to influence phasing of project to meet Council goals and market conditions.
- Allows transparency and public involvement in the process.
- Allows City to conduct marketing and advertising of the RFQ to improve the response rate.
- Leverages real estate for community benefit.

Cons:

- Limited staff resources to manage the development process for this complex public offering.

- The five-year timetable for the performance center may be ahead of the market for the private sector development component
- Construction, disruptions and temporary displacement of employee parking
- Cost of project management services

"Management of a project of this magnitude and complexity would require a commitment of existing staff resources and a compliment of professional services, such as real estate, architectural and engineering. The project management cost estimates would be developed in the course of negotiating the joint development agreement.

"Staff recommends that City Council consider the Asheville Area Center for the Performing Arts as a component in a RFQ/RFP process for development of the Parkside city owned site."

Councilman Newman asked if mixed-use meant different art uses or a performing arts center along with other types of uses on this site. He envisioned a variety of different redevelopment opportunities on this site of which a performing arts center could be a component, but would not consume the entirety of this city property.

Mr. Powers believed that the performing arts group is most interested in multiple uses on that site. That is one of the things a joint development agreement would allow us to refine – what the roles and responsibilities of each of the groups would be and also what the kinds of appropriate and highest and best uses for the site would be. Two years ago when we looked at the site, we envisioned that there would be multiple uses that could include residential uses, commercial or office uses as well as a performance center. They have not concluded that any of those would be included or excluded, but the potential of an RFP process would allow us to determine what the market could support and what might be most appropriate in terms of multiple uses on the site. From a staff perspective we are looking for uses that would be potentially other commercial type uses.

Councilman Newman supported the idea for there to be a performing arts center if the resources come together from the community to do that. And, he would like for it to be Council's goal that if it's possible (and the market supports it) that we would be able to optimally utilize that property in ways that would serve other economic development and community development goals for the City as well. He hoped there is an opportunity to do more than just a performing arts center on this large piece of property.

In response to Councilman Newman, Mr. Baudoin said that they are looking for a partnership with the City with a commercial component that can help bring about a community center. They want it to be more than just a performing arts center. It needs to have components that will compliment the uses on that site, e.g., restaurants, shops, housing. To make this project work they will have to create some significant revenue streams as an arts center and as well for the government entities that will be supporting this project. It will have to be a partnership.

Councilman Newman wanted to be clear that if there are opportunities to do private sector development in that area that not 100% of all future values from the development of the site would automatically be earmarked for the performing arts center. Mr. Baudoin responded that is not their assumption that they will try to capture every dollar related to earning potential on this block. They want to see a partnership with the government sector where everyone benefits. They do not need to have every square inch of that property serving their financial needs.

Councilman Mumpower voiced the following concerns: (1) most references are to large cities with strong city cores and most of those projects have marginal success; (2) the City has had other large projects that we haven't been able to bring the project to life; (3) timing of in the economy; (4) binding future Councils; (5) the City has a tendency to back into projects that obligates City tax dollars; and (6) the project will need either an extraordinary generous

benefactor or City taxpayers to succeed. Until he gets a sense of an extraordinary generous benefactor to take on the lion share of this project, he will not support this project that will ultimately burden the city taxpayers.

In response to Councilman Newman, City Manager Jackson said that there is no fiscal impact associated with this resolution, however, as noted in the staff report, there will be some due diligence on a joint development agreement and when that is brought back to Council (in approximately 90 days), there will be a fiscal impact.

Councilman Newman said that up to this point the study process has been raised by private dollars. He felt the resolution is basically setting aside this property. If the community can support this, this City-owned property is available for that purpose, if funds are raised by others to do it.

City Manager Jackson said that the City would be the managing partner and through negotiations with the group would determine what the cost of services would be and their financial participation covering those costs. There will be engineering, design and architectural services needed. He felt it was fair of Council to ask what their plan is for participation in those costs. At this time, our primary costs would be the in-house management and oversight of the project and in the past we have always complimented that with some outside consulting services.

In response to Councilman Newman, Mr. Powers said that as we move forward, the staff time will become more substantial. He felt that in the next 90 days there will be a fairly substantial amount of staff time in terms of project management, working with other Economic Development staff and Planning staff. As we look more at the joint development agreement and how the responsibilities of developing the site are put together, he thought we would have to look outside, because he didn't think the City has all of the expertise in-house that would be necessary to help structure those kinds of deals. He approximated 60-100 man hours based on prior experience. He did say this would be very time intensive from a staff standpoint. He felt that from a staff level, he believed that the best position for the City is to lead the process because it's our property.

Councilman Newman understood that what Council is voting on is reaffirming our support that this land is available for a project like this. It's his understanding that the City has land and we are happy to make it available, but it's different to say the City is going to financially lead this process as we have a lot of other processes going on that are important. Whether or not we decide to make an extensive financial commitment to a planning process is an entirely different matter for him.

Councilman Mumpower felt the City might be backing into dollar accountability incrementally that that's a danger. The City is interested and we want to get behind the project, but not financially.

Mayor Bellamy supported what is before Council, not a potential for what might happen in the future. She read the following paragraphs from the resolution: "Whereas, the ability to move into the next funding phase is contingent upon a site now being designated; and Whereas, the establishment of the Parkside site will provide for the next phase in project planning which will lead to construction and grand opening; Now, therefore, ..., the City of Asheville hereby commits to reserve space for a performance center within the area targeted for a multi-use redevelopment project on property bounded by Marjorie Street to the north, Spruce Street to the west, Eagle Street to the south and South Charlotte Street to the east, expecting that construction will commence within five years of the date of this resolution, with all pertinent details to be included in a forthcoming joint development agreement between the City of Asheville and the Asheville Area Center for the Performing Arts, Inc." She said that our consultants advised us that when we look at redevelopment of that site, that it would take five years. She sees this as an opportunity to do further do due diligence. They need a site in order to increase their fundraising potential.

She's excited to offer her support behind this initiative. The community has been talking for years about the importance of having a better performing arts center regardless of Asheville's size. Today Council is telling the community that we have set aside the site and believe their goal can be achieved. She felt that we can then really focus on what we want to do as a community with the Civic Center.

The motion made by Vice-Mayor Davis and seconded by Mayor Bellamy carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 294

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED PORTION OF PEACE STREET

RESOLUTION NO. 08-180 - RESOLUTION PERMANENTLY CLOSING AN UNOPENED PORTION OF PEACE STREET

Mayor Bellamy opened the public hearing at 6:25 p.m.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened portion of Peace Street. This public hearing was advertised on August 1, 8, 15 and 22, 2008.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close an unopened portion of Peace Street.

Public Works Department staff has researched and contacted all agencies and the Greenway Commission and determined easements are required for Progress Energy. The Greenway Commission at their meeting of 7/10/08 recommended the unopened portion of Peace Street be retained as future opportunities for greenways, bike, pedestrian or vehicular connections. The owners of the properties abutting the unopened right-of -way has committed to providing a 20 foot easement on the unopened portion of Peace Street. .

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pro:

- There will be no future compromise of ingress/egress to other property

Con:

- Staff can find no potential challenges regarding the closure of an unopened portion of Peace Street

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close a portion of Peace Street

Mayor Bellamy closed the public hearing at 6:27 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-180. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 296

B. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE LEGAL BUILDING, LOCATED AT 10-14 SOUTH PACK SQUARE, AS A LOCAL HISTORIC LANDMARK

Historic Resources Commission Director Stacy Merten said that the petitioner has requested this public hearing be continued to October 28, 2008. Therefore, Councilman Newman moved to continue this public hearing until October 28, 2008. This motion was seconded by Councilwoman Jones and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE JACKSON-WESTALL BUILDING, LOCATED AT 20-22 SOUTH PACK SQUARE, AS A LOCAL HISTORIC LANDMARK

Historic Resources Commission Director Stacy Merten said that the petitioner has requested this public hearing be continued to October 28, 2008. Therefore, Councilman Newman moved to continue this public hearing until October 28, 2008. This motion was seconded by Councilwoman Jones and carried unanimously.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 7 PACODA STREET REGARDING INCREASED BUILDING HEIGHT AND OTHER SITE PLAN REVISIONS FOR THE ABBERLY RIDGE PROJECT

ORDINANCE NO. 3648 - ORDINANCE AMENDING THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 7 PACODA STREET REGARDING INCREASED BUILDING HEIGHT AND OTHER SITE PLAN REVISIONS FOR THE ABBERLY RIDGE PROJECT

Mayor Bellamy opened the public hearing at 6:27 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance amending the conditional zoning for property located at 7 Pacoda Street regarding increased building height and other site plan revisions for the Abberly Ridge Project. This public hearing was advertised on August 15 and 22, 2008.

He said that on April 22, 2008, City Council unanimously approved a conditional zoning request, for property located at 7 Pacoda Street, from RM-8 to RB as part of a master development plan for the construction of 422 apartment units. Since the time of the zoning change and conceptual site plan approval, a number of revisions and modifications have been made to the plans. The following list provides a summary of these changes:

- A reduction in the number of total apartment buildings from 14 to 11.
- A reduction in the overall number of units from 422 to 360 (254 units in phase I and 106 units in phase II).
- The addition of one story to the "Manor Building" (building type 4 located in the center of the subject property) increasing the height from 3 stories to 4 and the unit count from 90

to 92 but decreasing the overall footprint. Further, the orientation of this building has been redesigned so that it faces south, internal to the site, instead of facing east towards Brevard Road.

- A reduction in the number of total parking spaces from 887 to 720.
- The addition of 41 accessory garage/storage units located throughout the site.
- A re-alignment of the site entrance from Pacoda Street.
- Additional impervious/open space areas interspersed throughout the site.

The changes noted above and reflected on the revised plans do not have an impact on the seven conditional use standards that were presented with the original application. Staff therefore, recommends approval of the proposed modifications pursuant to the site plans and supporting documentation.

Mr. Clay Mooney, land planner, explained in detail the site plan amendments. He felt there are very positive improvements to the project.

Mr. Alan Ditmore was disappointed with the loss of units. He hoped the owner would restore the units.

Mayor Bellamy closed the public hearing at 6:36 p.m.

After finding that the request is reasonable based on information provided in the staff report and stated in the staff recommendation, Councilman Mumpower moved to adopt Ordinance No. 3648 to approve the amendment to the conditional zoning for property located at 7 Pacoda Street regarding increased building height and other site plan revisions for the Abberly Ridge Project, as follows: (1) A reduction in the number of total apartment buildings from 14 to 11; (2) A reduction in the overall number of units from 422 to 360 (254 units in phase I and 106 units in phase II); (3) The addition of one story to the "Manor Building" (building type 4 located in the center of the subject property) increasing the height from 3 stories to 4 and the unit count from 90 to 92 but decreasing the overall footprint. Further, the orientation of this building has been redesigned so that it faces south, internal to the site, instead of facing east towards Brevard Road; (4) A reduction in the number of total parking spaces from 887 to 720; (5) The addition of 41 accessory garage/storage units located throughout the site; (6) A re-alignment of the site entrance from Pacoda Street; and (7) Additional impervious/open space areas interspersed throughout the site. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 28

V. UNFINISHED BUSINESS:

A. DISCUSSION REGARDING THE OFFER BY W&K HOTELS LLC FOR THE PURCHASE OF CITY-OWNED PROPERTY LOCATED AT 550 AIRPORT ROAD (AIRPORT HOLIDAY INN)

At the request of City staff, Councilman Mumpower moved to continue this matter until September 9, 2008. This motion was seconded by Councilwoman and carried unanimously.

B. CONSIDERATION OF THE SECOND AND FINAL READING OF ORDINANCE NO. 3642 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATIN, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS

At the request of City staff, after a brief discussion on Councilman Mumpower's opinion that the continuance is being orchestrated to pass the ordinance, Councilman Newman moved to

continue the matter until September 9, 2008. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

C. DISCUSSION REGARDING CONTRUCTION EASEMENT TO ALLOW FOR A PERMANENT ROAD IMPROVEMENT ON PUBLIC LAND (PACK SQUARE PARK)

Mayor Bellamy requested this matter be continued to September 9, 2008, as reports indicate that the Judge in the Pack Square Park lawsuit plans to rule by this Friday, August 29, 2008, and this may be a moot point. In addition, she felt that on September 9, 2008, there will be a full seated Council.

Vice-Mayor Davis agreed that discussion on this conservation easement might be premature; however, time is money for the developer.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Mumpower moved to continue this matter until September 9, 2008. This motion was seconded by Councilman Russell and carried unanimously.

D. GROVE PARK INN AREA TRAFFIC CALMING PROJECT

In response to Mayor Bellamy, City Attorney Oast said that a motion to reconsider, under Council's rules and Roberts Rules of Order, has to be made at the same meeting where the action was taken and it must be made by someone who voted with the majority and it has to pass by a 2/3 vote.

Councilman Mumpower said that there was a unanimous vote about two years ago to support an undeveloped traffic calming plan in this area. A plan has now been developed and is in the process of implementation. Concerns have been raised about the extremes of this plan and that the long-term impact may be detrimental to this community as a whole as well as to the neighborhood. Based on those concerns, he asked that this item be addressed.

Mr. Ken Putnam, Assistant Director of Transportation and Engineering, said that the contract was signed on July 24, 2008, and the completion date was established as December 31, 2008. The primary purpose of traffic calming measures including speed humps is to slow traffic and/or divert traffic. As a result, all vehicles using a particular street are impacted including emergency vehicles (police, fire trucks and ambulances). There is well documented research that indicates the response times for fire trucks can be delayed three to five seconds per speed hump and ambulances carrying a patient can be delayed up to ten seconds per speed hump. City staff has met with citizens, emergency responders, and other large vehicle users, including the Public Works Sanitation Division, Asheville City Schools, and Young Transportation, to address their individual concerns and to make adjustments to the proposed traffic calming measures before they are installed. Young Transportation as well as other transportation carriers makes regular trips to and from the Grove Park Inn typically using 45-foot motor coaches. At this time, all speed humps on Grovewood Road are installed and one speed hump along Country Club Road is in place.

He said that as a result of our meetings with emergency responders and other large vehicle users, including the Public Works Sanitation Division, Asheville City Schools and Young Transportation, we agreed to make the following adjustments (after testing once the roads were painted): (1) no speed humps will be installed along Edwin Place or Kimberly Avenue (this decision was made as a part of the original design); (2) a minimum travel lane width of 12 feet will be provided on each side of all median islands; (3) the proposed median island along Kimberly Avenue at its intersection with Country Club Road will be shortened by five feet; (4) the proposed median island along Kimberly Avenue at its intersection with Evelyn Place will be shortened 10

feet (five feet on each end) to accommodate turning movements for school buses and vehicles at a private alley; (5) the proposed median island along Edwin Place at its intersection with Celia Street/Gertrude Street will be shifted five feet southward and an existing streetlight will be removed and relocated; (6) the proposed median island along Edwin Place at its intersection with Charlotte Street might be eliminated; and (7) the proposed curb extension along Macon Avenue at its intersection with Charlotte Street will be eliminated. He said the biggest area that is still not fully finalized is the median island at the intersection with Charlotte and Macon Avenue. As it's laid out the buses cannot make that turn so they are looking at some different options: (1) eliminate the median island all together; (2) possibility of an all-way stop; or (3) a speed hump. They are working with the neighborhood representatives and emergency responders and other large vehicle uses to try to find the best treatment.

Buncombe County Emergency Medical Services Director Jerry Vehaun said that he has met with Fire Chief Grayson and Mr. Putnam on this issue. He felt the City was fortunate to have Mr. Putman on staff because of his wealth of experience in dealing with traffic. Regarding emergency services, his concern is any kind of traffic calming that sticks something on a roadway, i.e., a speed hump or a blub out. One of their primary routes for ambulances is Edwin Place and Kimberly Avenue for north Asheville or Beaverdam. When a vehicle is traveling in an emergency situation, people get confused with the bulb outs and don't know where to go, thus adding an additional time delay. Also, with bulb outs if it's raining and the driver is looking for a house number, the driver may run into them doing damage to the vehicle. The speed hump, on the average, will cost an ambulance 10 seconds since they must go over them extremely slow, especially if there is a patient in the back. He supported a traffic light at the intersection of Edwin Place and Charlotte Street instead of a median island. He also supported a speed hump on Macon Avenue going up to the Grove Park Inn. He could live with the speed humps, but he didn't like them. He suggested traffic calming be with signage, especially from an emergency vehicle standpoint.

In response to Vice-Mayor Davis, Mr. Putnam said that they have done all they can do in the tweaking process. If we continue to look at other things, we would begin to eliminate these devices which would place us back into doing the whole process all over again. We've kept the integrity of the plan that 60% of the people bought into, but if we try to eliminate some of the islands beyond the intersection with Edwin and Charlotte Street, he felt we would have to start over. In our existing contract, we have the ability to remove and add certain items, but if we were to try to take 60-90 days to revamp it, we would stand to lose the contractor because he has been waiting patiently as it is and prices continue to rise.

Councilman Mumpower moved to postpone additional action on traffic calming measures within the identified project area at the discretion of our Traffic Engineer and request that he do an additional study on a timely basis for managing some of the concerns raised tonight regarding impediments to our safety vehicles and perhaps other safety concerns. This motion was seconded by Vice-Mayor Davis.

Mr. Louis Neeves, resident on Charlotte Street, read the following statement from Mr. Jerry Sternberg: "The use of signs to promote traffic calming was dismissed out of hand by the previous traffic director eliminating one of the most valuable tools available. If we are really serious about traffic calming we must increase the number and variety of signs including warning signs and traffic boards promoting driver awareness cooperation and safety consciousness. Neither the Fire Chief; Mr. Vehaun, Emergency Management Services Director; or the various bus operators were consulted or signed off on this proposal before it was submitted. A proposed traffic isle at the intersection of Charlotte Street and Edwin Place will prohibit a left turn north on Charlotte Street in order to access the two churches and the Grove Park Inn. The locals who know about this problem will use Evelyn Place as a cut through thus dramatically increasing traffic on this narrow street creating a hazard. Many tourists and large vehicles that do not know about this will have to turn right (toward town) then have to find a side street or a parking lot to make a dangerous u turn. I understand that there is a proposal to install a traffic light at this

intersection, which appears to be a very satisfactory solution. A traffic study could be done with an eye toward eliminating the light at Hillside to improve the traffic flow. The lights at Edwin and Chestnut Streets would break the traffic flow permitting Hillside traffic to safely enter Charlotte Street. The blub outs on Kimberly Avenue will narrow the traffic lanes reducing separation between vehicles especially large buses and trucks. This could lead to head on collisions or vehicles being forced off the road and making these corridors biker unfriendly. These planned obstructions will delay fire and other emergency vehicles increasing response time especially for large vulnerable senior population in this area. In the event that a terrible fire, gas explosion or even a terrorist situation occurs in such places as the Grove Park Inn, the Longchamps Apartments or Jones School an enormous number of emergency vehicles will need unfettered access to hospitals, fire and police vehicles. I am well aware that there are serious political, legal, financial and contractual issues in this matter that must weigh heavily on your decision, but public safety must trump all other concerns. Tweaking this plan will not be enough and once this is in place it will be costly to undue the mistakes. We need another meeting of all the stakeholders. Trading one set of unsafe conditions for another set of unsafe conditions is not a win for anyone."

Mr. Alan Ditmore felt the City should continue to let the City streets deteriorate and let the pot holes slow people down. He felt that traffic island would inhibit drivers from driving around bicyclists.

Ms. Glenda Burgin, Grove Park neighborhood resident, read the following statement: "This traffic calming project means so much to the safety and environment for our streets and families. For many, many years we have struggled with all the hazards associated with increased traffic in our area. The usual attempts to regulate – ticketing, signs, patrol – produced little improvement, which is why we appealed for help with traffic calming measures. Since November, 2004, when the City Council recognized this need, directed the Grove Park Inn to deposit $375,000 in the city budget explicitly for that project, and directed the city staff to begin the process, we neighbors acted in good faith. Directed by the city as to which streets and citizens (407 households) needed to be involved, we diligently 'spread the word' with small groups, newsletters, door-to-door and phone-to-phone contact and discussion. We have cooperated and successfully completed every step required, including working with traffic engineers and consultants to draw up professional, legal plans, the required six public meetings for input, the 40% and again, the 60% consent-to-approve signatures. We are presently working on plans for individual and group donations and volunteerism in maintaining the traffic islands, which are the responsibility of the residents. The input of the city staff, the Grove Park Inn, the fire, school, emergency departments, the private property owners – all that input has been considered many times over and compromises have been made. As always, some folks do miss the conversations, the meetings, the newspaper and TV articles, the notices, the emails, etc., but there has been a concentrated effort to include everyone's needs and suggestions and to constantly take time to educate those who have not been aware of each step involved in the process. It has taken these many years, a long time, but that is the only fair way. Our neighborhood feels this has been a good example of city, citizens, and corporations communicating – working together and moving forward with change. We certainly feel it was a responsible decision of the Council to approve this project. It is a huge and costly enterprise, but involves a huge and historic neighborhood ... a neighborhood that provides not only housing for taxpayers, but a great deal of employment for taxpayers ... and enjoyment, as well (the proms, dances, restaurants, annual events, etc.). Our streets which are used by so many Ashevillians and tourists are where we live (24/7). As taxpayers, we are sensitive to budget costs and restraints, which is why this collaboration of private funds from the GPI and residents, and public funds from the city is appropriate. As citizens, we want safety and service vehicles to ably navigate our streets, which is why some changes and tweaking of the original plans are necessary. Not every driver's complaint or every homeowner's complaint will be satisfied, but these proposed measures will achieve the goal for all this work, thought, and discussion – traffic calming. We appreciate the Council's help in accomplishing this for our neighborhood and city."

Ms. Gloria Dastoli, resident on Innsbrook Road, she read the following paragraph from a February 12, 2008, letter from the City Manager: "City staff has concluded since the subject project was required by the City Council and the Grove Park Inn to fulfill their responsibility by submitting the total requested fund and the affected citizens fulfill their responsibility by participating in the traffic calming design process as set forth in the current traffic calming policy. It is the City's responsibility to accomplish the agreed upon work."

Ms. Liz McKenna, resident on Evelyn Place, emphasized that for the neighborhood it is a safety issue. Young families leave their neighborhood and pets get killed because of people speeding continuously. This is for safety reasons.

Mr. Hank Garvey, Vice-President of Young Transportation, stated that Mr. Putnam did spend time to go with them over this process. He has been open with their suggestions. He is pleased with the traffic light proposal. Their one concern left to iron out is the right hand turn onto Macon Avenue.

In response to Councilman Russell, Mr. Putnam said along Kimberly Avenue between Country Club and Edwin, there is already on-street parking allowed in front of the houses and there are proposed to be five curb extensions that take up no more width than a car. Two of them will be in front of fire hydrants. As you go through the traffic signal up toward Charlotte Street there are two intersections where we have curb extensions, but they are really cross walks - noting again that they are only taking the place where an on-street car would be parked.

In response to Councilman Russell, Mr. Putnam said that both sides are still offering up suggestions. What we have in place now is a good solid plan that has done a good job to minimize the negative impacts without compromising the overall goal of what we are trying to accomplish with traffic calming. If we go any further, we won't have a traffic calming plan.

Councilwoman Jones noted that Mr. Putnam has been commended by Mr. Vehaun, Young Transportation, and the neighborhood for his expertise and responsiveness. As a result of all the meetings with emergency responders and other large vehicle users, etc. he made the adjustments he outlined above. We have a professional everyone trusts, a process well underway and money being spent. She hoped this action is not a political decision but a professional decision. Public safety is job one and it is clearly demonstrated in the modified plan.

Councilman Mumpower was concerned that this plan reaches too far and instead of reducing safety, it's producing safety concerns. Until the Emergency Medical Services Director and the Fire Chief approve this plan, it should be delayed. Personally he felt enforcement of signs, etc. is a key to compliance.

Councilman Newman said that when this process began three years ago, everyone knew that traffic calming is to slow all traffic down. He felt we do have a good process and competent people to strike the appropriate balance between the public safety benefits of traffic calming and the effect it has on emergency response times. When City Council approved the Grove Park Inn project, traffic calming in this area was part of that agreement.

In response to Mayor Bellamy regarding the on-going work plan, Mr. Putnam said that as far as working with the contractor and continuing to tweak the plan the process is not over. On some of the adjustments, we still need to get the Fire trucks to drive the area once the markings are on the pavement.

Mayor Bellamy said that Mr. Putnam has provided Council with the construction work plan he is still finalizing resulting from concerns from emergency responders, other large vehicle users, including the Public Works Sanitation Division, Asheville City Schools and Young Transportation.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Davis failed on a 2-5 vote, with Vice-Mayor Davis and Councilman Mumpower voting "yes" and Mayor Bellamy, Councilwoman Jones, Councilman Newman and Councilman Russell voting "no."

At the request of Mayor Bellamy, it was the consensus of the majority of Council to instruct Mr. Putnam to provide regular updates on additional contacts made with the emergency responders, other large vehicle users, Public Works Sanitation Division, Asheville City Schools, Young Transportation, and the neighborhood detailing the results of those meetings.

At 7:28 p.m., Mayor Bellamy announced a five minute recess.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-181- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAMP DRESSER AND MCKEE FOR DEVELOPMENT OF THE STRATEGIC ENERGY MANAGEMENT PLAN

ORDINANCE NO. 3649 - BUDGET AMENDMENT FOR THE MATCHING FUNDS TO DEVELOP THE STRATEGIC ENERGY MANAGEMENT

Ms. Maggie Ullman, the City's Energy Coordinator, said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Camp Dresser and McKee (CDM) for development of the City of Asheville Strategic Energy Management Plan; and the associated budget amendment, in the amount of $50,000.

She explained that explained the green house gas (GHG) emission reduction 5 step strategy: (1) establish baseline – Fiscal Year 2000-01 - 32,000 tons (GHG); (2) Build stakeholder consensus – Sustainability Advisory Committee on Energy & the Environment (SACEE) focus groups, internal dialogue; (3) set reduction goal (Council's goal) – 80% reduction by 2050 – 2% per year; (4) create a strategic energy management plan – current stage; and (5) implement initiatives – selective projects underway.

We need a strategic plan because (1) of the commitment of the Mayor's Climate Protection Agreement – October of 2005; (2) of Council Resolution 07-90 calls for an energy management plan; (3) to identify realistic early wins and long term strategies; and (4) cost effective energy reduction strategies.

The strategic energy plan will provide (1) comprehensive interdepartmental energy plan; (2) long range plan to achieve reduction goal; (3) tool to achieve Council's strategic goals; and (4) a model for the community.

The strategic energy plan is in partnership with Camp Dresser and McKee (CDM). CDM provided a research and development grant of $140,000 and the City of Asheville matched funds of $50,000.

She then reviewed the time table for completion with the final report expected in mid-March of 2009.

In summary, in April 2007 City Council passed a resolution committing to develop a Strategic Energy Management Plan. On December 14, 2007, Mayor Bellamy wrote a letter of support regarding partnership for the development of the Strategic Energy Management Plan to CDM. In March 2008 CDM committed $138,900 to provide services to the City of Asheville for the development of a Strategic Energy Management Plan. CDM committed these funds and requested a match contribution of $50,000 be provided by the City.

This action supports the City Council Strategic Operating Plan in that it dedicates funding to the following Council goal, "Complete an Internal Energy Management Plan for conservation, technology and retrofitting, and sustainability management."

Pros:

- Funding this request will expedite the completion of this plan.
- Funding this request will provide technical expertise and insight from a non bias third party.

Con:

- The funding requested is not allocated in the current budget and will therefore have to be appropriated from fund balance.

The fiscal impact would be $50,000 reduction in fund balance.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Camp Dresser and McKee for development of the Strategic Energy Management Plan, and the associated budget amendment, in the amount of $50,000 to pay for services to conduct a portion of the Strategic Energy Management Plan.

When Mayor Bellamy asked for public comment, no one spoke.

Ms. Ullman responded to Councilman Mumpower when he asked what the motivation is for CDM to give the City $140,000 for the plan and have they done a study of this type in the past.

Councilman Mumpower felt that Council is preparing to spend further dollars on ways to conserve our resources when he believed we have the expertise in-house to identify. He spoke against additional studies, spending money on people when we have the expertise in-house, and contracting with a company who has not done a study of this type. He also felt we should have reached out for volunteers to help with this plan.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and budget amendment and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-181. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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Councilwoman Jones moved for the adoption of Ordinance No. 3649. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 31

B. RESOLUTIN NO. 08-182 - RESOLUTION APPOINTING MEMBERS TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Vice-Mayor Davis said that the terms of Tim Flora (north representative), Ed Taylor (central representative), Davidson Jones (east representative) and Mary Ann LaMantia (south representative) expired on June 30, 2008.

At the July 15, 2008, worksession, it was the consensus of Council to (1) interview Ada Volkmer and Angelica Reza Wind for the north representative; and (2) appoint Charlie Hume

(South representative) and Bob Smith (Central representative) to each serve a three-year tern respectively, terms to expire June 30, 2011. Ms. Volkmer was unable to attend the interview.

In addition, at the August 19, 2008, worksession, it was the consensus of Council to readvertise for the east representative.

After Council spoke highly of the candidates, Ada Volkmer received 2 votes and Angelica Wind received 3 votes. Therefore, Angelica Wind was appointed as the north representative on the Citizens-Police Advisory Committee to serve a three-year term, term to expire June 30, 2011, or until her successors has been appointed.

It was the consensus of Council to appoint Charlie Hume (South representative) and Bob Smith (Central representative) to each serve a three-year tern respectively, terms to expire June 30, 2011.

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C. RESOLUTION NO. 08-183 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Davis said that there currently exists three vacancies on the Recreation Board as follows: Carolyn Stanberry (term expired June 30, 2008), Carol Ann Pothier (term to expire June 30, 2009), and Sam Camp (term to expire June 30, 2009).

At the June 17, 2008, worksession, it was the consensus of Council to interview Davidson Jones and Wanda Hawthorne.

At the August 19, 2008, worksession, it was the consensus of Council to interview John Metcalf, Mildred Nance-Carson, Betty Young and Sara Manuel. Ms. Manuel was interested in appointment; however, would be out of town and unable to attend the interview. Ms. Young and Mr. Metcalf did not attend their scheduled interviews.

After Council spoke highly of the candidates, Davidson Jones received 1 vote; Wanda Hawthorne received 3 votes; John Metcalf received no votes; Mildred Nance-Carson received 4 votes; Betty Young received no votes; and Sara Manuel received 4 votes. Therefore, (1) Mildred Nance-Carson was appointed to serve a three-year term, term to expire June 30, 2011, or until her successor has been appointed; and Wanda Hawthorne and Sara Manuel were appointed to each serve an unexpired term, terms to expire June 30, 2009, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 300

D. RESOLUTION NO. 08-184 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Davis said that Wendy Kussrow (at large representative) has resigned from the River District Design Review Committee, thus leaving an unexpired term until September 1, 2010.

On July 15, 2008, City Council instructed the City Clerk to arrange interviews for Gregory Sills and Terry Meek. Prior to the interview time, Mr. Sills withdrew his name for consideration.

It was the consensus to appoint Terry Meek as the at-large member to the River District Design Review Committee, to serve the unexpired term of Ms. Kussrow, term to expire September 1, 2010, or until his has been appointed.

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E. RESOLUTION NO. 08-185 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Vice-Mayor Davis said that Lach Zemp has resigned from the Sustainable Advisory Committee on Energy & the Environment, thus leaving an unexpired term until December 31, 2008.

On August 19, 2008, City Council instructed the City Clerk to arrange interviews for Matthew Menne, Matthew Raker, Herbert Kupfer and Ryan Blau.

After Council spoke highly of the candidates, Matthew Menne received no votes, Matthew Raker received 2 votes, Herbert Kupfer received no votes and Ryan Blau received 2 votes. Another vote was taken and Matthew Raker received 2 votes and Ryan Blau received 3 votes. Therefore, Ryan Blau was appointed to the Sustainable Advisory Committee on Energy & the Environment to serve the unexpired term of Mr. Zemp, term to expire December 31, 2008, and then to serve a full three-year term, term to expire December 31, 2011, or until his successors has been appointed.

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VII. OTHER BUSINESS:

Western Carolina Rescue Ministries Inc.

Mayor Bellamy said that she has just received the following e-mail from Mr. Vic Howard, President and CEO of Western Carolina Rescue Ministries, Inc. and would like to see how the City can participate in this exciting opportunity: "We had a great thing happened here at Western Carolina Rescue Ministries on Friday, Aug 22nd. Sonopress came down and interviewed 35+ homeless men and women for employment. Only three failed the drug test. It looks like Sonopress may be able to hire 20-25 of them. This means that 20+ men and women will be off the streets of Asheville and employed. The ones who are hired are going to get special privileges here at The Ministry. They will be guaranteed a bed each night, a lunch will be packed each day and they will be able to keep their belongings here at the Ministry. We will also be providing them any clothes they need. We do need your help. We need bus passes for the first two weeks or until they get their first pay check and they start on this Wednesday, August 27th. We are also trying to figure out their Sunday transportation. Please let me know quickly if the city can provide bus passes for the 1st couple of weeks."

City Manager Jackson provided Council with a memorandum that is in response to the Western Carolina Rescue Ministries' (WCRM) request for a transportation assistance grant from the City to support their recent job placement program with Sonopress Inc. Recently, WCRM was able to refer and place over 20 homeless clients in jobs at Sonopress Inc. in Weaverville, N.C. The new employees will reside at WCRM facilities downtown and travel by transit to the employer's place of work. WCRM is requesting a grant in the amount of $500 to provide one monthly transit pass to each client. If Council approves this grant, the source of funds would be the Planning Department's homeless division operating budget.

Vice-Mayor Davis was very supportive of this action. However, he expressed concern over the bad behavior of homeless men and women at the Western Carolina Rescue Ministries on Patton Avenue, which is the western gateway corridor into Asheville. He asked, and it was the consensus of Council, that this item be addressed at the City Council Public Safety Committee regarding accountability of service providers, especially in the western gateway corridor.

Mayor Bellamy said that she has been meeting with the WCRM about a greater level of responsibility that needs to happen with their recipients of services. They are willing to raise the bar on themselves and she felt they would be happy to be a part of that discussion.

Councilman Mumpower said the WCRM does a lot of good things for our community; however, he could not support the action as it steps outside of our outside agency funding process. In the alternative, he said that he would be happy to personally contribute to this venture.

Mayor Bellamy was happy to support this initiative. When we look at how we use our funding dollars for the homeless community, this will help them get to work so we can have 20 people part of the solution and not part of the problem. She said that an outside agency contract will be prepared with measurable goals so there is some accountability to this action.

Councilman Newman felt this is one of the best uses of $500 we have ever allocated – full-time jobs for 20 homeless people. Plus, the grant is for City bus passes.

Councilman Russell agreed with Councilman Mumpower that this request didn't go through the right process. He supported of efforts of WCRM but he wished they would have asked the private sector first for the money because he felt people would have been happy to contribute to this initiative.

Councilman Newman felt this is not sidestepping the established process. The outside agency process is when a program is going to be run over a series of months and it goes through the appropriate budget process. That is not what this is. This is a situation that arose after the budget was approved. It is a small amount of money being discussed in an open session of Council. He felt it was very appropriate for Council to be able to respond to needs as they arise and it comes out of the funds that are appropriated in a department for these kinds of purposes.

Vice-Mayor Davis moved to approve a $500 grant to WCRM to provide one monthly transit pass to each client. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Claims

The following claims were received by the City of Asheville during the period of July 18-31, 2008: Ranier Allen (Police), David Sprangrude (Water), Carolyn Bouffard (Streets), Stephen Bowman (Police), Shannon Murry (Transit Services), Patricia Northrup (Streets), Lenard Carrier (Parks & Recreation), Michael Bolanos (Police), Sassi McClellan (Water) and Juanita Wilson (Streets).

The following claims were received during the period of August 1-14, 2008: Lawrence E. Peterson (Fire), Coleman Smith (Transit Services), David Sprouse (Sanitation), Celeste Fletcher (Water), Progress Energy (Water), and Cletus Hamilton (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The following Summons and Complaint was received by the City of Asheville on August 8, 2008: Calvert & Melton Investments LLC vs. Nationwide Mutual Insurance Company and the City of Asheville. The nature of the proceeding is a complaint for property damage resulting from corroded and leaking water main line, water meter, and/or service line. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Mary Steiner spoke to Council about tent worms killing all walnut trees, thus starving our squirrels. Vice-Mayor Davis, liaison to the Tree Commission, said that he would be happy to take Ms. Steiner's concern to the Tree Commission to see if there is something that can be done.

Closed Session

At 8:16 p.m., Councilman Mumpower moved that the Asheville City Council go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Asheville Jet, Inc. d/b/a Million Air Asheville; and Asheville Regional Airport Authority. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilwoman Jones and carried unanimously.

At 9:25 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:25 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – September 9, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 9, 2008, AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN"

Mayor Bellamy read the proclamation proclaiming September 9, 2008, as "Family Day – A Day to Eat Dinner with your Children" in the City of Asheville. She presented the proclamation to Ms. Jackie Latek, representing Families Together, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 22-26, 2008, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Bellamy read the proclamation proclaiming September 22-26, 2008, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Minority Business Coordinator Brenda Mills, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

Mayor Bellamy removed from consideration Consent Agenda "F" from the Consent Agenda. She said that late last week the Western Carolina Rescue Ministries found other means (Employment Staffing Inc. donation) to supply the transit passes, and has relayed to City staff that the budget amendment is no longer needed. She thanked the community for stepping up and making other donations as well to the Western Carolina Rescue Ministries.

At the request of Councilman Mumpower, Consent Agenda Items "D" and "G" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE WORKSESSION HELD ON AUGUST 19, 2008; AND THE FORMAL MEETING HELD ON AUGUST 26, 2008

B. RESOLUTION NO. 08-186 – RESOLUTION OF INTENT TO CLOSE A PORTION OF SHADY LANE AND SETTING A PUBLIC HEARING ON THE QUESTION FOR OCTOBER 14, 2008

Summary: The consideration of a resolution of intent to close an unopened portion of Shady Lane and request a public hearing for October 14, 2008, regarding this issue.

N.C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close an unopened portion of Shady Lane.

At the August 14, 2008, Greenway Commission meeting, they unanimously approved the closure in that they could find no visible use for retaining that portion of Shady Lane.

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for October 14, 2008, to close an unopened portion of Shady Lane.

RESOLUTION BOOK NO. 31 – PAGE 303

C. RESOLUTION NO. 08-187 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH T-MOBILE SOUTH, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD

ORDINANCE NO. 3650 – BUDGET AMENDMENT REGARDING LICENSE AGREEMENT WITH T-MOBILE SOUTH, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with T-Mobile South, LLC for antennas at 36 Reservoir Road; and the associated budget amendment, in the amount of $56,200.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

T-Mobile South, LLC has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "Lower Tower" which is the smaller tower to the west. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation, to be paid for by T-Mobile South, LLC. The proposed License Agreement will enable T-Mobile to operate six (6) panel antennas at that site; however, there is a provision,

which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be five (5) years with one renewal period of five (5) years. T-Mobile will pay an annual License Fee based on the initial rate of $30,000 with a 4% increase annually thereafter. Two years of license fees will be collected in advance; the first two months exempted to allow for installation of equipment.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were presented to the Planning and Economic Development Commission on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for this type of installation.

The Notice of Intent to enter into a License Agreement with T-Mobile South, LLC was published on August 28, 2008, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

Regarding the Strategic Operating Plan, strategic tower asset management, through the creation of new license agreements, presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable.

Several new tenant leases are anticipated in Fiscal Year 2009. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on utilizing an estimated $80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays $29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the Fiscal Year 2009 budget, and once implemented, will promote significant cost savings to the City over time. The attached budget amendment will appropriate $56,200 into the re-engineering account.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure
- Underwrites long term cost savings plan for telecommunications

Con:

- None

Fiscal Impacts:

- Fiscal Year 2009: $56,200 revenue
- Fiscal Year 2009: $56,200 investment programmed to support re-location of City equipment
- Beyond Fiscal Year 2009: Additional revenue stream based on initial rate of $30,000 per year with 4% escalation per year.
- Beyond Fiscal Year 2009: Resulting savings of initial rate of $29,000 per year with 7% rent escalations.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to execute the license agreement with T-Mobile South, LLC on behalf of the City of Asheville; and (2) approve associated budget amendment.

RESOLUTION BOOK NO. 31 – PAGE 304
ORDINANCE BOOK NO. 25 – PAGE 33

D. BUDGET AMENDMENT FROM A DONATION FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT CONSTRUCTION OF THE NEW RACCOON, FOX AND RED WOLF HABITATS AT THE NATURE CENTER

This item was pulled from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 08-188 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT SERVICE AGREEMENT WITH MOTOROLA INC. FOR MAINTENANCE COVERAGE OF OUR RADIO SYSTEM INFRASTRUCTURE EQUIPMENT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract service agreement with Motorola, Inc in the amount of $126,297.36 for maintenance coverage of our radio system infrastructure equipment.

The City of Asheville continues to use Motorola, Inc. to perform maintenance coverage on the infrastructure of the Motorola 800MHz radio system. The system is used by Public Safety departments as well as other operational departments.

Annual maintenance payments are required in order to keep the radio system in a reliable and supported state. A contracted agreement also means that the City has access to technicians and repair equipment immediately upon a problem arising.

Because the radio system provides basic support and enhanced safety functionality for officers, this action ties into City Council's goal of being one of the safest and most secure communities when compared to similar cities.

Pro:

- Prioritize public safety and infrastructure investments that support health and safety.

Con:

- If we do not have a maintenance contract in place we could have lengthy and more costly service interruptions on the radio system.

The fiscal impact would be for Fiscal Year 2009: $126,297.36. Having to pay for repairs on a basis per call and per part would be extremely likely to be much more costly.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with Motorola, Inc. for maintenance coverage of our radio system infrastructure equipment.

RESOLUTION BOOK NO. 35 – PAGE 305

F. BUDGET AMENDMENT TO ACCEPT DONATION FROM EMPLOYMENT STAFFING INC. FOR THE PURPOSE OF REIMBURSING TRANSPORTATION EXPENSES INCURRED BY WESTERN CAROLINA RESCUE MINISTRIES INC. ON BEHALF OF HOMELESS CLIENTS SEEKING WORK OPPORTUNITIES

Mayor Bellamy removed this item from the Consent Agenda. She said that late last week the Western Carolina Rescue Ministries found other means (Employment Staffing Inc. donation) to supply the transit passes, and has relayed to City staff that the budget amendment is no longer needed.

G. RESOLUTION AMENDING THE CITY'S FISCAL YEAR 2007-08 AND FISCAL YEAR 2008-09 CONSOLIDATED ACTION PLANS TO REALLOCATE FUNDS

TO THE ONTRACK FINANCIAL EDUCATION AND COUNSELING SERVICES AGENCY

This item was pulled from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. ORDINANCE NO. 3651 – BUDGET AMENDMENT FROM A DONATION FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT CONSTRUCTION OF THE NEW RACCOON, FOX AND RED WOLF HABITATS AT THE NATURE CENTER

Summary: The consideration of a budget amendment, in the amount of $69,160, for a donation from the Friends of the Nature Center for the Nature Center.

The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate for the Western North Carolina Nature Center, and to raise funds to support the programs and enhancements at the Nature Center.

The Friends has donated $69,160 to the City of Asheville to support construction of the new raccoon, fox, and red wolf habitats at the Nature Center. The funding will be applied to the cost of irrigation, landscaping, hot wire equipment, signage, and whelping boxes.

Construction of the raccoon, fox and red wolf habitat supports these City Council strategic goals:

- Critical Services and Infrastructure – Support and enhance basic city services and customer services
- Sense of Place, Heritage and the Arts – Embrace Asheville's vibrancy, character and cultural art – Sustain Asheville's unique character and heritage, develop regional assets

Pros:

- Provide funding that completes the funding plan for construction cost.
- Support the overall well being and safety of the red wolves, foxes and raccoons living at the Nature Center.
- Demonstrate a strong collaborative effort between the City of Asheville and the Friends of the Nature Center.

Con:

- None

The budget amendment will increase the budget for the red wolves, foxes and raccoons living at the Nature Center by $69,160 and provide additional funds to enhance the habitat at no cost to the City of Asheville.

City staff recommends City Council to adopt a budget amendment authorizing the City Manager to establish a budget for funds received from the Friends of the Nature Center in the

amount of $69,160 to support construction cost of the new raccoon, fox, and red wolf habitats at the Nature Center.

Councilman Mumpower wanted to highlight the efforts of those who are willing to help the City run the Nature Center.

Councilman Mumpower moved for the adoption of Ordinance No. 3651. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 35

G. RESOLUTION NO. 08-192 - RESOLUTION AMENDING THE CITY'S FISCAL YEAR 2007-08 AND FISCAL YEAR 2008-09 CONSOLIDATED ACTION PLANS TO REALLOCATE FUNDS TO THE ONTRACK FINANCIAL EDUCATION AND COUNSELING SERVICES AGENCY

Summary: This is the consideration of a resolution amending the FY 2007-08 and FY 2008-09 Consolidated Action Plans for HOME Program funding, and the 2008-09 Consolidated Action Plan for CDBG funding to reallocate these funds to the OnTrack Financial Education and Counseling services agency to provide counseling and rental assistance services to low-income clients.

On July 29, 2008, staff was contacted by the Affordable Housing Coalition of Asheville and Buncombe County (AHC) advising that the agency would discontinue providing counseling and rental assistance through its CDBG and HOME agreements with the City. AHC anticipated taking this action by mid-September. Since that date, staff has worked closely with AHC to identify an alternative agency to provide these services through the CDBG and HOME programs. Several community agencies were approached; however, OnTrack Financial Education and Counseling Services (OnTrack) was the only agency interested in assuming these services. OnTrack, a well-established and successful counseling agency, is very enthusiastic about continuing this important work for our community.

In order to minimize an interruption in these services, OnTrack quickly prepared the required applications for CDBG and HOME funds for review by the Housing and Community Development Committee (HCD) and the Asheville Regional Housing Consortium Board (the Board). OnTrack's CDBG application was approved by the HCD Committee on August 18, 2008; and the agency's HOME application was approved by the Board on August 20, 2008. Both the HCD Committee and the Board expressed their appreciation to OnTrack for stepping forward to assume this responsibility on behalf of those who are in need of this assistance.

This request supports and implements the City's 2008-09 Strategic Plan goal of providing affordable housing by targeting financial resources to initiatives that end homelessness in Asheville. In addition, this request supports the goals and objectives established in the City's 2005-10 Consolidated Strategic Plan for Housing and Community Development

Pros:

- Corrects each Action Plan so that it accurately reflects that OnTrack will now provide these services to the community;
- Updates the fiscal and programmatic information for each plan;
- Minimizes a gap in rental assistance services for the community; and
- Allocates CDBG and HOME funding to OnTrack to deliver these services.

Con: None noted.

Fiscal Impact: None.

City staff recommends City Council amend the Fiscal Year 2007-08 and Fiscal Year 2008-09 Consolidated Action Plans for HOME Program funding, and the 2008-09 Consolidated Action Plan for CDBG funding to reallocate these funds to the OnTrack Financial Education and Counseling services agency to provide counseling and rental assistance services to low-income clients.

Councilman Mumpower suggested these monies might be better invested in core City activities.

Councilman Newman moved for the adoption of Resolution No. 08-192. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 309

III. PRESENTATIONS & REPORTS:

A. STRATEGIC PLAN QUARTERLY UPDATE

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2007 strategic planning retreat and staff is providing its fourth quarterly update on progress in several key areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the eight priority areas reflected in the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the fourth quarter of Fiscal Year 2007-08. In addition, as a subset to this presentation, staff has provided Council with the additional information: (1) Economic Development Key Indicator Report; and (2) Police Department Drug & Community Policing Quarterly Report.

He then presented the following Fourth Quarter Fiscal Year 2007-08 Strategic Plan End of the Year Report.

The following are the focus areas for 2007-08: (1) Community Building; (2) Critical Services & Infrastructure; (3) Economic Development; (4) Growth, Development, & Land Use; (5) Housing Opportunities; (6) Sense of Place, Heritage & the Arts; (7) Natural & Built Environment; and (8) Intergovernmental Relations.

The following are the 2008-09 Strategic Plan focus areas: (1) Affordable; (2) Green; (3) Safe; and (4) Sustainable.

In the focus area of community building, the following goals have been accomplished:

Continue to Develop Resources and Tools for Increasing Citizen Participation in Government - Neighborhood and Community Outreach Progress: (1) twenty neighborhood meetings prove successful; (2) five neighborhood walks; three community meetings; (3) three neighborhood groups receive technical assistance; (4) Neighborhood E-News (3 issues); and (5) Neighborhood event planning assistance (3 events).

Citizen's Academy Graduation – (1) Graduation on June 24, 2008; (2) Last class graduated 28 students; and (3) Largest Citizen's Academy graduation

Develop Public Outreach to Communicate City Council's Strategic Goals - Downtown Master Plan Success: (1) High attendance for public meetings (Average 120 - 200 people); (2)

Issue/specific topic meetings (Average 50 - 60 people); (3) Mailings to property owners; (4) E-mail newsletters; and (5) Website with documents from public/group meetings.

"Promote Inclusive Decision-Making" – 2007-08 progress: (1) communications improvements – City Channel programming, Map Asheville, website redesign; and (2) increase citizen participation: (a) Citizens Academy; (b) community/neighborhood outreach; (c) neighborhood planning (pilot) program; (d) neighborhood E-News; (e) neighborhood walks; and (f) development forums.

In the focus area of critical services & infrastructure, the following goals have been accomplished:

Enhance Commitment to Public Safety and Drug Approach - Weed and Seed Initiative Progress at West Riverside: (1) Drug arrests up 14%; (2) Calls for service (Asheville Police Department) down 18%; (3) Weed and Seed patrols net 216 arrests; (4) Services provided to 344 citizens by Resource Officers; and (5) Asheville Police Department Officers facilitate Community Oriented Problem Solving (COPS) Meetings.

Continue Commitment to Public Safety - Traffic Safety Unit's Wreck Reduction Efforts: (1) 47% cumulative reduction for targeted areas (excluding fender benders); (2) Intersection of US 19-23 & Louisiana Ave down 46%; (3) Intersection of Tunnel Road & S. Tunnel Road down 50%; and (4) Hendersonville Road in the area of Boston Way, Lodge Street and surrounding areas down 47%.

Enhance Basic City Services by Providing an Enhanced Level of Customer Service and Response – (1) Street Maintenance Progress: (a) 1410 potholes filled within 24 hours; and (2) Downtown Cleanliness: (a) Downtown public restrooms; (b) Park Ambassador; (b) weekly street cleaning.

"Supporting and enhancing basic City services" - 2007-08 notable enhancements include: (1) Downtown garbage collection (7 days per week); (2) Pritchard Park Ambassador; (3) Bee Tree Water Treatment Plant On Line; (4) Sidewalk Project Completions 56% up; (5) Asheville Police Department Gang Suppression Unit introduced; (6) City facility security improvements up; (7) Two new fire stations on-line – emergency response time up; and (8) water revenue bond implementation.

In the focus area of Economic Development, the following goals have been accomplished:

Improve Parking and Pursue Public-Private Partnerships to Address Downtown Parking Needs - Parking Improvements Progress: (1) Civic Center Garage improvements ($561,280); (2) New equipment for three parking garages; (3) completed feasibility study: Rankin Avenue Garage; (4) completed parking lot improvements under I-240; and (5) pursuing private/public partnerships.

Develop strategies for youth and education programs and increase awareness of City government – City of Asheville Youth Leadership Academy (CAYLA) success: (1) 100% acceptance into college acceptance; (2) high ratings on the summer job success; (3) community service enrichment was broad level of community service; and (4) City knowledge has been increased.

"Supporting a dynamic and robust Asheville economy with balanced growth" – 2007-08 notable initiatives: (1) job development: Volvo, Biltmore Farms, Unison Engine Components, Colbond, Highway Clays; (2) customer service center/development services; (3) Eagle-Market Street Request for Proposals mixed-use proposal; (4) UNC-Asheville "Rising Star" Program; (5)

CAYLA; (6) Riverfront property acquisition (Senate Bill 7); and (7) access to capital: Mountain Bizworks.

In the focus area of Growth, Development & Land Use, the following goals have been accomplished:

Pursue redevelopment of City-owned property to advance Council's goal of affordable housing – (1) City Owned Land Redevelopment: (a) Aston Gateway; (b) Ralph/Choctaw; and (c) Hunt Hill Purchasing Site; and (2) City Facility Master Planning process - plans underway.

Continue to Support Programs Such as the Greenway Master Plan and Increase the Amount of Linear Feet of Paved Greenways in the City - Greenway Development Progress: (1) Master Plan to City Council next month; (2) French Broad River Corridor Connector: planning, design, and land acquisition underway; (3) Hominy Creek Greenway: preparing for construction; and (4) Reed Creek Greenway: Phase I between Cauble and Catawba Street is complete; Phase II underway.

In the focus area of Housing Opportunities, the following goal has been accomplished:

Address the City of Asheville's Growing Need for Affordable Housing – Mayor's Affordable Housing Task Force Progress: (1) June 2008, City Council accepts Affordable Housing Plan; (2) July – August, 2008, Affordable Housing Working Group works with Housing & Community Development Committee – Unified Development Ordinance amendment work begins; and (3) September 2008, Unified Development Ordinance amendment recommendations (Presentation September 15 to Housing & Community Development Committee) – if accepted, then September 23, 2008, City Council agenda.

"Providing sufficient, safe and affordable housing opportunities for all citizens" – 2007-08 notable progress: (1) City of Asheville Homeless Coordinator (in-house); (2) 10-Year Plan progress continues; (3) Housing Code presentations (19 meetings); (4) Housing Trust Fund (a) Council appropriated $600,000; (b) awards - $590,000; (c) units: 12 market and 6 rental; and (d) loans repaid - $202,908; and (5) additional $500,000 Glen Rock/60 units (year two).

In the focus area of Sense of Place, Heritage and the Arts, the following goals have been accomplished:

To Support Asheville's Unique Character and Promote Opportunities for Social Interaction and Local Products - The Downtown Asheville Farmers Market: (1) produce; (2) baked goods; and (3) people.

Embrace Asheville's Cultural Heritage - Urban Trail maintenance project: (1) Maintenance assessment completed; and (2) Restoration repair work beginning Fall 2008.

Develop Recommendations & Implement Wayfinding Project - Implementation will include: (1) 35 pedestrian level signs; (2) 13 informational kiosks; and (3) 290 directional and destination signs.

"Embracing Asheville's vibrancy, character and cultural heritage" – 2007-08 significant progress: (1) Pack Square Park (Phase III); (2) Downtown Farmers Market; (3) Lexington I-240 Mural Project; (4) Bike Plan; (5) Downtown public restrooms on-line; and (6) Energy Loop restoration.

In the focus area of Natural & Built Environment, the following goals have been accomplished:

Continue to Improve Energy Conservation Efforts - Public Works 4/10 Work Schedule Pilot Program: (1) Preliminary results: (a) energy use reduction in Public Works Building: 13%; (b) building energy use reduction in Fleet Building: 6%; (c) avoided building cost energy bill: $1665; (d) expected annual fuel savings per employee: $521; and (e) expected green house gas emissions avoidance: 249 tons.

Continue to Improve Energy Conservation Efforts - Staff Energy Conservation Education (Better Energy Savings Today Program, or B.E.S.T.) Progress: (1) distributed conservation educational materials throughout 23 city buildings; (2) alternative community staff education; and (3) management education on sustainability leadership. This results in 1.2% total energy reduction in 23 City buildings.

"Preserving and Enhancing Asheville's natural beauty" – 2007-08 notable progress: (1) Council acquisition of 20.9 acres (preserved open space); (2) Beaucatcher Overlook Park 30 acres (2/3 paid); (3) Steep Slope Ordinance approved; (4) stormwater/erosion control permit Review process enforcement up ($94,000 fines); (5) two watershed engineering analyses; (6) zoning enforcement up: routine enforcement yielded 300% increase in violation; and (7) City's environmental education efforts underway.

In the focus area of Intergovernmental Relations, the following goal has been accomplished:

Collaborate with Local and Regional Partners – Collaborate on Regional Issues (1) Collaborative Efforts Include: (a) City operations proposal/ County parking decks; (b) One Stop Citizens Service Center; (c) Asheville Police/Buncombe Co. BCAT; (d) City Asheville Police Department/Department of Social Services Substation effort; (e) UNC-Asheville/City of Asheville Rising Star Program; and (f) environmental education: City of Asheville/Metropolitan Sewerage District/Water.

"Collaborating with State/Local Agencies to Achieve Regional Goals" – 2007-08 notable progress: (1) Oaks Subdivision Water Project ($200,000); (2) mental health Community Development Block Grant funding for Dobbins Center; (3) wholesale municipal water contracts; (4) DEA/Asheville Police Department Task Force; (5) City of Asheville/Buncombe County 911 consolidation; (6) regional emergency services training center; (7) City of Asheville Fire & Rescue mutual aid agreements; and (7) WNC Green Building Council Partnership ($5,000 rebate/ environmental building incentives.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

Upon inquiry of Mayor Bellamy, Parks & Recreation Director Roderick Simmons updated City Council on the temporary closing (approximately 2-3 weeks) of the Burton Street Center for renovations. He said the programs will be conducted at the West Asheville Center in the interim.

Councilman Newman was pleased to see the expected annual fuel savings per employee of $521 with the 4/10 work schedule pilot program.

In response to Mayor Bellamy, Director of Public Works Mark Combs explained how the City has been working with the N.C. Dept. of Transportation regarding mowing and notifying adjacent property owners about their responsibility of keeping gutters and sidewalks in front of their homes clear of weeds.

At the request of Mayor Bellamy, and by consensus of Council, she asked that the City place on their website and on the government channel information to raise the citizens' level of awareness of their responsibilities.

When Councilman Russell asked when the Civic Center parking deck stairwell would be completed, Director of Transportation and Engineering Cathy Ball said she would be happy to provide Council a timeline for that project.

Mayor Bellamy commended Civic Center Director Sherman Bass and his staff on improvements to the Civic Center.

Mayor Bellamy was pleased to see the increase in success over last year's success and thanked the City staff for the work they do on behalf of the citizens of Asheville.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 131 OLD CHARLOTTE HIGHWAY, ASHEVILLE, NORTH CAROLINA

ORDINANCE NO. 3652 – ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, NORTH CAROLINA, BY ANNEXING ONE LOT LOCATED AT 131 OLD CHARLOTTE HIGHWAY

Mayor Bellamy opened the public hearing at 5:53 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance for the voluntary annexation of one lot located at 131 Old Charlotte Highway. This public hearing was advertised on August 29, 2008.

She said that Curtis Canty, on behalf of the City of Asheville Board of Alcoholic Beverage Control Board, has petitioned the City for the annexation of one parcel located at 131 Old Charlotte Highway (PIN 9667.16-73-7727) containing approximately .85 acres.

The lot is located on the northern side of Old Charlotte Highway just past the entrance to Eastwood Village. The parcel is approximately 1.9 miles from the nearest boundary of the City of Asheville's primary corporate limits and is, therefore, subject to the standards for annexation of noncontiguous area contained in N. C. Gen. Stat. sec. 160A-58.1. The parcel and the petition meet all applicable requirements of the State of North Carolina.

A single-family home is currently located on the property and they propose to build a new ABC store. The current appraised valuation for this property, according to the Buncombe County tax records, is $90,100.00. As this property is owned by a governmental entity, it is exempt from property taxes. The City of Asheville will, however, share in the revenues produced at this store.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on December 31, 2008.

This action complies with the City Council's Strategic Operating Plan with the goal of working to enable voluntary annexation to support healthy growth of the City.

Pro:

- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal increase in service costs.

Regarding fiscal impact, while the property is not taxable, since owned by a governmental entity, the City will receive a distribution of the profits of the store. Information from the CEO of the local ABC Board states that,

> "Early projections indicate that the Fairview area store would generate sales at between $1,250,000 and $1,800,000 annually. At these levels we would project the initial net income before distributions of approximately $30,000, since the Board would incur debt for the construction of the building. We believe that the benefit to the City from a store in this location will only increase in future years."

Information from the Fire Department indicates costs would include: a $100 debt service payment to the Reynolds Fire Department, tri-annual inspections, and emergency responses. The Department indicates that these expenses would be negligible.

The Police Department indicates that this annexation will not have a significant impact on the operation. They base this comment on information on calls from other ABC stores in our jurisdiction.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Mr. Curtis Canty, CEO of the Asheville ABC Board, said that this area was identified in their five-year plan early on as a growth area for Asheville. They secured this site in December of 2007. At this site they will expand their operations to better serve that market as it continues to grow.

Mayor Bellamy closed the public hearing at 5:55 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3652. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 37

V. UNFINISHED BUSINESS:

A. DISCUSSION REGARDING THE OFFER BY W&K HOTELS LLC FOR THE PURCHASE OF CITY-OWNED PROPERTY LOCATED AT 550 AIRPORT ROAD (AIRPORT HOLIDAY INN)

At staff's request, Vice-Mayor Davis moved to refer this discussion to the City Council Finance Committee. This motion was seconded by Councilman Newman and after the Mayor asked for public comments and received none, the motion carried unanimously.

B. CONSIDERATION OF THE SECOND AND FINAL READING OF ORDINANCE NO. 3642 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSES OF FILLING IN MISSING INFORMATIN, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE AS IT RELATES TO SIGN REGULATIONS

Mayor Bellamy said that the public hearing and adoption on first reading of Ordinance No. 3642 was held on July 22, 2008, and due to the vote, it needed to be brought back for a second and final reading. On August 26, 2008, by City staff request, the second reading of this ordinance was continued until this date.

Urban Planner Julia Cogburn said that this is the consideration of amending Ordinance No. 3642, which was adopted on first reading only to address Council concerns with respect to the proposed amendments to Chapter 7 of the Unified Development Ordinance as it relates to signs regulations.

On July 22, 2008, Asheville City Council received a report on recommended changes to sign regulations found in the City's Unified Development Ordinance. At that meeting Council voted 4-3 to approve the proposed amendments. During discussion on the proposals, certain Council members expressed concerns with two of the amendments, which have led to proposed wording changes. Specifically, Council concerns were expressed about:

- The minimum setback requirement for real estate signs and the type of sign included in the setback provision.
- The provision requiring movement of vehicles that contain signage.

The staff proposes the following modifications to the amendment language to address the issues noted above.

- The primary concern with setback requirements for real estate signage was for the larger signage on commercial/institutional/industrial zoned properties. Therefore, we would now like to propose that no setback be required if the real estate sign is less than ten (10) square feet per face, however, a set back of ten (10) feet would be required for anything greater than ten (10 feet) per face.
- The suggested amendment concerning how often a vehicle must be used in the normal course of business has been deleted. . The current language states that a vehicle with signage on it must be used "periodically." The staff had recommended that "daily" use be required. After discussion, the Council expressed a preference for "weekly" use. After further consideration of the matter, the staff feels that it would be better to retain the existing language, allowing our enforcement officers to determine whether or not it appears that a vehicle is being used as a sign based on the type of business (one requiring significant delivery services vs. one not requiring the same) rather than having to inspect a site daily to see if a vehicle is being driven at any time during a week.

In summary, Ms. Cogburn said that the concerns noted were (1) Size of signs included in the minimum setback provision for real estate signs; and (2) Provision requiring movement of vehicles with exterior signs.

Regarding real estate signs (1) No setback required if the real estate sign is less than ten (10) square feet per face; and (2) Setback of ten (10) feet for signs greater than ten (10 feet) per face. *This excludes signs typically used for residences*

Regarding vehicles with signs (1) Original proposal that required "daily" movement concerned Council, given the nature of certain businesses and environmental concerns; (2) In discussion the Council expressed a preference that this be modified to require "weekly" movement; (3) After further internal discussion of Council concerns, the staff now believes it would be better to retain the existing language (requiring "periodic" movement); and (4) This allows enforcement officers discretion to determine whether a vehicle is being used as a sign based on the type of business (one requiring significant delivery services or not) rather than having to frequently inspect a site to determine if vehicles are being regularly driven for business purposes.

Staff recommends that Council approve the revisions to the ordinance as previously presented, but incorporating the described changes.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it will not be read.

Councilman Newman moved for the adoption of the second and final reading of Ordinance No. 3642 as amended as outlined above. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Vice-Mayor Davis, Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "no."

ORDINANCE BOOK NO. 25 – PAGE 14

C. DISCUSSION REGARDING CONTRUCTION EASEMENT TO ALLOW FOR A PERMANENT ROAD IMPROVEMENT ON PUBLIC LAND (PACK SQUARE PARK)

At staff's request, Councilman Mumpower moved to table this item pending resolution of litigation. This motion was seconded by Councilwoman Jones and after the Mayor asked for public comments and received none, the motion carried unanimously.

D. RESOLUTION NO. 08-189 – RESOLUTION ADDRESSING THE INCORPORATION OF THE TOWN OF LEICESTER

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of a resolution addressing the incorporation of the Town of Leicester.

In June of 2007, the Asheville City Council heard a request from representatives of the task force for the incorporation of Leicester for the adoption of a resolution of support for their incorporation efforts. This resolution of support would allow the Leicester request that is currently before the Joint Legislative Commission to move to the General Assembly with a positive recommendation; without this resolution of support, a negative recommendation would be offered which could impact the success of the incorporation request. In June, the request was not supported by the majority of Council members (motion failed for lack of a second). While the desire for self governance was generally supported by the Council, specific concerns over the size of the proposed incorporation area (66+ square miles), ability to provide adequate services, and protecting Asheville's growth interests were among the concerns cited during the discussion; Council also expressed a desire for more discussions with Leicester representatives to better understand their request and to explore a mutually acceptable and sound proposal.

Leicester representatives returned to City Council on January 8, 2008, with a revised proposal that still included a boundary that largely followed the boundary of the township but did exclude the city's extra-territorial jurisdiction (ETJ) that fell within the boundary of the township. Representatives felt that this modification should help address Asheville's growth interests along with a modification to the proposed charter that would restrict the town's ability to pursue involuntary annexations. During this meeting, the Council continued to express concern over the general size of the area but did, ultimately, approve a resolution of support with language that was designed to encourage additional modification and adjustment. It was unclear whether the adopted resolution would be viewed as a resolution of support by the Joint Legislative Committee so, rather than forward this resolution for consideration, Leicester representatives elected to continue discussions with City staff and Council members.

After several meetings and discussions Leicester representatives have now agreed to reduce the overall size by approximately 43%, excluding large areas of undeveloped forest land and/or lightly managed farm land. This change will have a positive impact on the density for the proposed area of incorporation to a number higher than the .4 persons per acre documented for the township. The staff, however, is unable to assess what the actual density would be. Also discussed during these meetings was how to better protect Asheville's interests for future growth

with some modifications to the boundary being proposed for areas along Leicester Highway and surrounding areas. This discussion resulted in a few variations with the most refined and mutually acceptable option being offered for consideration; this option results in a total area of 37.7 square miles which constitutes a significant reduction from the 66 square miles originally proposed. It is also important to note that due to the significant reduction in overall size, the restriction in the town's proposed charter that would prohibit involuntary annexations has been removed to allow for future growth options for Leicester.

As a general point of interest, between the June '07 and January '08 time period, representatives from Swannanoa approached the City of Asheville with a similar request for a resolution of support for an incorporation which was adopted in May of this year. Unlike the request from Leicester, Swannanoa desired a referendum and for this desire to be reflected in the text of the resolution. Because a referendum had not been offered by the representatives from Leicester, this language is not included in the resolution.

She said that copies of the June 27, 2007, staff report and relevant portions of the minutes of both the June 27th meeting as well as the January 8th meeting, where previous consideration occurred, are available. Under "Legal and Process Issues," the staff report explains why the City of Asheville is being requested to consider this matter.

In the City Council Strategic Operation Plan, City Council adopted the following four strategic goals: *sustainable, affordable, green* and *safe*. This report's recommendation most appropriately reflects the goal of *sustainability* by addressing growth management issues on the periphery of the city limits by forging strong, collaborative partnerships with bordering municipalities to address regional growth concerns.

Pros:
- Would allow for Leicester to have a degree of self governance
- May help contribute to regional partnerships

Cons:
- Size of area and potential delivery of service problems
- Supports a trend of rural incorporations without regional planning
- (Minor) financial impact

This modified proposal would reduce the impact that had been originally projected at $20,000 from lost sales tax revenue to a number not less than $13,000 (to be based on assessed value).

The revised proposal is a significant improvement over the original incorporation plan. However, the staff believes that the size of the area proposed for incorporation will present practical difficulties in delivering urban services, and the density and character of the area proposed for incorporation is predominately rural and does not reflect the intent of incorporation.

The staff recommends that the Council consider the information contained in the staff report and presentations offered by the Leicester representatives and make an appropriate motion with respect to the resolution. Should the Council choose to support the adoption of the resolution, suggested language is noted in the resolution, as follows: (1). The City of Asheville approves the incorporation effort of the Town of Leicester to obtain a greater degree of governance and control over its future through incorporation, but expresses the following concerns: (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (b) That the density and character of the area proposed for incorporation is predominately rural and does not reflect the intent of incorporation; and (c) Incorporation affects the City of Asheville's opportunities for improved fiscal health.

In response to Councilman Russell, Ms. Tuch said that the Leicester Task Force did not express interest in including language about the incorporation being submitted to a referendum; however, City Council can include that language if they wish.

Ms. Pat Cothran requested ten minutes, however, there were not three other individuals in the Chamber that would give up their time for her to speak. Councilwoman Jones moved to waive the rules and allow Ms. Cothran ten minutes. This motion was seconded by Councilwoman Cape. Said motion failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower, Councilman Newman and Councilman Russell voting "no."

Ms. Cothran preferred not to make a presentation but provided City Clerk Burleson her notes to circulate to Council.

When Councilman Russell asked if Leicester was interested in holding a referendum on incorporation, Ms. Cothran felt that Raleigh would ask for a referendum anyway. She asked for Council support of their incorporation without any three concerns outlined. She also asked that the referendum issue not be a part of the resolution as well.

Councilman Mumpower could not support the resolution without language recommending any act of incorporating Leicester be submitted to a referendum.

In response to Councilman Mumpower, City Attorney Oast said that charters can be adopted for cities that limit or prohibit those cities from annexing.

In response to Councilman Mumpower, Ms. Cothran said that their charter does not include language about involuntary annexations. It does not include a prohibition against involuntary annexation. Their charter has already been submitted to Raleigh – prior to beginning these deliberations. If they incorporated such a large area they would put in their charter that they would not involuntarily annex; however, they have now reduced the size by almost half. She didn't particularly envision that they will do involuntary annexations.

Councilman Mumpower noted that Asheville gets criticized for involuntary annexations and that is one of the reasons why Leicester is wanting to incorporate. He questioned why Leicester would want to retain the power of involuntary annexation – the same model that they are resisting from Asheville. He would recommend language in the resolution be added to include a referendum and a charter amendment that does not allow involuntary annexations in the Town of Leicester.

Councilman Mumpower moved to approve the resolution incorporating the three concerns with the following two additional: (1) request the Town of Leicester's ability to utilize involuntary annexation be removed from their charter; and (2) any act incorporating Leicester be submitted to a referendum by the citizens of the identified proposed Town. This motion failed for a lack of a second.

When Councilman Russell asked if there are any cities in North Carolina that don't have the power to annex, City Attorney Oast said that some have limited ability to annex. It is something that can be peculiarized to any particular city and be limited or expanded as the legislature wishes.

Councilman Russell moved to approve Resolution No. 08-189 incorporating the three concerns with the following additional: (1) any act incorporating Leicester be submitted to a referendum by the citizens of the identified proposed Town. This motion was seconded by Councilman Mumpower.

In response to Vice-Mayor Davis, City Attorney Oast said that a referendum is not a necessary part of the incorporation procedure, but it is something that can be required at the time

the legislature takes action. What Council is doing is expressing their position that they think the legislature should make that a requirement as it has the option to do. This would only be a recommendation from Council. All Council can really do is to either say they approve this or not. We include recommendations in our resolutions because they are legitimate concerns, He advised Council that the effect of their recommendations is limited.

At the request of Vice-Mayor Davis, using a map, Urban Planner Blake Esselstyn showed Council where the new boundary line is in relationship to the City.

Councilwoman Cape could not support the motion because we only have the option of saying yes to the incorporation or no. She felt the size was still to large, lack of a referendum and some of the other issues. Just because we add the concerns in the resolution, does not mean they will be heard.

Councilman Newman felt that it is not right the right thing to do to allow people to organize large rural areas for incorporation. The areas in North Carolina that get organized into municipalities should be what most people view as towns and cities – not large areas of farm and forest land. He felt the revised boundary is still an overwhelming rural area. There may be a more appropriate area narrowly defined around what most people see as the Town of Leicester, but this proposed area is far too expansive to meet what would be good policy for Buncombe County or North Carolina.

In response to Councilwoman Jones' comments regarding the balance of good planning of what is important to preserve and what is appropriate to develop, Ms. Cothran said they are certainly agreeable to regional planning efforts.

Even though Vice-Mayor Davis felt the area was not urban enough for incorporation, he would support the motion with the inclusion of a recommendation for a referendum.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The motion made by Councilman Russell and seconded by Councilman Mumpower to approve the resolution, with the following four concerns (1).The City of Asheville approves the incorporation effort of the Town of Leicester to obtain a greater degree of governance and control over its future through incorporation, but expresses the following concerns: (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (b) That the density and character of the area proposed for incorporation is predominately rural and does not reflect the intent of incorporation; and (c) Incorporation affects the City of Asheville's opportunities for improved fiscal health; and (d) any act incorporating Leicester be submitted to a referendum by the citizens of the identified proposed Town, carried on a 5-2 vote, with Councilwoman Cape and Councilman Newman voting "no."

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E. RESOLUTION NO. 08-190 – RESOLUTION ADOPTING THE ASHEVILLE AREA WAYFINDING MASTER PLAN

RESOLUTION NO. 08-191 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A COOPERATIVE INTERLOCAL AGREEMENT FOR MAINTENANCE OF THE ASHEVILLE AREA WAYFINDING PROGRAM

Transportation Planner Dan Baechtold said that this is (1) Consideration of a resolution adopting the Asheville Wayfinding Master Plan; and (2) Consideration of a resolution authorizing the City Manager to sign a cooperative interlocal agreement for the maintenance of the Wayfinding program.

Per City Council's direction, staff is working with other area partners toward implementing a comprehensive wayfinding and signage program for the Asheville area. The master plan phase of the project is complete, and the next step is fabrication and installation of the signs. All of the participating local governments are being asked to adopt the Wayfinding Master Plan and the interlocal agreement.

- The City of Asheville, Buncombe County, the Towns of Weaverville, Woodfin, and Black Mountain, and the Asheville Regional Airport jointly funded the development of the Asheville Area Wayfinding Master Plan.
- Hillier Architecture was hired in April 2007 to design and program the county-wide wayfinding system.
- The Partnership on Wayfinding task force, made up staff from the City of Asheville and the Convention and Visitors Bureau (CVB), the Towns of Weaverville, Woodfin, and Black Mountain, Buncombe County, the Asheville Regional Airport, and the North Carolina Department of Transportation worked with Hillier on the wayfinding analysis and designs, and identified needed signage in the community.
- Through a public input process, designs were selected that included pedestrian level signs and kiosks, vehicular signs, and gateway signs.
- In December 2007 Buncombe County Tourism Development Authority approved funding for construction of the wayfinding system in the amount of $1.65 million.
- The CVB is leading the project management.

Current Status: The Asheville Area Wayfinding Program is entering the implementation phase of the project, which includes the fabrication and installation of approximately 35 pedestrian level signs, 13 informational kiosks, and 290 directional and destination signs within Buncombe County, of which 230 are within the City of Asheville.

- Programming for the wayfinding elements is complete.
- Three Buncombe County artists have been selected to create five designs for "finials" that will be on top of some of the sign poles.
- Eight kiosks and approximately 35 pedestrian-level signs are planned for installation throughout downtown Asheville.
- A construction management team is being assembled to guide the steering committee through the bid process, encroachment agreements with the NCDOT, and the construction and installation of the wayfinding elements.

The Asheville City Council 2008-09 Strategic Plan lists this project as action item under the Sustainable Category. The strategic plan reads: "Partner with the Convention and Visitors Bureau to implement the regional wayfinding project."

Next Steps:

- The CVB will begin the bid process in mid-September. It is expected to take approximately six weeks.
- The installation will be phased beginning with the pedestrian program. The second phase includes installation of signs in downtown Asheville, followed by the remaining signs in the program.

- The steering committee anticipates fabrication to begin in November with installation beginning in December and continuing through April 2009.
- A plan for removal of obsolete signage will be finalized.

Pros:

- Successful regional partnership.
- Most of the project is funded by the Tourism Development Authority.
- The wayfinding program addresses several identified City Council goals: 1) improving signage into and out of City parking facilities; 2) providing information kiosks in the downtown; 3) removing sign clutter and obsolete signage; 4) improving directional signage for residents and visitors.

Cons:

- The project requires an ongoing commitment from the City to maintain the signs.
- The project requires a financial contribution from the City Parking Fund to purchase the signs that will be attached to City parking structures (a $90,000 commitment spread over two years).

The City of Asheville contributed financially to the master plan phase of the project. The Tourism Development Authority has committed the majority of the funding for the fabrication and installation of the signs. The City's parking fund will be used to pay for signage that is physically attached to the City parking structures. The City of Asheville and other municipalities will assume an ongoing maintenance role for the signs, which will result in additional responsibilities for the sign maintenance crew in the Public Works Department.

City staff recommends (1) approval of the resolution adopting the Asheville Area Wayfinding Master Plan; (2) approval the resolution authorizing the City Manager to sign a cooperative interlocal agreement.

Mr. Kelly Miller, Executive Director of the Buncombe County Tourism Development Authority, briefly explained the final phase of the wayfinding project. Showing people clearly and succinctly how to get to point A and point B is crucial in the area of fuel consumption. He said that fabrication and installation will begin in early November and we should be completed in April of 2009. They will begin installation of pedestrian signs and informational kiosks, followed by vehicular signage in Asheville and then the surrounding towns. They will focus on the City of Asheville first. Regarding removal of existing signs, they will be identifying where the signs are located and make sure that new signs are in place as old signs come down. He said that the Tourism Development Authority has budgeted $150,000 (for 5-years) to go towards the maintenance effort and have worked closely with City staff and the other municipalities to come up with a unique maintenance program – the Tourism Development Authority will pay half and the other half is to be paid for by the other cities in the area.

There was a brief discussion regarding the maintenance contract of these expensive signs. Mr. Miller said that if the signs are vandalized by graffiti, there is a coating on the signage that will make it easy to take graffiti off. If the $150,000 allocated by the Tourism Development Authority is not enough for the 5-year contract, Mr. Miller said they would talk about amending the agreement.

When Vice-Mayor Davis asked if there is a willingness of the Tourism Development Authority to consider an extension after the five-year maintenance period is up, Mr. Miller said, not speaking for the Tourism Development Authority, said that he felt there will be a real desire to continue this relationship for many years.

In response to Councilman Mumpower, Ms. Kate Marble, project manager, said that there is a removal plan as part of the program. At this point, there are approximately 50 existing signs slated to be removed.

Councilman Mumpower felt this program has advantages to the tourism industry in Asheville but significant risks to the taxpayers of Asheville. Since Asheville residents know where to go, he suggested partnering with the Tourism Development Authority with the City's involvement being the utilization of City staff to make sure the equipment is maintained, but the Tourism Development Authority carry the entire maintenance costs for the five years, or at least for two years until we find out what the risk factors are.

In response to Councilman Mumpower, Mr. Miller felt that retail sales can increase as much as 20% with an effective, unified, integrated community wayfinding program. When more people walk in an attraction or know how to get to Biltmore Village, those businesses can hopefully generate more revenue to hire more people.

In response to Councilman Mumpower, Mr. Miller said the Tourism Development Authority's operating budget this year is $5.2 Million and they have about $1.6 Million in our product development fund.

There was a brief discussion, initiated by Councilman Mumpower, about how other cities in North Carolina receive a portion, if not all, of the room tax revenue. He said the City of Asheville does not enjoy this revenue source that he believed every other large city in North Carolina enjoys. On that basis, it seems more fair for something that is clearly going to reward the tourism industry for the Tourism Development Authority to assume the risks associated with this good effort, than the taxpayers. He felt the direct beneficiaries are visitors. Based on the tax structure we have in Asheville, he suggested Council not put our taxpayers at risk for maintaining these signs.

Mr. Miller said the City does receive funds from the Tourism Development Authority in a huge way. They have funded ten projects for a total of over $9 Million. He noted that they are the only County in the State of North Carolina that takes one-cent and puts it into a program called "tourism product development fund" that anyone, even the Civic Center, can make application for those funds. He said that fund is working well.

Councilman Mumpower felt that we work hard in the City of Asheville to stop putting up signs, but now we are part of an effort, because it's something we want, to create more signs.

Councilman Newman felt this is an excellent partnership and a great investment of dollars.

Councilwoman Cape asked the Tourism Development Authority to consider supporting Asheville in letting Asheville have an equal share of the room tax as other large cities in North Carolina. It would be beneficial to us to be able to help with the product development of keeping our streets clean, signs maintained, etc. Mr. Miller said that he would take that message back to the Tourism Development Authority.

In response to Mayor Bellamy, City Manager Jackson said that he would research insuring the signs and report back to Council.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they will not be read.

Councilman Newman moved for the adoption of Resolution No. 08-190. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Newman moved for the adoption of Resolution No. 08-191. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no.".

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Mayor Bellamy suggested a joint meeting of City Council and the Tourism Development Authority to discuss future revenues and possibilities for more collaborative efforts. Regarding the Civic Center, Council adopted a policy for basic maintenance of the Civic Center and Council committed space for a performance center, so it's about time we had a serious conversation about significant investment in other infrastructure needs for our City. Mr. Miller said that he would take that message back to the Tourism Development Authority. Mayor Bellamy asked City Manager Jackson to follow-up with a letter to the Tourism Development Authority asking for that conversation.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-193 – RESOLUTION AUTHORIZING NEW RATES FOR ADVERTISING ON CITY BUSES AND PARKING DECK PROPERTIES

Mr. Paul Van Heden, Transportation and Engineering Department employee working on sales and marketing, said that his first project was to analyze and make recommendations to improve the way Asheville generates revenue from selling ad space on the buses.

The background is (1) the outdoor industry has changed and the current advertising rates have become obsolete (a) no demographic, showing or market share data; (b) no graphics; (c) ads sold by day, rather than by month; and (d) parking services have never offered advertising products; and (2) new advertising rates (a) makes the City's advertising competitive; (b) parking services is integrated into the advertising mix; (c) graphics for all products; and (d) all data an advertiser needs will be included in a comprehensive Excel sheet.

Using a chart, he explained how the rate sheet meets best practices and increases earnings. Using a chart, he showed the old rate sheet and then the new rate sheet.

The next steps will be (1) staff will outreach to local businesses in order to educate them about advertising opportunities on buses and elevators; and (2) staff will aggressively go after local and national accounts.

The following is additional information from the staff report prepared by Director of Transportation and Engineering Cathy Ball. This is the consideration of a resolution authorizing new rates for advertising on city buses and parking deck properties.

Staff is dedicated to maximizing revenue from selling ad space on appropriate city-owned property. To this end, staff re-visited the way it sells advertising on the Asheville Transit System (ATS) and studied the feasibility of installing billboards within city-owned parking decks.

Last year ATS earned approximately $64,425 in advertising. It is staff's opinion that by streamlining the rate structure to meet best practices, aggressively market advertising opportunities to businesses, and making bus wraps available – this amount could be doubled.

In addition, staff would like to open a new venue for advertising by placing poster-lockers within the three parking-deck elevators, and selected stairwells.

Under the current rate structure and advertising products, the most ATS can generate from bus advertising is approximately $85,000. Under the proposed rate structure, ATS expects to generate $120,000 in the first year. The most staff expects to make under the new rates is $380,000 per year.

Staff estimates that allowing advertising in the poster-lockers would generate between $19,000 to 30,000 in the first year.

Staff will aggressively go after local and national accounts when the rates are approved.

New rates: **Bus Advertising** is a method for advertisers to reach the public in metropolitan areas. Ads are placed externally on the sides and rear of a public bus - thus turning it into a mobile billboard. Ads are also placed inside the vehicle, attached to the corners between the walls and ceiling overhead.

The first step in encouraging businesses to advertise with ATS is to create a rate sheet which meets industry standards, offers demographic information, and uses terms a potential media buyer would expect.

In creating this new rate sheet, staff decided to build on the old one and include best practices. Staff selected the following cities for analysis:

- Fayetteville, NC (FAST): Chosen because they are a south-eastern transit system with a similar-sized fleet of 17 buses.
- Charlottesville, VA (CTS): Chosen because they are a south-eastern transit system with an exact-sized fleet of 20 buses.
- Danville, VA (DMT): Chosen because they are a south-eastern transit system with a similar-sized population size of 53,000.
- Raleigh, NC (CAT): Chosen because their system services the capital. As such, they are a good benchmark for transit systems in North Carolina.
- Winston-Salem and Durham (WSTA, DATA): While their fleet and population is larger than Asheville's, comparing with these markets allows staff to determine what upper-end rates are possible.

Staff made a side-by-side comparison of base advertising rates to advertise for one month on transit systems listed above. Based on this comparison, staff set the following prices to advertise on one bus for one month:

Ad Product	Rate 1 month / 1 bus	Old Rate
Queen:	$200	$230
King:	$225	$105
King Kong:	$700	
Half Side:	$600	
Full Side:	$1,000	
Full Wrap:	$2,000	$833
Tail Light:	$200	$105
Supertail:	$400	
Full Back:	$600	
Interior:	$20	$15

Staff created a full rate sheet by multiplying the number of buses necessary to meet a certain showing with the base monthly rate. A *"showing"* represents the percentage of buses which carry a particular ad, represented as a number between 1 and 100. In the case of Asheville, a "50" showing can be achieved by placing ads on ten buses.

In order to motivate advertisers to invest in long-term contracts, staff included a 5% discount for three months, 6% for six months, and 7% for the entire year. Offering bulk discounts is standard practice across the advertising industry.

Applying the above calculations, staff set the rate structure for advertising on ATS buses. This rate sheet was reviewed by, and has support from, the Transit Commission.

Billboard rates: In the context of this report, a billboard is a 28 x 40.5 inch advertising space within a lockable frame. The top half (28 x 20) will be rented out to advertisers, and the bottom half (28 x 20) will be reserved for public information and civic announcements.

Since this type of product has never been offered by the city, and staff was unable to find a city in North Carolina that offered similar space - staff resorted to comparing rates with the rates for advertising on the back page of local newspapers, and researched as to what the market would support.

The Transit Commission approved staff's recommendation with a 5 to 1 vote on August 13, 2008.

Should the Council approve this proposal, a wording amendment adding language to the City's sign code specifically allowing this form of advertising will have to follow.

This action complies with the City Council's Strategic Plan in the Green focus area by assisting in the development of a sustainable funding structure for Asheville Transit.

Fiscal impact:

- Costs per billboard: Approximately $200. Total cost: $800.

Pros:

- Advertising on the buses can generate an extra $60,000 ($120,000 within a year). In the long term, this could go up to as much as $380,000 per year.

- Staff expects to generate between $19,000 to 30,000 in the first year from advertising in the city-owned elevators and hallways.

Cons:

- Adverting on buses dilutes the ATS brand.

City staff recommends City Council adopting a resolution approving the new rate sheet.

When Vice-Mayor Davis recalled the negative reaction from residents about the full wrap buses, Mr. Van Heden said that the Transit Commission discussed that at length. The outcome was to limit the full wraps to five buses. Advertisers can use different combinations for different types of wraps, but at no given time over the next two years can any one advertiser be able to dominate the entire civic space. This way we can balance the desire to meet funding requirements without having to depend on taxpayers at the same time preserve civic space.

In response to Councilwoman Cape, Mr. Van Heden said that we can generate $120,000 to $300,000 if everything worked out ideally, opposed to $64,000 if we continue on the track we are on now.

Councilwoman Cape asked how the additional revenue will be utilized. Ms. Ball responded that Assistant to the City Manager Lauren Bradley is working on creating a marketing plan so we can figure out how to better invest those monies. Staff will be reporting back to Council with that proposal.

Councilman Mumpower felt we have spent years developing heavy regulations for billboards, commercial signage and in people's yards, and now that it serves our purposes, we are prepared to approve signs. He felt we are being inconsistent. He also felt we are putting ourselves in competition with the business community and advertising firms and that is not good city government.

Councilman Russell felt that this have been approved by the Transit Commission by a 5-1 vote and it will increase the revenue stream. Therefore, he moved to approve Resolution No. 08-193 adopting new rates for advertising on City buses and parking deck properties as outlined by City staff. This motion was seconded by Councilwoman Cape.

In response to Vice-Mayor Davis, Mr. Van Heden said that we will lose approximately $110,000 if we do not allow full wraps. He explained why he did not think the prohibition of full wraps would affect the base revenue of $120,000.

Councilwoman Jones hoped we would look for opportunities for public service announcements inside the buses at a reduced cost.

Councilman Newman moved for a friendly amendment to the motion to not allow the full side or full wraps. Councilman Russell did not accept the friendly amendment. Since Councilman Russell did not accept the friendly amendment, Mayor Bellamy asked for a second to the amendment. Said motion died for lack of a second.

Councilman Newman moved for a friendly amendment to the motion to not allow the full side, full wrap or King Kong signs. Councilman Russell did not accept the friendly amendment. Since Councilman Russell did not accept the friendly amendment, Mayor Bellamy asked for a second to the amendment. Said motion died for lack of a second.

Councilman Newman moved for a friendly amendment to the motion to not allow the full side, full wrap or King Kong signs. Councilman Russell did not accept the friendly amendment. Councilwoman Cape seconded the motion and said motion failed on a 3-4 vote, with Mayor Bellamy, Councilwoman Jones, Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy could not support the motion in that she felt it will create a problem in our community with the increase of signage on our buses, based upon the feedback we get about yard sale signs. She looked forward to seeing other opportunities to diversify funding sources.

The original motion made by Councilman Russell and seconded by Councilwoman Cape, adopting new rates for advertising on City buses and parking deck properties as outlined by City staff, carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of August 15-28, 2008: Betty Clark (Water), Olivia M. Walton (Sanitation), Greg and Susanne Wilson (Sanitation), Southern Concrete (Sanitation), John Santangelo (Streets), AT&T (Water), Donna Mackin (Water) and Charter Communication (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton, founder of North Carolina Citizens for Quality Government, spoke to Council the US Constitutional right of freedom of speech at Bele Chere.

Mr. Gilian Kearns spoke about his inability to register people to vote at the Transit Station. As this is a time sensitive matter, Mayor Bellamy placed this on the September 16, 2008, worksession for Council to receive a report from City Attorney Oast.

Councilman Mumpower commended Employment Staffing Inc. for stepping forward with the donation of $500 to Western Carolina Rescue Ministries (WCRM). He also thanked WCRM for their long standing history of not reaching into taxpayers' pockets.

Councilwoman Cape said that she has just returned from a Sister City trip to Nigeria and she was able to see the value of social and governmental infrastructure and what a difference it makes regarding litter, potholes, streets, etc. She felt we take for granted the basic infrastructure., and was pleased to see how well the City of Asheville functions as a community. She commended City staff who work so hard on those basic elements.

Closed Session

At 7:50 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to

which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; City of Asheville; and County of Buncombe - The statutory authorization is NCGS sec 143-318.11(a)(6); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e) - The statutory authorization is contained in NCGS sec. 143-318.11(a)(1). This motion was seconded by Councilwoman Jones and carried unanimously.

At 8:57 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:57 p.m.

Magdalen Burleson
CITY CLERK

Jerry W. Bellamy
MAYOR

Tuesday – September 16, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

WATER SYSTEM MASTER PLAN UPDATE

Interim Water Resources Director Robert Griffin said that a Water System Master Plan is typically updated every 5-10 years. The City of Asheville Water Resources Department's Master Plan was last updated in1995. A Water System Master Plan helps project future area growth and what water system updates will be needed to accommodate that growth.

In June 2007, the Water Resources Department partnered with Jordan, Jones & Goulding (JJG) to update the Water System Master Plan. JJG has completed their study and made the following projections and recommendations:

- Buncombe County Growth – In 2007, Buncombe County population was 243,565. In 2012, 2017 and 2037, the population is projected to be 264,326, 285,088, and 368,135, respectively. The major growth is projected to be in the southern part of Buncombe County.
- Model Development – JJG developed a model to project future needs for treatment plants, pipes, pump stations, and valves. Model Development will also provide GIS integrated water computerized hydraulic model and maps.
- System Evaluation – with future growth projections, the water treatment plant capacity will be needed to be increased around the year 2025.
- Capital Improvement Plan – between now and 2037, JJG projects 14 pipeline installations, one pump station replacement, one new pump station, and additional water treatment plant capacity at a total estimated cost of $60,449,000. This amount does not included recommended annual costs for pipe replacement due to age or any line extensions that the City accepts from developers.

This project is part of the City Council strategic plan to improve City infrastructure.

Pros:

- The Water System Master Plan Update will help ensure that Asheville builds the water infrastructure to accommodate future growth.

Cons:

- Failure to update the Water System Master Plan will not prepare the Water Resources Department for future growth.

The Master Plan recommends additional long-term improvements that will need to be planned for and financed through future system revenues.

Mr. Eric Nease, Water Resources Practice Leader with Jordan, Jones & Goulding, reviewed with Council the population projections for Buncombe County; and Buncombe County's projected growth to the year 2037.

He explained that the model development (1) treatment plants, pipes, pumps, and valve locations based on the City's mapping system; (2) updated pressure zone boundaries; (3) actual pump data used to simulate pumps; (4) system controls included in model; and (5) model verified to simulate actual system data.

The system evaluation consisted of (1) total system demand for 2037 is 41 MGD; (2) exceeds current treatment capacity of 37 MGD; (3) additional water treatment capacity needed in 2025 ±; (4) pipes evaluated for velocity; (5) tanks evaluated for ability to drain and re-fill; and (6) pumps evaluated for capacity.

Using a map, he then reviewed the recommended improvements.

He explained the growth capital improvement plan summary as follows: Completed by year 2012 would be (1) 6 pipeline projects - $4,740,000; and (2) Walnut Cove Pump Replacement - $292,000. Completed by year 2017 would be (1) 4 pipeline projects - $5,892,000; and (2) New Mills Gap Pump Station - $1,556,000. Completed by year 2037 would be (1) 4 pipeline projects - $10,797,000; and (2) additional water treatment capacity - $37,172,000. The total cost at 2008 dollars is $60,449,000. These costs do not include recommended annual costs for pipe replacement due to age.

Throughout discussion, Mr. Nease, Mr. Griffin and Mr. Ron Thomas responded to various questions/comments from Council, some being, but are not limited to: is the Walnut Cove Pump Station needing to be expanded due to the growth in the area; what kind of models or information was used to obtain the Buncombe County growth projections and where the County will grow; how were other area water systems factored into this model; did the consultants look at how we might be working together with other water systems in our area; is there anyway to cost-share with developers if their development overtaxes our pump station; what is the cost of a pump station; is the completion timeline for the improvements realistic; when water lines are upgraded, do most cities spread the costs out amongst present customers, new customers and developers; in the projected Buncombe County population growth chart, were manufacturing or economic industry numbers factored in; should we dredge the existing lakes; and are some growth patterns more expensive for infrastructure than others.

Councilwoman Jones cautioned using this Buncombe County projection model in the future because it was based on a county that didn't have zoning opposed to using a land use plan of where we would like to drive our infrastructure and growth.

In response to Vice-Mayor Davis about discussions with the surrounding communities, Mayor Bellamy said the Land-of-Sky Regional Council is working on a comprehensive water study taking into consideration all the municipalities and the unincorporated areas. Recently the Mayors in Buncombe County met to discuss the same issues about water. She asked the City Manager to provide Council members with information previously provided to the Mayors in Buncombe County. Woodfin is able to grow because of the supplemental water they receive from the City of Asheville. She has asked City Manager Jackson to look at Woodfin's system, which is not run by the Town of Woodfin, about their capital improvement plan and how they will grow.

In response to Mayor Bellamy about staff's recommendation, Mr. Griffin recommended Council modify the Water Master Plan with these updated recommendations, understanding it is a 30-year plan and situations can change.

Mayor Bellamy requested staff research best practices on funding going forward. She suggested staff look at the Metropolitan Sewerage District model on how they deal with impact fees and developments tapping into the sewerage system. We may be able to duplicate some of their successes. She also suggested staff look at other cities around the state that have had to deal with infrastructure upgrades, so the City would not have to bear the full cost of upgrading the pump stations. She also asked we begin some deliberate conversations with the Woodfin Water

System and how and where they are going to grow. She looked forward to the City's participation with the Land-of-Sky Regional Council's comprehensive water study and how we can work together regionally.

FUEL CONSUMPTION UPDATE

Assistant City Manager Jeff Richardson said that the purpose of this report is to update Council on fuel supply and its impact on service delivery.

Recent Hurricanes Ike and Gustav have temporarily interrupted some gasoline supplies to the pipelines that serve North Carolina. As a result of these interruptions, North Carolina is experiencing high gas prices and gas shortages. Staff is currently working to promote the Asheville Transit System during this time as a way to conserve fuel, avoid high gas prices, and avoid gas shortages. Staff is proactively reviewing the City-wide fuel conservation plan on a department-by-department level and making any necessary modifications in the event that the plan needs to be implemented. The conservation plan is designed to provide distinct levels of fuel consumption reduction which, if implemented at higher reduction levels, can impact City services.

As of Friday, September 12, 2008, market conditions and City supply quantities were 26,000 gallons of diesel and 14,000 gallons of unleaded fuel. Fuel conservation measures have been emphasized to City employees. On a department-by-department level review, the City-wide fuel conservation plan is being reviewed for any imperative modification. The Public Information Officer will alert citizens through press releases and website that all City services are continuing as normal.

As of Monday, September 15, 2008, market conditions and City supply quantities were 22,000 gallons of diesel and 17,000 gallons of unleaded fuel. By the end of the day, the City Manager called for implementation of the first phase of the accelerated fuel conservation operational plan for City government. The first phase of the plan will not interrupt police, fire and rescue, and transit services. Fuel conservation measures will be taken in order to make the most efficient use of City supplies. City employees will consolidate services where possible and delay some maintenance functions.

As of midday Tuesday, September 16, 2008, market conditions and City supply quantities were 20,000 gallons of diesel and 16,000 gallons of unleaded fuel.

Conservation measures of Level 1 include (1) no disruption of core City services; (2) delay non-essential travel when possible; and (3) consolidate services were possible. Conservation measures of Level 2 include (1) no disruption of police, fire and rescue, and transit services; and (2) non public-safety related services will be reduced (a) inspectors carpooling to work sites; (b) planning field inspections are delayed; (c) suspension of street cleaning and tree crew work; (d) yard waste, bulky items and white goods collection will be suspended; and (e) parks center programs. Conservation measures of Level 3 include is to reduce services in order to fully focus on public safety and health as well as transportation.

Our goal is to promote the Asheville Transit as a way to conserve fuel and avoid high gas prices and shortages. Media outreach includes (1) press release on September 15, 2008 to all outlets; (2) contacted television highlighting public transit; (3) newspaper op-ed submitted; (4) radio and public service announcements; (5) website – Asheville Transit is featured; (6) website – all current service information posted; and (7) City Channel – all transit and other information current.

The ridership numbers remain strong over the past two weeks. Arterial route ridership is up on Merrimon Avenue, Hendersonville Road and Tunnel Road. Additional analysis is underway.

The next steps include (1) monitoring; (2) fuel supply management; (3) conservation; and (4) public relations.

This report is for information purposes only as the City is currently remaining in Level 1.

In response to Councilwoman Jones, Mr. Richardson said that he would provide Council with a comparison of ridership before the hurricanes and after.

In response to Councilwoman Jones, Mr. Richardson said that the City will have conversations with the Transit Management Company to make sure they are sensitive to the stressful conditions of the bus drivers as ridership increases.

Mayor Bellamy hoped that if the City must proceed to Level 2 conservation measures, that parks center programs be reduced last as the centers provide affordable after-school care. She again lobbied for buses to run on Sundays.

UPDATE ON STATUS OF PROPOSED PARKING GARAGE AT 51 BILTMORE AVENUE

Director of Transportation and Engineering Cathy Ball said that the purpose of this report is to update City Council on the terms of the proposed parking garage on Biltmore Avenue. Staff recommends consideration of these terms and approval at the October 14, 2008, City Council Meeting.

The City of Asheville provides public parking in Downtown Asheville as an economic development incentive for merchants, restaurants, retailers and offices. The City currently operates a parking system that consists of three parking garages, several surface parking lots and on-street parking. A parking study prepared by Kimley-Horn and Associates this year evaluated the demand for parking versus the supply in the Central Business District. The study determined that the area know as the Biltmore Avenue had a current peak deficit of parking in the amount of 622 spaces and a normal demand of 476 parking spaces. The proposed location of the garage is a surface parking lot with approximately one hundred parking spaces.

The project is a mixed-use building that includes: an Aloft Hotel; sub-leased retail spaces along Biltmore Avenue; a City owned parking garage (437 spaces); and a component that will be a second phase for an area along Biltmore Avenue and Lexington Avenue to include housing units. The second phase portion of the project will come back through the review process including the Downtown Commission. This site is identified in the City Development Plan 2025: Center City Plan as both a potential parking garage site and as a possible location for a catalytic development because of its important location and size. Catalytic developments are projects that because of their size, location or programming have the potential to stimulate additional investment or provide missing uses that are critical to maximizing downtown vitality.

The initial concept for the building was nine levels above grade on the Biltmore Avenue site and four levels under ground. The Downtown Development Commission was concerned about the height of the building, parking spaces fronting on Biltmore Avenue and the lack of retail space on Biltmore Avenue. The design team moved the lobby to the second level and created a balcony an expanded the footprint of the building to the Hot Dog King site. At the last meeting a subcommittee of the Downtown Planning Commission, they were pleased with these changes.

The current proposed parking garage will have 437 spaces on seven levels. The garage has access points from three streets: one-way in from Biltmore Avenue and Aston Street, and two-way movement at Lexington Avenue. Several garage levels are below grade with the design taking advantage of the natural terrain across the site to eventually meet Aston Street and Biltmore Avenue at grade. The retail spaces and hotel use cover and top the garage along Biltmore Avenue. Along Aston Street the garage fronts directly at the street and provides a

driveway into the garage. Public restrooms are provided in the garage with direct access from Aston. Because of the presence of the garage on the sidewalk edge, a space for public art will be provided to soften the façade and create pedestrian interest.

In summary of the current parking proposal is (1) public (a) 437 parking spaces; (b) public restrooms; and (c) City owns and operates parking garage; and (2) private (no public funds will be spent on private development) (a) 145 hotel rooms; (b) ground floor retail on Biltmore Avenue; and (c) future workforce housing liner on Lexington Avenue.

The retail and hotel uses occupy the frontage areas along Biltmore Avenue and above the street level along Aston Street. The building is seven stories along Biltmore Avenue and measures about 95 feet to the top of the roof structure. Ground level retail space along Biltmore Avenue will total about 4,800 square feet which will likely be subdivided and leased depending on demand. The hotel use occupies the second floor and above as measured from Biltmore Avenue and has 145 guest rooms. A balcony space for the hotel is located on the second level of the building and will serve to activate the street. A hotel amenity floor is provided at the top of the garage level.

Phase Two areas of this project are made up of: a larger space lining the garage along Lexington Avenue and a smaller space adjacent to the retail spaces on Biltmore Avenue. King James, LLC will hold these properties and will develop plans for them at a later date.

The cost associated with building a parking garage includes property acquisition, design and hard construction. A stand alone parking garage would be $17,000 to $20,000 per space. A multi-use parking garage would be $25,000 to $30,000 per space.

When Public Interest Projects (PIP), the owner of the property at 51 Biltmore Avenue, approached the City with a public/private partnership, they did not want to sell the property but rather lease this property. Following the financial analysis, the City determined that it was a better financial decision to purchase the property rather than lease. Pubic Interest Projects has agreed to sell at a price of $3,110,000.

During the course of the last year, the Hot Dog King property adjacent to 51 Biltmore Avenue became available for sale. Our parking consultant, Kimley Horn Associates, evaluated the potential to expand the footprint of the garage to the Hot Dog King property. Preliminary cost estimates indicate that the City would save $5,200 per parking space or $2,272,400. PIP has a contract for the Hot Dog King property in the amount of $1,450,000. The total project savings as a result of purchasing the Hot Dog King property is approximately $800,000.

Kimley Horn has developed an opinion of probable cost for the parking garage on the expanded footprint of $1,800 for design and $26,200 for hard construction. The total estimated cost for design and hard construction of the 437 car parking garage is estimated at $12,236,000.

In efforts to facilitate a good urban design of the project to include mixed-uses, there are a number of easements and air-rights required for the project. The project is such that it fits together like a three dimensional puzzle. The lowest level of the parking garage fronts under the hotel on Biltmore Avenue, requiring a cross-easement. Some of the hotel will be constructed over the parking garage, requiring air-rights. PIP will retain air-rights over the parking garage on the Hot Dog King property for future residential development.

The terms of the partnership is proposed for sixty years. McKibbon Hotel Group, MHG, has requested a maximum of 35 monthly reserved parking spaces on the Biltmore Avenue level. They have requested an additional 115 evening/weekend parking spaces. The rate for these spaces would be market rate plus a premium rate associated with financing of the dedicated spaces which is estimated at an additional $39 per month.

MHG and PIP have requested that the $39 per month be waived. Staff would agree with this provided that the construction cost (hard construction) budget is reduced $3,000 per parking space. This would result in a total saving to the City of $1,311,000. MHG may be able to reduce the construction cost by building the hotel and parking garage at the same time. Additionally, the private sector has been able to construct project at a lower cost than the public.

PIP has agreed to sell a portion of the property at 51 Biltmore Avenue and the Hot Dog King Property for $4.56 million dollars. This sell would include all cross easements and air-rights necessary to build the project as currently designed. Additionally, the City would have the right of first option for the property owned by PIP at 85 South Lexington Avenue, adjacent to the site.

PIP has requested a maximum of 50 monthly parking spaces. The City proposes to lease these spaces for the same terms as indicated above for MHG. PIP has requested to be included in waiving the additional taxable rate if the project is constructed at a $3,000 cost per space to the City.

In summary of the terms of PIP, the purchase price is $4,560,000 for land and first right offer (approximately $1 Million in savings over land use) (a) 51 Biltmore Avenue garage site; (b) Hot Dog King garage site; (c) air rights for parking deck under frontage on Biltmore Avenue; and (d) PIP retains air rights over garage on Hot Dog King land. Regarding the frontage (a) construction staging on Lexington Avenue; and (b) first right of offer to expand deck over 85 South Lexington Avenue. The maximum of 50 monthly parking spaces (1) 60 years; (2) $101 market + taxable rate (taxable rate estimated at $39 per space per month); and (3) $140 per month per parking space.

In summary of the terms of McKibbon Hotel Group (MHG), (1) MHG constructs garage/City takes possession after CO issues; (2) maximum of 35 monthly 24/7 spaces (a) 60 years; and (b) $101 market + taxable rate; and (3) maximum 115 evening/weekend spaces (a) 60 years; and (b) $60 market + taxable rate. If MHG saves the City $3,000 per space from probably construction costs, City waives the taxable rate. (PIP has requested to participate in this savings.) She then explained how this would work.

This project is consistent with the current recommendations of the Downtown Master Plan, City Council's Downtown Parking Plan, Council's Strategic Goals and the 2025 Plan. The Downtown Commission has reviewed the project informally three times and will have a formal recommendation on September 12, 2008. The Technical Review Committee of the City of Asheville will review the project at its September 15, 2008 meeting.

Next Steps

This project is scheduled for the Planning and Zoning Commission Meeting on October 1, 2008. Staff has requested this item be reviewed at City Council's formal meeting on October 14, 2008. Staff will request the following approvals at that meeting:

- Conditional zoning;
- Downtown development agreement;
- Parking agreement;
- Land purchase agreement;
- Cross easement/air rights agreement;
- Reimbursement resolution; and,
- Construction management agreement.

The project would move into the final design stages after the October meeting. Construction would be expected to being in the Summer/Fall of 2009.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

The pro forma for this project indicates that the annual operating deficit for the first year to be approximately $650,000. This amount will be reduced every year until the debt service (loan) is paid. After the debt service is paid, the revenues for the parking garage will exceed the expenditures. All of the operating deficit will be paid from the parking enterprise fund.

Staff recommends consideration of these terms and approval at the October 14, 2008, City Council meeting.

Mr. Pat Whalen, President of PIP, spoke in support of all the things this partnership will accomplish.

Mr. Wes Townsend looked forward to working on this kind of project downtown.

Throughout discussion, Mr. Whalen and Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: who assumes the cost of the extra foundation on the Hot Dog King property in order for PIP to retain air-rights over the parking garage for future residential development; are there any points of vulnerability on this project in terms of the economy; and what is the tentative timeframe to begin construction if approved by Council.

There was a brief discussion regarding predatory towing from the existing parking lot. Mr. Whalen felt that once more monthly parking is made available downtown, non-consensual towing will decrease. He said that he would be happy to work with the City to find a solution to predatory towing.

EMPLOYER OF CHOICE PROGRESS REPORT

Human Resources Director Lisa Roth said that regarding the labor force, (1) the U.S. workforce is aging; (2) in the next 5 to 15 years, 76 million baby boomers will be replaced by only 66 million new employees; and (3) thirty percent of City employees are eligible to retire in the next five years.

Using a chart she explained the percentage change in population by age group for the years 2000-2010.

Regarding competition for labor, (1) finding qualified candidates is becoming more difficult; (2) competing with other government agencies and the private sector for the same talent; and (3) Asheville's cost of living creates recruitment and retention issues.

She then reviewed a cost of living index chart of Asheville, Charlotte, Raleigh and Winston-Salem. The City's lowest wage of $10.37 per hour with benefits exceeds the $9.85 per hour with benefits proposed.

She explained how we are bridging the gap with (1) market based pay; (2) health insurance options; (3) flexible work hours; and (4) other benefits. That is working in that (1) the market plan is helping; (2) turnover rate is declining; (3) positive feedback on benefits; and (3) recruitment issues still exist.

Using a chart she showed how the market plan is helping and how the turnover rate is declining.

The old paradigm is "The City pays better than the County but the County has better benefits." She showed a salary comparison of staring pay for a City telecommunicator and auto mechanic vs. a County telecommunicator and auto mechanic. Regarding the benefit comparisons on health insurance comparison – the City budgets approximately $6,100 per employee vs. the County budgets approximately $11,000 to $12,000 per employee. With regard to 401 (k) comparisons, the City provides 5% 401 (k) contribution, whereas the County provides 8$ 401 (k) contribution.

She said we need to (1) continue market pay plan until July 2010; (2) classification study underway with completion in July 2009; (3) new compensation structure implementation July 2010; and (4) continuous evaluation of best practices to achieve Employer of Choice goal.

In response to Councilman Russell, Ms. Roth said the City is discussing succession planning.

In response to Councilman Newman, Ms. Roth said that the City is in the third year of the market pay plan.

ACCIDENT/COLLISION AVOIDANCE TRAINING FOR YOUNG DRIVERS

Vice-Mayor Davis said that the Public Safety Committee reviewed the Collision Avoidance Driver Training Program to be offered to high school age drivers.

He said that at the direction of the Public Safety Committee, the Asheville Police Department has evaluated the feasibility of implementing a Collision Avoidance Driver Training Program to be offered to high school age drivers.

Earlier this year, the Asheville Police Department was approached by a citizen who was familiar with a driver training program offered in other areas of the United Stated for new drivers, in an effort to reduce new driver traffic accidents. Police Department staff member Sgt. Stony

Gonce has analyzed several program options in an effort to determine the feasibility and cost associated for offering this type of driver training program.

Pros:

- National statistics show dramatic decreases in new driver traffic crashes for drivers who participate in this type of training.
- Local efforts to emphasize safe driving habits to young drivers can help to save lives.
- This program provides the Police Department community relations outreach opportunities with our youth.

Con:

- Mid-year start-up of an unbudgeted program.

The program cost ($8,500) is not budgeted in the current fiscal year. Opportunities may exist to obtain private funding assistance from the local insurance industry.

The Public Safety Committee recommends Council consider starting the program either mid-year or at the start of Fiscal Year 2009-10.

Sgt. Gonce provided Council with a brief overview of the Collision Avoidance Training (CAT) is an advanced defensive driving and vehicle control program. It is a two-day program designed for teenager drivers.

Program objectives include (1) enhance driver awareness; (2) develop skills to anticipate and react appropriately; and (3) develop a foundation of safe driving habits.

The classroom portion, consisting of four hours, covers (1) crashes and driver responsibilities; (2) defensive driving; (3) vehicle safety devices; (4) acceleration/deceleration; (5) vehicle maneuverability; (6) reaction time; and (7) other material. We do want the parents involved in the classroom and driving range portions.

Five basic skills are covered: (1) evasive maneuvers; (2) threshold/emergency braking; (3) forward serpentine cornering; (4) backing; and (5) skid recovery.

There are 8 hours of driving range exercises (1) shuffle steering/figure 8; (2) evasive maneuvers and controlled braking; (3) forward/reserve serpentine; (4) backing; (5) cornering; and (6) skid recovery. Each student provides his/her own vehicle for the driving exercises.

Extra subject material covered includes (1) safety belt usage; (2) drinking and driving issues; (3) cell phone usage; and (4) general driver distractions.

Regarding fees, (1) training is provided by the National Traffic Safety Academy (NTSA); (2) three year NTSA licensing fee of $7,600; (4) total annual program cost of $8,500; and (4) cost of $105 per student (to cover their course material and program fees).

The Public Safety Committee recommendations are (1) to implement the CAT program; and (2) schedule consideration and a budget amendment or include in the 2009-10 budget.

As discussion occurred surrounding support of the program, Sgt. Gonce responded to various questions/comments, some being, but are not limited to: is this program designed only for teens or can it be modified for adults as well; is there a way to solicit some scholarships; is there a private service in Buncombe County or North Carolina that provides this service; is there a system for selecting young adults if the program is a huge success; is there a way to encourage this program other than asking the teens themselves to enroll, i.e., perhaps a requirement to play

sports; are there opportunities to cost-share with other partners, i.e., the YMCA Teen Program, Buncombe County or the insurance industry; does the annual program cost of $8,500 include the $7,600 three-year license fee; will after-hour law enforcement driver instructors staff the actual program; how much will the after-hour instructors receive in compensation; what will the $105 per student pay for; is there a system for selecting young adults; if the program is a huge success, is it anticipated if the program is a real success, that it will become time intensive at some point; is there a way to get the kids not pre-deposed to be safe drivers to get these skills; and is it possible to target youth who have already had accidents be mandated to go through this program.

Councilman Russell sees benefits of this program to the City and to the people in the car. This ties in well with City Council's goal of being a safe city. As far as the costs are concerned, he was looking at this program entirely through his company of State Farm Insurance, without the City being involved. Having police officers involved would have a profound impact on the young drivers. He thinks there are ways to almost eliminate the public cost of this and he will be happy to champion the efforts on behalf of the insurance industry.

It was the consensus of Council to support this program and to ask Vice-Mayor Davis meet with Councilman Russell and the Public Safety Committee regarding funding options and to report back to the full Council.

REGULATION OF ACTIVITES AT TRANSIT CENTER

City Attorney Oast said this is the consideration of policy direction for activities at Transit Center said that this is the consideration of policy direction for activities at Transit Center

Last week, an individual attempted to conduct voter registration activities in the City's Transit Center. He was advised that such activities were not allowed in the Transit Center. This matter was brought to Council's attention at your September 9 meeting; and Council requested consideration at the September 16 work session.

One of the issues that has been raised with respect to this matter is that the City has no rule or policy regarding activities in the Transit Center. While the City Council certainly can adopt rules and regulations regarding the use of City facilities, State law and the City's Charter also confer this authority on the City Manager and, through the Manager, to the directors of the various City departments. The Manager's authority is subject to the general direction control of the Council, and other general legal and constitutional limitations.

Accordingly, the responsibility for the operation of the transit facility, as well as other City-operated facilities, is the responsibility of the City Manager and administrative staff. Written rules and policies exist for some but not all City facilities. It is not possible to have a set of rules that address every possible activity, and in some facilities, the conduct of users is monitored by those in charge to ensure that operations are not interfered with.

The central issue here – legal and operational – is whether the City can or should limit or prohibit activities in the Transit Center that are not related to the operation of the facility. Such activities, even if limited to non-commercial activities, could include petition drives, speech making, and distribution of leaflets, to name a few (herein collectively "speech activity").

The Transit Center has been in operation since 1997. Although the issue of speech activities has not arisen often during this time, the Transit Division advises that such activity historically has not been allowed. On a few occasions in the past, individuals wishing to engage in speech activity have been directed to the sidewalk immediately adjacent to the Center, an alternative that appears to have been satisfactory.

The Transit Services Director has identified some operational issues with allowing unrelated activities in the Transit Center. These include:

1. Users of the Center may be distracted and less alert to vehicular traffic, potentially compromising their safety.

2. The Transit Center is an area that frequently sees a high level of pedestrian traffic, when multiple buses are discharging passengers at the same time. The space available for this pedestrian flow is limited, and obstructions to the flow can reduce its efficiency and compromise safety.

3. Activities involving the distribution of leaflets or fliers create the potential for litter in the Transit Center and surrounding area.

4. Activities that involve subject matter that is controversial or offensive to some may create an uncomfortable environment for users and Transit employees, who are essentially a captive audience.

The Transit Center is a use-specific facility that has not historically been used for activities such as voter registration or petition drives. It is not a traditional public forum in the same way that parks and sidewalks are. There is space available directly adjacent to the Transit Center where these activities can occur, and historically have occurred. If these activities are allowed within the Transit Center itself, the City may not regulate them on the basis of content (except for "commercial" activities, which is not always an easy distinction to make). Thus, if the Transit Center is made available for voter registration or another similar speech activity, it essentially becomes a public forum and it is extremely difficult to limit its use for other similar activities.

If speech activity is allowed to occur, the fact that the Transit Center is a use-specific facility may permit the City to take appropriate steps to ensure that the use is not interfered with, such as designating space where speech activity can occur. If this is done, however, there may be practical issues associated with monitoring this activity with a limited staff.

The fiscal impact is difficult to assess without knowing the level of activity that will occur if allowed.

A motion to provide policy direction to the City Manager is appropriate. If the direction is to allow speech activity, it is recommended that the Manager be allowed to designate areas where it can occur, and develop other regulations to ensure that such activity does not interfere with the operations of the Transit Center.

After a brief discussion regarding the inability of Council to permit voter registration at the Transit Center and not allow other first amendment rights, it was the consensus of Council to permit speech activity at the Transit Center with the City Manager designating space where that speech activity can occur, so as not to be overbearing to the customers and so the activities do not interfere with the operations of the Transit Center. In addition, Council directed that the activities be monitored and the City Manager report back to Council for further policy guidance, if necessary. City Manager Jackson said that he would work with the Transit Manager and the City Attorney to have something in place in a week, noting that he would make contact with the person who brought this to Council's attention to advise them of Council's guidance.

BOARDS/COMMISSIONS

It was the consensus of Council to interview Brock Moore, Ronald Maynard and Kyle Ross for the east vacancy on the Citizens-Police Advisory Committee.

It was the consensus of Council to re-advertise for a vacancy on the Civic Center Commission. Vice-Mayor Davis said that the Boards & Commissions Committee will give thought

to asking for the age of applicants on our Board & Commission Application, for diversity, not only with race and gender, but with maturity.

It was the consensus of Council to reappoint Stephanie Cooper and James Lewis and appoint Dr. Stephen Hulkower to the Police Officers and Firefighters Disability Review Board.

It was the consensus of Council to interview Michael Orford, Bruce Emory and Larry Chapman for a vacancy on the Transit Commission. David Lack will also be a candidate; however, he will not be brought in for an interview.

It was the consensus of Council to re-advertise for a vacancy on the Civil Service Board.

It was the consensus of Council to invite the Transit Commission to a meeting to discuss their desire for restructuring. Vice-Mayor Davis said if a restructuring is recommended by the Transit Commission, he strongly urged that it be with a staff recommendation as well.

Other Business

Mayor Bellamy reminded City Council of the reception on September 23, 2008, in Room 209 of the City Hall Building at 4:15 p.m. The Chamber of Commerce will present a gift of appreciation to the City for its support of the new Chamber Building and Visitor Center through the Advantage Asheville capital campaign. They will give the City three pieces of artwork to be displayed in the lobby area of Room 209. Former Mayors Sitnick and Worley will be invited as they helped launch and support the campaign during their tenures.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 5:50 p.m.

Magdalen Burleson
CITY CLERK

Jerry W. Bellamy
MAYOR

Tuesday – September 23, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

FUEL SUPPLY UPDATE

Chief Financial Officer Ben Durant updated City Council on the fuel supply. He explained the conservation measures for Level I (1) no disruption of core City services; (2) delay non-essential travel when possible; and (3) consolidate services where possible. Level 2 conservation measures include (1) no disruption of police, fire and rescue, sanitation, and transit services; and (2) non public safety related services will be reduced (a) inspectors carpooling to work sites; (b) planning field inspections are delayed; (c) suspension of street cleaning and tree crew work; (d) yard waste, bulky item and white goods collection will be suspended; (e) parks center programs; and (f) minimal staffing. Level 3 conservation measures include reducing services in order to fully focus on public safety and health as well as transportation.

Marketing transit and alternatives include (1) press release on 9-15-08 and 9-22-08 (all outlets); (2) contacted television highlighting public transit; (3) newspaper op-ed submitted; (4) website – Asheville Transit is featured; (5) website – All current service information posted; (6) City Channel – All transit and other information current; (7) Share the Ride NC; and (8) Emergency Ride Home.

Regarding the Asheville Transit ridership, (1) ridership numbers remain strong; (2) arterial route ridership up on Merrimon Avenue, Hendersonville Road, and Tunnel Road; and (3) ridership analysis has been provided.

The next steps are to monitor, fuel supply management, conservation and public relations.

Mr. Mack Sulley, representing the Buncombe County Emergency Management Services, explained what Buncombe County is doing regarding fuel conservation.

Mr. Allen Johnson, representing the Buncombe County Schools, updated Council on how the Buncombe County Schools are implementing conservation measures.

Mr. Randy Flack, representing Congressman Heath Shuler's Office, explained how Congressman Shuler has been making contact with all the counties in Western North Carolina to keep them updated regarding the status of the Colonial Pipeline (which supplies Spartanburg). Congressman Shuler spoke with the Dept. of Energy, Governor Easley's Office, the Attorney General's Office and Mr. Sam Whitehead who is the President of Colonial Oil. The fuel supply is

getting better, although slowly. They hope within a week the pipeline will be running at full capacity.

Mayor Bellamy spoke with representatives from Senator Burr's office as well. They have contacted the distributor in Wilmington to see if we can get additional tankers into our community. She also contacted the Assistant Director of the U.S. Dept. of Energy to see what he could do to get additional fuel to our community. In addition, she too talked with Mr. Whitehead and the two lines that serve our area are running at reduced rates and Asheville is on the lower end. She explained that Wilco-Hess continues to get gas as they are connected to a larger oil company coming out of Wilmington. She said that we do not have any oil companies in our community. The biggest oil company in our area is Wilco-Hess and they are serviced by Wilmington. The three oil companies in our area have been in our community for many years and they are not here to price gauge. She hoped these reports will clear up the misinformation circulating in our community. She stressed the need to be civil to each other during this period of time as we are all in this together. Since our community will not have full capacity for 7-10 days, she urged the community to make concerted efforts to conserve fuel. The City Council wants business as usual in our City and not for students to miss class. She asked that City staff continually update the City's website in order to give our community up-to-date and accurate information.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2008 AS "NATIONAL ARTS & HUMANITIES MONTH"

Councilwoman Jones read the proclamation proclaiming October, 2008, as "National Arts & Humanities Month" in the City of Asheville. She presented the proclamation to Ms. Dana Irwin, member of the Public Art Board and Ms. Barb Lothrop, Chair of the Urban Trail Committee who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING OCTOBER 5-12, 2008, AS "MENTAL ILLNESS AWARENESS WEEK"

Mayor Bellamy read the proclamation proclaiming October 5-12, 2008, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Mr. James Pitts and a member of the National Alliance on Mental Illness, who briefed City Council on some activities taking place during the week.

Mayor Bellamy noted that the City has invested in the Neil Dobbins Center that is providing assistance to individuals. In addition, the City has also invested in a crisis intervention training program for our police officers.

C. PROCLAMATION PROCLAIMING OCTOBER 4, 2008, AS "AIDS WALK DAY"

Vice-Mayor Davis read the proclamation proclaiming October 4, 2008, as "AIDS Walk Day" in the City of Asheville. He presented the proclamation to Ms. Keisha Hightower who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "E" and "F" were removed from the Consent Agenda for individual votes and/or discussion.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON SEPTEMBER 9, 2008, AND THE WORKSESSION HELD ON SEPTEMBER 16, 2008

B. RESOLUTION NO. 08-194 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H & M CONSTRUCTORS TO SUPPLY, CONSTRUCT AND INSTALL A NEW CHILLDER UNIT FOR CITY HALL

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with H & M Constructors to supply, construct and install a new chiller unit for City Hall for an amount not to exceed $206,815.00.

City Council approved $200,000 in funding for the City Hall chiller replacement as part of the City's Fiscal Year 2007-08 capital improvements budget. As a part of this project, the City hired a firm to complete engineering drawings at a cost of $13,000. The City then issued a request for proposals for the project and the lowest, responsible bid was received from H & M Constructors for a cost not to exceed $206,815. Therefore, the total cost of the project, including the engineering drawings, will be $219,815. The additional $19,815 that was not included in the initial budget for this project will be taken from the City's FY 2007-08 general building maintenance fund.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the public facilities maintenance program to make facility improvements. It is also a green focus area by making an energy efficient capital improvement decision and supporting energy efficient funding for facilities and operations.

Pros:

- Provide funds to supply, construct and install a new chiller unit at City Hall.
- Fulfill commitment to replace aging infrastructure that is failing and cost more every year to maintain.
- Reduce energy consumption.

Con:

- The total cost of the project ($219,815) exceeds the original budgeted amount by $19,815.

$200,000 was approved in the City's Fiscal Year 2007-08 capital improvement budget for this project. The additional $19,815 needed to complete this project will be taken from the general building maintenance fund that was approved in the City's Fiscal Year 2007-08 budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with H & M Constructors to supply, construct and install a new chiller unit for City Hall for an amount not to exceed $206,815.00.

RESOLUTION BOOK NO. 31 – PAGE 317

C. RESOLUTION NO. 08-195 – RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The consideration of reappointing members to the Police Officers and Firefighters Disability Review Board.

The terms of Dr. Alexander Maitland, Stephanie Cooper and James Lewis, as members on the Police Officers & Firefighters Disability Review Board, expired on July 19, 2008.

On September 16, 2008, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Dr. Stephen Hulkower (as the licensed physician); and reappoint Stephanie Cooper and James Lewis to each serve a two year term respectively, terms to expire July 19, 2010, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 318

D. RESOLUTION NO. 08-196 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD

ORDINANCE NO. 3653 – BUDGET AMENDMENT REGARDING THE LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with New Cingular Wireless PCS, LLC for antennas at 36 Reservoir Road; and the associated budget amendment, in the amount of $61,200.

The property at 36 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

New Cingular Wireless PCS, LLC has offered to enter into a license agreement for antenna space and related equipment on the tower known as the "Lower Tower" which is the smaller tower to the west. New Cingular is an existing tenant on the lower tower, seeking to reinstate the contractual relationship with the City. The proposed License Agreement will enable New Cingular to continue operating their existing equipment at the tower; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be five (5) years with one renewal period of five (5) years. New Cingular will pay an annual License Fee based on the initial rate of $30,000 with a 4% increase annually thereafter. Two years of license fees will be collected in advance.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were presented to the Planning and Economic Development Commission on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for this type of installation.

The Notice of Intent to enter into a License Agreement with New Cingular Wireless PCS, LLC was published on September 12, 2008, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

Regarding the City Council Strategic Operating Plan, the strategic tower asset management presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable.

Several new or renewing tenant leases are anticipated in Fiscal Year 2009. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on utilizing an estimated $80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays $29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the Fiscal Year 2009 budget, and once implemented, will promote significant cost savings to the City over time. The budget amendment will appropriate $61,200 into the re-engineering account.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure
- Underwrites long term cost savings plan for telecommunications

Cons:

- None

Fiscal Impact:

- Fiscal Year 2009: $61,200 revenue
- Fiscal Year 2009: $61,200 investment programmed to support re-location of City equipment
- Beyond Fiscal Year 2009: Additional revenue stream based on initial rate of $30,000 per year with 4% escalation per year.
- Beyond Fiscal Year 2009: Resulting savings of initial rate of $29,000 per year with 7% rent escalations.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to execute the license agreement with New Cingular Wireless PCS, LLC on behalf of the City of Asheville; and (2) approve associated budget amendment to be used for cost savings plan for telecommunications.

RESOLUTION BOOK NO. 31 – PAGE 319
ORDINANCE BOOK NO. 25 – PAGE 39

E. BUDGET AMENDMENT FOR THE PURCHASE OF 20 NEW FAREBOXES FOR THE ASHEVILLE TRANSIT SYSTEM

This item was removed from the Consent Agenda for an individual vote and/or discussion.

F. BUDGET AMENDMENT TO CLOSE OUT LAND ACQUISITION IN RICHMOND HILL

This item was removed from the Consent Agenda for an individual vote and/or discussion.

G. ORDINANCE NO. 3656 – BUDGET AMENDMENT TO INSTALL A TRAFFIC SIGNAL AT THE INTERSECTION OF FAIRVIEW ROAD AND THIRD STREET IN THE OAKLEY COMMUNITY

Summary: The consideration of a budget amendment, in the amount of 50,000, to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community because of a sight visibility problem.

Fairview Road can be classified as a collector-type residential street with a posted speed limit of 30 mph. According to traffic counts that were collected during October 2007, 4,600 vehicles per day use Fairview Road in the immediate area of Third Street and the 85th percentile speed for these vehicles is 37.9 mph. Full-turning movement traffic counts were collected at the intersection of Fairview Road and Third Street during November 2007 and these counts determined that about 4,700 vehicles per day were using the subject intersection. During the 12-hour count timeframe from 6:30 am until 6:30 pm, 54 vehicles entered Fairview Road from Third Street; 24 vehicles made a left turn and 30 vehicles made a right turn.

Third Street can be classified as a local-type residential street with a statutory speed limit of 35 mph. It is a dead-end street with an average pavement width of 16 feet and an overall length of 0.28 mile. Third Street provides access to about 21 properties.

According to our records, five angle-type crashes have occurred at the subject intersection during the past year including one crash in 2006 and four crashes in 2007. All of these crashes involved a vehicle attempting to turn left onto Fairview Road that was struck by a westbound vehicle traveling along Fairview Road. One of the crashes involved injuries and the rest were property damage only. A contributing factor to all of the crashes is limited sight distance, which is the primary issue that you and the other residents along Third Street are concerned about and you have suggested a traffic signal as a possible solution. Compounding the limited sight distance is the fact that Third Street intersects Fairview Road on the inside of a horizontal curve. Also, vegetation including mature trees and shrubs, a fence, and parked vehicles contribute to the limited sight distance. The City of Asheville installed a pair of mirrors at the subject intersection during December 2006 in order to help improve the decision making process for the drivers attempting to enter Fairview Road. I believe the mirrors have been partially successful; however, they are not intended to be used as a long-term solution and four of the angle-type crashes occurred after the mirrors were installed.

Although from a traffic volume standpoint, the nationally recognized traffic signal warrants are not satisfied, the decision to install a traffic signal at the subject intersection was based on several factors, including the fact that a definite crash history exists that could be eliminated and/or minimized with the installation of a traffic signal and that no reasonable alternatives to traffic signal control can be identified that would significantly improve the limited sight distance. Compared to some other traffic-related projects, the subject project was originally listed as a number 5 priority; however, recent conditions have changed that should move the subject project to a number 1 priority. A special needs child now lives along Third Street and is transported on a daily basis to Fairview Elementary School. Due to the limited sight distance at the subject intersection, the bus driver has been directed not to pickup or drop-off the child directly at his/her home but to do so at the intersection. We have contacted the Buncombe County School Bus Transportation staff to confirm this information and they have told us that if a traffic signal is installed, they would then direct the bus driver to go directly to the child's home.

This action complies with the City Council 2008-09 Strategic Operating Plan by protecting the traveling public and giving citizens an opportunity to have safe and reasonable access to and from their homes.

Pros:

- The traffic signal will enable vehicles attempting to enter Fairview Road from Third Street opportunities to make the movements in a safe and reasonable manner.
- An actuated traffic signal will minimize the potential delay to vehicles along Fairview Road compared to a pre-timed traffic signal.

Cons:

- When the traffic signal provides a green indication for the Third Street approach, vehicles along Fairview Road will come to a STOP condition.
- The total cost of the project including survey and design is $57,275.

The total estimated construction cost is $50,000 assuming there will be no right-of-way and/or easement issues. The survey and design work was accomplished during Fiscal Year 2007-08 at a cost of $ 7,275. As mentioned in earlier staff reports, on September 19, 2008, there was $410,000 available in the General Capital Reserve Fund. The previous appropriations for the fareboxes and the Richmond Hill project, along with this $50,000 appropriation, will lower the available funds in the General Capital Reserve fund to $238,316.

Staff recommends that City Council approve a budget amendment, in the amount of $50,000, from the General Capital Reserve fund to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community.

Also, staff encourages review in the coming months for budget planning to accommodate additional projects of this nature.

Mayor Bellamy said that City staff will be bringing back some opportunities for City Council to look at other projects in the community of this nature, as well as an overall policy for items like this.

ORDINANCE BOOK NO. 25 - PAGE 45

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. ORDINANCE NO. 3654 – BUDGET AMENDMENT FOR THE PURCHASE OF 20 NEW FAREBOXES FOR THE ASHEVILLE TRANSIT SYSTEM

Summary: The consideration of a budget amendment, in the amount of $233,417, 20% of which will come from the City's capital reserve funds, to purchase twenty fareboxes to replace the existing ones.

City staff has identified the acquisition of new fareboxes as the number one priority in the capital program, after replacement of existing fleet.

The fareboxes are an essential part of operations; they are used to collect the cash fares ensuring a safe environment for drivers and system users. The fareboxes currently installed in City's transit fleet operate with a very simple technology that only receives cash and tickets. Five of the fareboxes installed in the 2006 buses were borrowed from High Point transit system. These fareboxes are smaller than the regular ones and cannot be used in high demand routes because of the lack of capacity to store the fares.

During the last years, Asheville Transit ridership has been growing, and the city has provided diverse alternatives to facilitate the trips, such as 11-ticket booklet, monthly passes and annual passes.

In addition, the city has been promoting very successfully the Passport program of employer-provided passes. Under this program, the only requirement is to show the ID card to the driver, in order to use the bus.

The acquisition of new fareboxes will enhance driver effectiveness and work conditions. Currently the driver is responsible to record all these movements, and count all the passengers who are using the system as well as to identify the programs. The driver has to be able to identify each of the passes and ID cards of riders that are boarding the bus; this task disrupts the driver's ability to focus on driving the bus and ensuring passenger safety.

City staff is proposing to acquire GFI GENFARE CENTSaBill electronic registering fareboxes. This decision was made in conjunction with Transit Operations. The proposed technology stores cash, and accept magnetic swipe cards which will expedite boardings and will increase safety. The farebox system records fares and passenger data and produce accurate and reliable reports about system usage. This technology can be upgraded to issue tickets, handle transfers and read smart cards.

The fareboxes will be acquired through a State contract which expires on September 30, 2009. The use of an existing contract (piggy back) facilitates and expedites the procurement process. The city is required to issue a purchase order for the fareboxes and perform sole source procurement for the software which is not part of the contract. The vendor estimates that production will take four months after receiving the purchase order.

This project will cost $233,417. The City will fund this project using section 5307 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or $186,733. The City will be required to provide the remaining twenty percent (20%) of the funding, which will total $46,684. The City's funding will be taken from the general capital reserve fund which consists of the accumulated savings from capital projects that have been competed and come in under budget. City staff will also apply for a North Carolina Department of Transportation grant to cover ten percent (10%) of the total price. If this grant effort is successful, the City's contribution will be reduced to $23,342 and the unused funding will be returned to the capital reserve fund.

This action complies with the Strategic Operating Plan in the acquisition of new technology that will support the area of environmental sustainability.

Pros:

- Increases financial reliability and better usage of resources and funds.
- Improves system operation, promoting smoother and faster boardings.
- Produces accurate and reliable passenger data related to usage of the transit system.
- Increases safety.
- Promotes a better work place reducing the driver's stress.
- Expedites the procurement process using the State contract currently in place.
- 80% of the cost will be covered by the Federal Transit Administration.

Cons:

- The City match of $46,684 was not budgeted in the Fiscal Year 2008-09 budget; therefore, the funding will have to be taken from the City's capital reserve funds, which will reduce the funding available to other projects.

The project cost will be $233,417, with 80% of this total to be paid by federal funds - FTA section 5307 and 20% by the City. On September 19, 2008, there was $410,000 in the General Capital Reserve fund. Appropriating the $46,684 for the fareboxes will reduce this amount to $363,316.

City staff recommends City Council adopt a budget amendment, in the amount of $233,417, 20% of which will come from the City's capital reserve funds, to purchase twenty new fareboxes to replace the existing ones.

Director of Transportation and Engineering Cathy Ball and Interim Transit Director Mariate Echeverry responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: are there other less expensive opportunities to purchase fareboxes; are there different qualities of fareboxes; where do these fareboxes fall in those different categories; how much were the fareboxes that we currently borrow from High Point;

does the cost of the farebox include software; why did the City purchase the new buses without fareboxes; and were the drivers of the buses consulted about what kind of farebox works best.

Councilman Newman explained why he felt this is a good investment, especially with the partnerships we are building in the community.

Councilman Mumpower felt our transit system is one of the best social services we have in Asheville, but it is a highly subsidized service and this action represents another increase in that subsidy. He was concerned that we are losing our point of realism in our ability to sustain that subsidy.

Councilman Newman moved for the adoption of Ordinance No. 3654. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 41

F. ORDINANCE NO. 3655 – BUDGET AMENDMENT TO CLOSE OUT LAND ACQUISITION IN RICHMOND HILL

Summary: The consideration of a budget amendment, in the amount of $75,000, to amend the annual budget to close out land acquisition in Richmond Hill.

In 2005, the City entered into a contract for the acquisition of real property to facilitate access to the recreation facilities that were under development at Richmond Hill. At the time, those facilities were planned to include athletic fields and a National Guard training center and equipment maintenance facility. The owner of the adjacent property needed for the access was Chris Peterson, and it was part of a larger tract owned by him. As part of the consideration for the access, the agreement provided for the City to provide 20,000 cubic yards of fill material on adjacent property, and to grade and compact it sufficiently to allow for construction of a road. Most of this fill was planned to come from grading and excavating activities on the City's Richmond Hill property, especially the planned athletic fields.

The scope of the Richmond Hill project has been significantly reduced; the training center is reduced in size, and the athletic fields are not being constructed. As a result, the fill material that was to be placed on the adjacent property is not available on site. At this point, fulfilling this term of the agreement would mean trucking the material in, which would be prohibitively expensive (estimates as high as $200,000) and disruptive for the neighborhood, even if the fill was generated by the City's activities.

In lieu of the City providing the fill, Mr. Peterson has agreed to accept $75,000 to close this contract out.

Regarding the fiscal impact, $75,000 is to come from other Capital Projects. As mentioned in the previous staff report for the transit fareboxes, on September 19, 2008, there was $410,000 available in the General Capital Reserve fund. The previous appropriation for the fareboxes, coupled with this $75,000 appropriation for Richmond Hill, will lower the available funds in the capital reserve to $288,316.

Pros:
- Closes contract out
- Less cost than actual performance of contract
- Minimizes disruption to neighborhood

Con:
- Additional cost in tight budget year

Adoption of the budget amendment is recommended.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3655. This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Councilwoman Jones, Councilman Newman and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 43

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT GRANT TO UNISON ENGINE COMPONENTS (FORMERLY SMITHS AEROSPACE)

RESOLUTION NO. 08-197 – RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT GRANT FOR UNISON ENGINE COMPONENTS

ORDINANCE NO. 3657 – BUDGET AMENDMENT FOR ECONOMIC DEVELOPMENT GRANT FOR UNISON ENGINE COMPONENTS

Mayor Bellamy opened the public hearing at 5:52 p.m.

Economic Development Director Sam Powers said that this is the consideration of a resolution approving a $236,250 economic development incentive grant to Unison Engine Components; and the corresponding budget amendment in the amount of $47,250 for the estimated first year's installment of this five-year economic development incentive grant. This public hearing was advertised on September 12 and 19, 2008.

This is consideration for an economic development incentive grant under the City of Asheville Economic Development policy. Unison Engine Components (herein "Unison") operates and maintains a manufacturing facility in Buncombe County substantially all of which is located in the City of Asheville. Unison is proposing new, taxable, capital investment of $15,000,000 for additional production equipment and facility improvements at the local facility, and has requested consideration for a cash grant under the City of Asheville Economic Development policy. The purpose of this investment is to allow Unison to expand its operations, and is projected to result in the retention of jobs that pay at or above the average wage for Buncombe County.

The City of Asheville proposes to offer Unison a performance-based grant not to exceed $236,250. The performance-based grant will be paid over a five (5) year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal approximately 75% of said estimated revenue.

The City will fund the payments from the general fund. The first year estimated payment of $47,250 will be funded with an appropriation from fund balance; subsequent years' payments will be included in the annual general fund budgets adopted by Council.

The economic development incentive grant to Unison Engine Components ties into City Council's Strategic Operating Plan as it addresses the Affordability Strategic Plan focus area by meeting the objective to support diversified job growth and small business development. The grant also addresses the Sustainability Strategic Plan focus area by promoting sustainable, high density infill development that makes efficient use of existing resources. Staff believes that the project will stabilize and improve the economic prospects of the City and the area.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of 75% of value of new incremental tax revenue for a five year period.

The project has a positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the city will receive approximately 25% of the new incremental ad valorem revenues from the project, in addition to the current taxes paid by the company. After five years, the City will henceforth receive 100% capture of new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant to Unison Engine Components not to exceed $236,250 payable in five (5) annual installments, subject to compliance of a performance agreement between the City and Unison Engine Components, and also the corresponding budget amendment in the amount of $47,250 for the estimated first year's installment of this economic development incentive grant.

Mr. John Bellows, financial leader at Unison Engine Components, said they have been a part of the Asheville community for over 60 years. Their decision to grow the business is directly related to the quality of the local work force and the incentives not just from the City, but in conjunction with the county, state and other agencies. They are nearly doubling the manufacturing footprint. They have spent over $2 Million in upgrading the existing facility. To date, we have exceeded the $15 Million investment and they have plans to make similar investments in the future. They have increased their workforce by approximately 70 employees out of the 200 they originally identified in their goal. They currently have 390 employees in our two facilities. Their business plan is to grow the business approximately 50% and next year they are looking forward to an additional top line growth in the 37% range.

Mr. Jerry Rice questioned how many Unison employees are from Asheville and Buncombe County. He felt that if their employees are from other counties, those counties should be contributing as well.

Mayor Bellamy closed the public hearing at 6:02 p.m.

In response to Councilwoman Jones, Mr. Bellows said that he did not have the exact number of Asheville and Buncombe County employees with him at this meeting; however, he guessed it would be approximately 50% of his workforce. He said he would be happy to provide Council with the accurate information as early as tomorrow.

When Councilman Mumpower asked if Unison uses the E-verify program which is a federal program used for verification of citizenship, Mr. Bellows responded that they use a private agency to perform a detailed background check on all their employees, which check does include citizenship. At Councilman Mumpower's request, Mr. Bellows said that he would be happy to provide him with information on their verification program.

Councilman Mumpower felt this action represents an exercise in corporate welfare and is a special deal for an employer. He felt the City helps businesses best by having a safe, clean and affordable city and not by granting tax exemptions that most taxpayers do not receive. Most taxes in Asheville are paid by citizens and not businesses.

Councilman Newman noted that Asheville does have an economic development policy that any business can apply for if they meet the criteria outlined in our policy. However, he questioned if the policy, even if administered consistently, is a good public policy. It is an issue that communities and states struggle with. If we got rid of economic incentive policies across the board, he feels most people would support that. That way cities could compete on who has the best schools, best infrastructure, cleanest environment, etc. Since that is not the case, it is extremely important to have good paying jobs in our community to be competitive.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-197. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Newman moved for the adoption of Ordinance No. 3657. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS HAYWOOD PARK MIXED-USE REDEVELOPMENT PROJECT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

City Attorney Oast also noted that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:17 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Haywood Park Mixed-Use Redevelopment Project, with 130,000 square feet of retail, office and ballroom space, 200 hotel rooms and 100 condominium units, located at 1 and 35 Battery Park Avenue, 34 and 46 Haywood Street and Page Avenue.

She said the Smart Growth principles adopted in the *2025 Plan* encourages higher-density, mixed-use developments. Retail, residential, office and hotel uses align with economic development priorities, supporting the needs of local residents as well as the tourism industry, helping the downtown become and remain a "destination." This project supports objectives of the *Plan* by providing not only a variety of uses suitable to a Central Business District, but also a range of housing options and sizes appealing to different income levels, located in close proximity to public transit and in a walkable urban location.

The tower structures would be the tallest in the City (surpassing the BB&T by approximately 39'), but the project has been designed to maintain a human-scale experience from the street/pedestrian level and promote compatibility with the existing urban context. Although the Kostas building and a four-story mixed use building along Haywood Street will be demolished to accommodate this proposal, the adaptive reuse of two existing buildings (the Haywood Park Hotel and Starnes Building) into the overall project will aid in maintaining the existing streetscape and character. The proposal includes a dedication to LEED certification (base level), which corresponds to the City's dedication to environmentally-responsible development.

Goals in the Center City Plan are addressed through aspects of this proposal as well – the project has a mix of uses which can work towards ensuring a balanced and lively downtown; provides a variety of residential spaces; the design complements and stimulates pedestrian activity; existing structures are preserved and incorporated into the project; and includes needed parking spaces.

Three catalytic projects are located in the immediate vicinity: the Grove Arcade, Civic Center and Battery Hill City-Owned Property. Catalytic sites are identified as such for their potential to stimulate additional investment. It may have originally been thought that the "additional development spurred" would be on vacant or underutilized property, and not on parcels already occupied by uses and structures. However, the investment expected due to proximity to those sites has begun to be realized by this proposal.

One area of possible (temporary) discord with the Center City Plan is the goal "actively work to retain existing downtown businesses and foster their continued success and growth." There is the possibility of unavoidable consequence or negative impact on surrounding businesses during the extended construction period for this project as well as the displacement of active businesses in the buildings proposed for demolition.

City Council adopted the following four strategic goals: *sustainable, affordable, green* and *safe*; this development proposal supports the strategic goal of *sustainability* and reflects other vision plans by providing for high-density infill growth; supports and provides amenities for downtown living; and encourages economic development in the downtown. Additionally, the LEED elements of the development proposal address the desire for *green* development features and practices.

While this proposal has many positive aspects and clearly supports several key goals, it fails to address the issue of affordability in that it does not provide affordable units within the development. Additionally, the donation offered to the Eblen Foundation as part of the public benefits package does not contribute to the creation of new affordable units, although it is a valuable endowment dedicated to helping citizens in need of housing assistance.

Other hotel/residential projects planned or approved include:

- Hotel Indigo (currently under construction) which includes 100 hotel rooms and 12 residential units, and
- Ellington (approved in 2007 – not yet under construction) which proposed 125 hotel rooms and 52 residential units.
- These projects will bring the number of hotel rooms in the CBD to 774 (549 existing). If approved, this project would bring the total to 974 rooms.

Residential projects recently planned include 452 residential units approved in the Central Business District (CBD) over the past year and a half, with 80 units currently under construction (Hotel Indigo and 60 North Market). If approved, this project would bring the total to 552 units approved. Data on the number of existing residential units in the CBD is not accurately available.

This is a request for review of site plans for a mixed-use redevelopment project with residential and commercial components. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the CBD shall be considered as a Level III project and a Conditional Use.

The project area consists of five parcels with a combined area of approximately 1.92 acres (Attachments to City Exhibit 3 – Location Map and Aerial Map). The site is located on the downtown block bordered by Page Avenue to the west (Grove Arcade), Battery Park Avenue to the south and Haywood Street to the east. The proposal includes construction of a mixed-use redevelopment, incorporating some existing structures. The 4-story Haywood Park Hotel and Starnes Building (northwest corner of Battery Park and Haywood) will remain as office uses.

The project will include a mix of uses including approximately 200 hotel rooms; approximately 100 residential units; 80,000 square feet of retail space (including a multi-story internal arcade); 50,000 square feet of office space; and 506 parking spaces. This is an increase of approximately 170 hotel rooms (currently +/- 33 rooms in the Haywood Park Hotel); 100 residential units (currently none); 40,000 sq. ft. of retail space (currently +/- 40,000 sq. ft. existing); +/- 20,000 sq. ft. of office space (currently +/- 30,000 sq. ft. existing); and a net gain of 226 parking spaces available to the public (30 currently available to the public). (Attachment to City Exhibit 3 – Site Plan)

The proposed new construction is separated into five parts for ease of review: Haywood Street base, Haywood Street tower, Page Avenue base, Page Avenue tower and underground parking (although it should be noted that the project is proposed as a whole and will be constructed as such):

Haywood Street base: 5 levels (expanded 16'6" ground story level with 10'6" upper floors), includes retail spaces on ground level with residential above (units ranging in size from 632 to 1,700 square feet, all units with balconies facing onto Haywood). Includes pedestrian entry to arcade, pedestrian entry to residential lobby, vehicle entry/exit for the parking garage (30' wide). This "platform" is a similar height to adjacent structures and maintains visual consistency along the streetscape.

Haywood Street tower: The tower is proposed at 258' 6" from the street to the top of the architectural element (approximately 23 levels) and includes residential units (units ranging in size from 1,800 to 2,200 square feet – four units per floor). The structure steps back after the 5th level with proposed floor-plates of approximately 9,900 sq. ft. This creates a slender structure with a less bulky visual impact. In addition, the tower's walls curve away from the street, further diminishing the mass of the structure. This tower has a contemporary design. (Attachment to City Exhibit 3 – Haywood Street Elevation)

Page Avenue base: The 36 foot high base of this side of the structure has 2-3 levels (all expanded floor-to-floor heights) that include retail/restaurant space on the ground level with hotel ballroom/meeting rooms above. The base includes a pedestrian entry into the retail arcade, a pedestrian entry into hotel lobby, and a vehicle entry/exit for parking garage (25'9" wide) from Page Avenue. This "platform" is similar to the height of adjacent structures as well as the Grove Arcade across Page Street, maintaining visual consistency along the streetscape and a complementary relationship to the Arcade.

Page Avenue tower: The tower is proposed at 339' 9" from the street to the top of the architectural element (approximately 25 levels) and includes approximately 200 hotel rooms. The number of levels could increase depending on the floor-to-floor ratios desired by the yet-to-be-determined hotelier. This structure does not step back from the street face until the 14th level. The floor-plates are approximately 7,400 sq. ft. on the lower floors with front and rear step-backs resulting in a reduced 4,200 sq. ft. footprint, further diminishing the mass of the structure. This tower is designed in the spirit of the original tower intended to be built on top of the Grove Arcade, which was proposed at a height around 300'. (Attachments to City Exhibit 3 – Page Avenue Elevation and Battery Park Avenue Elevation)

Parking: Parking for the project is proposed primarily underground, with 6 levels for 506 spaces (159 proposed as tandem spaces). There are 2 automobile access points proposed for entry/exit to the underground parking, one on Haywood Street and one on Page Avenue. This project will require cutting off a portion of Battery Park Alley due to the new structure covering the entire width of the block, which must be coordinated through Public Works to maintain the existing level of service for residents of 21 Battery Park and other existing businesses on the block. The project proposes assigning 250 parking spaces to the hotel and condominium, with 256 available at a fee for public use (a net gain of 226 parking spaces).

Other Public Improvements: Significant streetscape improvements are proposed as a part of this project, including bump-outs, space for outdoor dining, benches, bollards, special pavers and 10' wide sidewalks. All proposed street furniture is subject to final approval by Public Works. Landscaping for this project will include street trees along Page and Battery Park Avenues and Haywood Street. There will also be screening for the loading zone, accessed from the north via Battery Park Alley.

Impact to the Built Environment: As noted above, office uses are proposed for the Haywood Park Hotel structure (blt. 1923) and Starnes Building (1930). There are, however, several structures that will be demolished as a part of this proposal: the Kostas Building (northeast corner of Battery Park and Page Avenue), the parking garage and surface parking located near the center of the block, and a 4-story mixed-use building along Haywood Street.

Public Benefits Package: The applicant has submitted a Public Benefits Package listing job created by the project (approximately 200), increased tax base (estimated to generate over $1,000,000 in annual taxes), parking (net gain of 226 spaces available to the public), LEED certification, Preservation/Adaptive reuse of historic buildings and public contribution to housing assistance. Additionally the applicant has agreed to implement a list of construction mitigation improvements. Their benefits package consists of (1) job creation - they anticipate that 200 jobs will be created, broken down as follows – 180 hotel employees, 10 retail and office (supervisory and maintenance personnel), and 10 in condominium building (supervisory and maintenance personnel); (2) increased tax base - it is estimated that the project will generate over $1 Million in annual ad valorem taxes to the City and County governments; (c) parking - they will be asking 250 parking spaces to the hotel and condominium, and the remainder (256) parking spaces will be available at a fee to the public; (d) LEED certification – the project will be committing to obtain a base LEED certification; (e) preservation/adaptive re-use of historic buildings – the existing Haywood Park Hotel and Starnes building will be preserved and renovated; (f) public contribution – a minimum contribution of $3 Million, taken from the condominium sales, will be made directly to The Eblen-Kimmel Charitable Foundation, which will distribute the funds to meet the housing

needs of our most vulnerable citizens; and (g) construction mitigation measures – they will work with City staff per their Construction Mitigation Measures Agreement. This agreement includes efforts to keep sidewalks open, an "Open for Business" marking campaign, and hiring an ombudsman.

The affordable housing contribution promises 1.5% of the initial sales price of each condominium or a total of $3 million (whichever is greater) to be allocated to the Haywood Park Housing Assistance Program (HAP), which will be administered by the Eblen-Kimmel Charitable Group and will provide housing, utility and emergency assistance to local families in need. This contribution seeks to satisfy Council's goal to provide sufficient, safe and affordable housing opportunities. While the HAP will provide assistance to local residents with housing issues, there is no new construction of affordable units within the project or elsewhere included as a part of this proposed benefit.

Required Reviews

Downtown Commission Review: This project was reviewed by the Downtown Commission (DTC) over the course of five months. The Commission voted on July 1, 2008, to recommend approval of the project's design (6-2) after the developer incorporated DTC requested modifications, incorporating suggestions on improving the design of the Haywood Street tower and cap. No variances from the UDO CBD requirements were required. The Commissioners expressed positive comments regarding:

- the activation of the street level,
- the compatibility of the platform with existing adjacent structures,
- the stepping-back of the towers from the street level, and
- the small footprint of the towers that creates a slender structure to minimize viewshed impact.

Some Commissioners expressed concerns regarding:

- the scale of the development,
- the height of the towers, and
- the necessity for the craftsmanship and materials to be of utmost quality.

The largest concerns of the Commission focused on the impact of the construction and resulting project on the existing and displaced businesses in the immediate area.

At their meeting on September 12, 2008, the Downtown Commission voted to recommend Council consider the following construction mitigation measures:

- Allow affected businesses to purchase free parking garage vouchers at a reduced price from the City to offer to their customers, and
- Require the developer to run a monthly newspaper ad supplementing the "Open for Business" marketing campaign, listing affected business as open.

At the Downtown Commission hearings, members of the community expressed concerns regarding:

- the impact of the development with regard to shadows and air flow;
- how this project would mesh with the recommendations of the upcoming Downtown Master Plan;
- the scale of the project and impact on existing businesses, especially the Grove Arcade;
- the potential physical impact of construction on adjacent commercial and residential structures; and
- the design of the contemporary Haywood Street tower.

Technical Review Committee (TRC) Review: The project was approved with conditions by the TRC on July 21, 2008. Several members of the community voiced comments, including:

- ensuring adequate access for residents of 21 Battery Park to their building in the event of the proposed alley closure;
- safety concerns associated with high-rise buildings; and
- concerns regarding safeguarding the City from fiscal harm in the event that the developer is unable to complete the project as proposed.

Planning & Zoning (P&Z) Review: The project was unanimously approved by the Planning & Zoning Commission (5-0) on August 6, 2008, (one commissioner absent, and one position vacant). The applicant provided an outline of their public benefits package, with includes LEED-certification and a minimum $3 Million donation to the Eblen-Kimmel Charitable Foundation for assisting housing needs of the less-affluent residents of Asheville. They also stated that they will not demolish any existing structures until they have a hotel operator secured and at least 60% of the residential units pre-sold.

The P&Z members proposed modifications to several conditions included in the staff report including:

- requiring that the applicant finalize the LEED-certification proposal and commitment to affordable housing prior to moving forward to City Council,
- requiring that the funds dedicated to affordable housing be earmarked for distribution within the City limits.
- requiring that staff and the applicant come to an agreement on traffic mitigation measures and construction mitigation measures prior to moving forward to City Council.

These items have all been discussed and agreed to by the applicant. Details can be found in the *Public Benefits Package* section of this report.

Approximately 11 members of the public provided comment on this proposal, including:

- concern about the economic impact on adjacent businesses during the construction process;
- the impact from increased traffic congestion, especially around the parking deck access points;
- the economic viability or need for a project of such a significant scale;
- concern that this development will house "chain stores" and impact street-level character;
- support for the narrow tower design and the pedestrian gateway created from Page to Haywood; and
- support for the additional retail and office spaces in the downtown.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate**

vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
There are no significant natural or topographic features on the site that will pose a major issue with this development. The project has been designed to accommodate the existing (12') grade change from Page Avenue to Haywood Street with a ramped walkway through the arcade at a 4% slope.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
When the project is complete, the project should not injure the value of adjoining or abutting property. The uses proposed are should complement existing businesses and augment the needs of both residents and visitors. However, without conditions to limit disruption during construction, there are likely to be adverse economic impact to smaller businesses.

There has been some concern expressed by the Downtown Commission and members of the public that the construction period may have negative impacts on businesses in the vicinity. Concerns have also been raised regarding what fiscal security or protection the City has in the event that the developer is unable to complete the project as proposed.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
Uses: The mix of uses proposed is allowed and appropriate for the CBD.

Height: The proposed towers at 258 feet and 340 feet will be the tallest in the city and can be considered to be out of scale with the existing structures immediately adjacent to the project site. However, as stated in the Downtown Design Review Guidelines, tall structures identify the CBD as an urban core and these buildings have been designed to respect views to and from neighboring properties (such as 21 Battery Park, the Basilica, the Grove Arcade). Also, there is a precedent of height in this end of the CBD, including the +/- 160' Battery Park Apartments and the +/- 145' Vanderbilt Apartments, although the proposed towers are considerably taller than these buildings. The tower originally planned for the Grove Arcade was planned to be nearly as tall as these two structures.

Design: The small floor-plates with stepped-back towers follow basic urban design principles by creating slender structures with significantly less visual mass than if they were shorter but had no step-backs, and thereby appearing more bulky when viewed from the street. When towers are stepped-back from a platform building, they create more compatible rooflines from the pedestrian level, especially when the platform is proposed at roughly the same height as adjacent structures. Also, the designs of the towers are significantly different from one another, which is supported by the Landmark Guidelines in the Downtown Design Review, which state that "new, unique designs may be appropriate to deviate from the norm and add special accent to the urban fabric".

Character: Typical building heights in this established core of downtown are around 3-4 stories, with some exceptions (see heights of Vanderbilt and Battery Park Apartments as mentioned above). The proposed 23 and 25-story structures will bring a substantial change to the character of the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Smart Growth principles adopted in the 2025 Plan encourage these types of higher-density, mixed-use developments). Retail, residential, office and hotel uses align with economic development priorities, supporting the needs of local residents as well as the

tourism industry, helping the downtown become and remain a "destination"). This project agrees with objectives of the Plan by providing a not only a variety of uses suitable to a CBD, but also a range of housing options and sizes appealing to different income level), located in close proximity to public transit and in a walkable urban location.

Although the tower structures would become the tallest in the City, the project has been designed in a way that maintains a human-scale from the street/pedestrian level and seeks to encourage compatibility with the existing urban context. Also notable is the adaptive reuse of existing buildings (the Haywood Park Hotel and Starnes Building) into the overall project, which aids in maintaining the existing streetscape and character. The proposal includes a dedication to basic LEED, which corresponds to the City's dedication to environmentally-responsible development.

Goals in the Center City Plan are addressed through aspects of this proposal as well – the project has a mix of uses which can work towards ensuring a balanced and lively downtown;; provides a variety of residential spaces; the design complements and stimulates pedestrian activity; existing structures are preserved and incorporated into the project; and includes needed parking spaces – 226 net gain of parking spaces available to the public.

Three catalytic projects are located in the immediate vicinity: the Grove Arcade, Civic Center and Battery Hill City-Owned Property. Catalytic sites are identified as such for their potential to stimulate additional investment. It may have originally been thought that the "additional development spurred" would be on vacant or underutilized property, and not on parcels already occupied by uses and structures. However, the investment expected due to proximity to those sites has begun to be realized by this proposal.

One area of possible (temporary) discord with the Center City Plan is the goal "actively work to retain existing downtown businesses and foster their continued success and growth." There is the possibility of unavoidable consequence or negative impact on surrounding businesses during the extended construction period for this project as well as the displacement of active businesses in the buildings proposed for demolition. Appropriate mitigation measures are vital to avoid this impact.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Traffic Engineer: The proposed project is anticipated to generate 289 vehicles per hour (168 vph ingress and 121 vph egress) during the morning peak hour and 604 vehicles per hour (274 vph ingress and 330 vph egress) during the afternoon peak hour at full build-out conditions (three years). In addition, the proposed project could generate 6,100 vehicles per day during a typical weekday. Existing weekday traffic volumes along Haywood Street are about 4,300 vehicles per day. It is anticipated that about 48 percent of proposed traffic will use the Haywood Street access point.

Based on these anticipated peak hour traffic volumes, a traffic impact study was required. The scope of work included 16 intersections (eight signalized intersections and eight unsignalized intersections) in the immediate area of the project site and the annual traffic growth rate was 3 ½%.

Based on the anticipated traffic that the proposed project could generate, it is reasonable to conclude that the project would impact the surrounding street network and as a result, certain mitigation improvements should be required It should be noted that common mitigation improvements such as providing left and/or right-turn lanes are difficult to construct in a downtown setting due to physical constraints. Therefore, mitigation improvements that would improve the existing street infrastructure such as upgrading existing signalized intersections are typically required for projects in a downtown setting. Mitigation improvements that have been identified and agreed to by the developer (letter dated August 28, 2008) include the following items:

1. *The existing traffic signal at the intersection of the I-240 WB On/Off Ramps and Montford Avenue will be upgraded to provide 2070 technology. The total estimated cost including appropriate design and approval is about $30,000.*
2. *The existing traffic signal at the intersection of Haywood Street and Montford Avenue will be upgraded to provide 2070 technology. The total estimated cost including appropriate design and approval, new signal heads, cabinet and controller, pedestrian signals, and metal poles and mast arms is about $100,000.*
3. *The existing traffic signal at the intersection of the I-240 EB On/Off Ramps/O.Henry Avenue and Haywood Street should be revised to remove the split side street phasing subject to review and approval by the North Carolina Department of Transportation. Remove existing vegetation along the southbound approach to improve overall sight distance at the intersection subject to approval by the N.C. Dept. of Transportation. The total estimated cost including appropriate design and approval is about $20,000.*

The total estimated cost for the proposed mitigation improvements is about $150,000.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable, if certain conditions, as included in this report, can be met.

Pros:

- Incorporation of existing structures (adaptive reuse)
- Project provides a mix of housing options, including smaller-sized units available at a "workforce" rate
- Includes 506 added parking spaces in the heart of downtown – 256 available to the public – a net gain of 226 parking spaces
- Provides a variety retail sizes to encourage a mix of businesses
- Applicant has indicated an intent to support affordable housing goals through the $3 Million minimum contribution to the Eblen-Kimmel Charitable Foundations
- Buildings are proposed to be LEED-certified at the basic level
- Applicant has agreed to implement construction mitigation measures to lessen the negative impacts of the construction process on adjacent businesses and residents
- Building design follows sound urban design principles (slender towers reduce massing and are stepped-back from the street, platform level is at a compatible height with adjacent structures, street-level activation for pedestrians)
- Design provides variety and diversity to skyline and downtown architecture

Cons:

- Proposal includes the demolition of currently occupied, economically viable buildings/businesses
- Potential negative impact of large scale development on adjacent businesses and residents during the extended construction process
- While there is a financial contribution to support affordable housing goals included with this proposal, no new affordable units are to be created with this money

- Downtown Master Plan not yet completed, but is expected to indicate "appropriate" areas for height and may also include market analysis on the economic potential of downtown (currently no means to determine the cumulative impact of this large development proposal)
- While the Haywood Street tower does step-back from the street after the 5th level, the Page Avenue tower does not step-back until the 14th level, thereby appearing more visually massive from a pedestrian perspective.

Based on the findings and analysis above, staff feels there is reasonable cause to support this project inclusive of the conditions by the TRC, Downtown Commission and Planning & Zoning Commission. However, members of City Council may want to consider community and stakeholder concerns and comments to help mitigate the potential impact of this proposal.

Should City Council choose to support this project, staff would recommend the consideration of a condition that would redirect a portion of the donation to the City's Housing Trust Fund, or other comparable fund dedicated to the creation of new affordable units.

Should City Council choose to include the Downtown Commission's two additional construction mitigation measures to the conditions for approval of this project, Parking and Engineering staff should be consulted as to the financial implications of offering reduced-rate parking vouchers.

Mr. Tony Fraga, developer of the Haywood Park Complex, spoke in support of the project and explained the existing conditions and the proposed conditions. Existing: hotel, 4 levels, 33 keys; office - approximately 29,000 sq. ft.; retail - approximately 40,000 sq. ft.; residential - none; and parking - approximately 119. Proposed: 25 levels, approximately 189 keys; office - 42,000 sq. ft.; retail - approximately 80,000 sq. ft.; residential - 23 levels (97 units); and parking - approximately 500 spaces. While describing the project he showed images of the towers and various views of the proposed buildings. He said they have tried to design the project in the harmony and in respect to the existing streetscape, along with trying to respect the views of their neighbors. He briefly reviewed the public benefits package outlined above by Ms. Bernstein. The goal of the Haywood Park office complex is to have sustainable companies and sustainable retailers. He said they have redesigned their project to address the view concerns raised by area residents.

Mr. Pat Whalen, representing the Downtown Commission, said they reviewed the project in five separate meetings. Some of the following comments were received: the Downtown Commission should table the project until the Downtown Master Plan is adopted; massive size of the project; negative impact on local businesses during construction process; potential physical impact to the 60 Haywood condominium project; compliment on design and thoughtfulness of slender towers; added vitality to the downtown after the project is completed; negative comments on design of the contemporary Haywood Street tower; issues about the driveway cut on Haywood Street; compliments of arcade connecting Page and Haywood Street; concerns of public benefit package; questions of green or LEED certification; and questions about the length of the project. Because the project activates Page Avenue, creates a connection between Page Avenue and Haywood Street, puts eyes on the street from the residential balconies, has slender buildings; has step-backs on the property; includes addition of parking spaces with only two access points; and no UDO variances, the Downtown Commission approved the project on a 6-2 vote. He said that on September 12, 2008, the Downtown Commission voted to recommend Council consider the following construction mitigation measures: (1) The City allow affected businesses to purchase free parking garage vouchers at a reduced price to offer to their customers, and (2) Require the developer to run a monthly newspaper ad supplementing the "Open for Business" marketing campaign, listing affected business as open.

The following individuals spoke in support of the conditional use permit for several reasons, some being, but are not limited to: letter of understanding signed regarding satisfaction

of outstanding issues and impacts raised by the 60 Haywood Condominium Association; well thought out project; solution to parking problems downtown; positive impact to the downtown businesses once the project is complete; background history of the Eblen-Kimmel Charitable Foundation and how they work with families; increased tax base; project will house national and global tenants who exercise corporate responsibility and practice sustainability at the highest level; entire project will be LEED certified; project will bring more people downtown to shop; had E.W. Grove lived past 1927, the tower probably would have already been constructed and been an historic gem; if project is approved, request it be conditioned upon 21 Batter Park Condominium Association receiving a letter of understanding similar to the 60 Haywood Condominium Association; project will be a strong economic pillar in the downtown area; the project will bring in more eyes on the street to deter crime and drugs trafficking; project will bring in more people to the downtown area to purchase items from the unique shops; thin towers will not block mountain views; one of the towers matches the Grove Arcade; support the use of parking vouchers; since growth is inevitable, this is a good project which will bring more jobs and parking downtown; growth occurs in cities all the time and people do not give up because of construction; long term positive impact on downtown Asheville; the restaurant experience on Page Avenue must be preserved during the construction process through monitoring the construction staging and traffic flow to minimize the impact; and parking issues must be addressed with a suggestion of off-site parking for construction workers, hotel staff, retail staff and condominium visitors:

Mr. Patric Mullen, President of the 60 Haywood Condominium Association
(Neighborhood Exhibit 1)
Mr. Joe Kimmel, businessman in downtown Asheville
Mr. Bill Murdock, Executive Director of Eblen-Kimmel Charitable Foundation
Mr. Joe Eblen, with the Eblen-Kimmel Charitable Foundation
Mr. Greg Tolen, Executive Director of the National Center for Sustainability
Mr. Mark Ellis Bennett, restoration and craftsman for historic buildings
Mr. Bill Winkler, representing 21 Battery Park Condominium Association
Owner of a Days Inn
Mr. and Mrs. Tom Gallagher, owners of 26 Battery Park
Mr. Bill Foley, owner of the Chocolate Fetish
Mr. Bill Lehnert, representing the Grove Arcade merchants
Mr. Bill Waddell, community relations with Eblen-Kimmel Charitable Foundation

The following individuals spoke in opposition of the conditional use permit for several reasons, some being, but are not limited to: height of the buildings are too high; scale of the buildings are too large; the underground parking will eliminate two parking spaces on Haywood Street mid-block; Haywood Street is one of the smallest thoroughfares downtown; request the City postpone action until the Downtown Master Plan is adopted; project should be scaled down to medium-rise buildings that fit into the landscape; project promotes gentrification of downtown Asheville for a small group of rich people; the St. Lawrence Basilica will cease being a focal point and turn into a smudge in the shadow of the huge towers; the towers will monopolize the views; funds will go to a foundation but will not promote affordable housing in that area; the construction process will cease operation on the west side of Haywood Street; concern of Montford Street bridge durability from dump trucks; concern of no traffic downtown during the construction process; negative impact to the Civic Center events during construction; since Mr. Fraga told the press that he wouldn't be able to begin construction until 2010, the process should be continued until that date and then let it conform with the Downtown Master Plan; disregard to the historic surroundings; people come to downtown Asheville for the uniqueness of the area; tall buildings will destroy downtown and diminish the visual beauty; there will be large shadows looming over the downtown area; increase in traffic resulting in more pollution; more people trolling for parking spaces; narrow streets not capable of handling increase in traffic; project is not economically feasible at this time; and there is no demand for high end residential units, offices, retail or condominiums:

Ms. Paula Dawkins, business owner on Haywood Street
Mr. John Lantzius, property owner on Lexington
Mr. David Wheeler
Mr. Bud Crawford, co-owner of the Earth Guild
Mr. Steve Rasmussen
Mr. Mac Coxe, native of Asheville
Owner of two businesses in the affected area
Ms. Amina Spengler, Asheville resident
Mr. Alan Berger, representing the Buncombe Green Party and Park

At 7:50 p.m., Mayor Bellamy closed the public hearing. She then announced a short 10-minute recess.

Vice-Mayor Davis expressed concern regarding pedestrian and vehicular conflicts with the driveway cuts on Haywood Street.

In response to Councilwoman Cape, Ms. Bernstein explained where the loading docks will be located and what size trucks will be able to access that area.

As Council is to take serious consideration of the seven standards for approval of a conditional use permit, Councilman Mumpower explained how the project dramatically fails to meet Condition No. 4. Regarding the $3 Million contribution to the Eblen-Kimmel Charitable Foundation, he felt the developer should be allowed to give their money to whoever they wish and we should be grateful for that contribution. He was concerned that we have created a complex document (UDO) so that no one can figure it out and no one can have any predictable confidence in success when they go through this horrific process.

Councilwoman Cape felt this project may work in a different area of town. She felt this project may be very disruptive and counter productive to the long term health of this growing and thriving downtown. She believes this materially endangers public health with the addition of 6,100 cars on our streets that are already difficult to navigate on. She also feels the project is out of scale for this area.

Councilman Russell felt everyone has talked about growing up and not out and to have a dense downtown. He felt the seven conditions for approval of conditional use permits is an evasion on people's property rights. He felt that scale includes the entire downtown area and because there is some history of this type of project in that area, he felt the project is appropriate. He noted there are a lot of positive benefits for the community.

Councilman Newman felt that a lot of these issues were debated when the Ellington project was considered. He liked the commitment to green building, parts of the project that are outstanding from a design standpoint, and for projects that are not going to include affordable housing unit, he felt this is a sound way to materially and significantly contribute towards addressing an important need for affordable housing in downtown. The way he interprets the UDO is when projects are of this scale they come to City Council - a process of whether the benefits of the project outweigh some of the inherent pain that goes along with this kind of growth in the community. Developers have ideas for ways they can help the project contribute to those community goods. Comparing this project with the Ellington building, the Ellington building is on the down slope and in a location where based of the building would not seem out of character for the community if you simply looked at the height of it compared to other buildings. In this case, we have two buildings next to each other that are even taller and they are on one of the highest points in the downtown. We do have tall buildings downtown, but we have a pattern of lower-rise buildings (2-4 stories) interspersed with tall buildings downtown. He felt if the project was one building, rather than two buildings of this scale immediately adjacent to each other, he felt the community would see the project differently. With the greatest respect for the Eblen-Kimmel Charitable Foundation, he felt that if we are going to have resources contributed to a public

benefits fund from a project like this, then he felt we needed additional discussion about how we want to structure that. We have created an Affordable Housing Citizens Task Force which came up with an Affordable Housing Plan for the City. He felt that before we make a specific decision about how to program those funds, he felt we should get input from that group on that question. He wouldn't suggest automatically putting it in the Housing Trust Fund, but it is an important question that should be thought through carefully as part of the overall decision.

Vice-Mayor Davis felt it was obvious that the project does not comply with Condition No. 4 regarding the project being in harmony with the scale, bulk ... character of the area. He did think this is a great project, but the two tall buildings in such close proximity are not in harmony with the scale in the area. He hoped that the developers might reconsider some of the project to see if they can get to a better place.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that if the project is denied by Council, the one year waiting period does not apply if the project has changed substantially.

Mr. W. Louis Bissette Jr., attorney representing the developer, said he has seen a lot of development in Asheville and has never seen one done in a more sensitive way than this project. Mr. Fraga has had 50 meetings on the project and 5 meetings with the Downtown Commission. The project has been approved by the Downtown Commission, TRC and the Planning & Zoning Commission. Now one year into the process, and no telling how much money has been spent, they are told the project is not in harmony with the area.

Regarding the process (seven standards which must be met to approve a conditional use permit), Mayor Bellamy said that there have been times (on the south slope) where she personally voted in favor of a project when she could not find project being in harmony with the scale, bulk ... character of the area.

Councilman Mumpower outlined the dramatic differences between this project and the Ellington project.

Mr. Bissette asked for a continuance of this matter. He was uncertain what the developer could do to change the project to gain support by Council, but they will look to do that.

Vice-Mayor Davis noted that this is a quasi-judicial process and as such Council doesn't have the opportunity to discuss the project outside of the Council Chamber. In addition, information was provided to Council on Friday, which leaves a short amount of time for Council to digest all the applicable information.

Councilman Newman hoped the developer could find some ways the project can be adjusted, noting that even though the projects received approval by the Downtown Commission, TRC and Planning & Zoning Commission, many comments heard today were expressed during those reviews as well.

Councilwoman Cape noted some of her following concerns: (1) two buildings that tall so close together; (2) need better pictures for scale; (3) that many cars on Haywood Street with difficult turning radii; (4) concern of entryway for trucks; and (5) what is the realism of 80,000 sq. ft. or retail being served with the truck size mentioned.

Councilman Newman moved to continue this matter until November 11, 2008. This motion was seconded by Vice-Mayor Davis and carried unanimously.

Closed Session

At 9:22 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which

the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; City of Asheville; and County of Buncombe - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent the disclosure of information that is confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e) - The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 9:40 p.m., Vice-Mayor Davis moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. GRAFFITI PROGRAM UPDATE AND POLICY DIRECTION

Public Works Director Mark Combs said that City Council requested an update on graffiti program efforts.

In March 2007 the Asheville Police Department (APD) formed a Graffiti Task Force in response to more than 200 incidents throughout the City. Their efforts included over 50 surveillance operations including 10 search warrants, which to date resulted in 20 charges for damage to property. In May 2007 the Public Works Department formed a graffiti removal team, procured specialized removal equipment & chemicals, and formed a partnership with Quality Forward (to promote removal of graffiti on private property to include supplies). Staff continues to aggressively pursue vandals and clean up public property.

Based on interviews with key staff from cities with graffiti programs, the following common elements were noted:

- Graffiti adds to 'visual' feeling that the community is not safe
- Graffiti should be removed as soon as possible
- Public/private partnerships (for removal) are effective
- Good programs consist of two key elements:
    - Enforcement: Zero tolerance, arrests, severe penalties, education
    - Logistics: Consistent & diligent removal, public/private partnerships
- Some communities (Los Angeles) provide locations for 'painters'
- It requires the entire community, businesses, neighborhood associations, police and prosecutors, etc. to work together to put out the message: "Graffiti is not acceptable in this community!"
- Removal compliance (once established by ordinance or policy) must be strictly enforced
- 5-10% of graffiti in Asheville is gang-related

In response to outcomes from the Social Issues Task Force regarding removal of graffiti on private property, in July 2007 staff completed research and benchmarking and drafted a pilot graffiti program in the Central Business District (CBD) for the removal of graffiti on both public and private property. With increased emphasis by APD, input from community stakeholders and field experience, the draft pilot program was further refined and submitted as an enhancement project for funding in the Fiscal Year 2008-09 budget; however, due to budgetary constraints the program was not funded.

The draft graffiti removal program addresses reporting, removal process, department responsibilities and future considerations (regarding program expansion/refinement). Following is a chart comparing Asheville's existing efforts to the proposed formal program (including private property):

	Existing program	Proposed program
Reporting:	Call APD; Customer Svc.	Graffiti 'hotline'; Cust. Svc.
Removal: Public ROW: Public Buildings: Private property:	 48 hours (DPW staff) 48 hours (multi-city staff) **NONE**	 48 hours (DPW staff) 48 hours (multi-city staff) 48 hours (**owner-voluntary?**) **or** 48 hours (**PW staff w/release?**) **or** 48 hours (**by ordinance?**)
Priorities:	APD-ID'd graffiti Key corridors-high visibility	APD ID'd graffiti Key corridors- high visibility **Private property**
Cost:	In current budget	$279,500 ($190,590/yr.)

A formal graffiti program would be consistent with the following Strategic Plan initiatives: SAFE: Strengthen enforcement of existing laws and regulations; and, GREEN: Increase downtown cleanliness and beautification.

Pros:

- A formal graffiti program will provide the means and resources to remove graffiti from both public and private property
- Aggressive removal of graffiti will eliminate 'visual' feeling of unsafe community
- Combination Graffiti/weed/median crew will improve visual aesthetics of community in 3 key areas: graffiti, sidewalks & gutters and islands & bulb-outs

Cons:

- Mandatory removal of graffiti on private property may be a financial burden to property owners
- Court system does not currently mete out severe punishment for such crimes
- Total eradication of graffiti will take a long time with effort from entire community

Initial investment of equipment & staff: $279,590; annual costs: $190,590

Using a PowerPoint presentation, Mr. Combs said the on March 2007, the Asheville Police Department (APD) formed a Graffiti Task Force (a) 200 incidents recorded; (b) 10 search warrants; (c) 50+ surveillance ops (500 man hours); (d) 20 people charged; and (e) aggressive public relations campaign.

In May of 2007, the Public Works Department formed a removal crew to remove graffiti on public property (a) mission was to remove it as quickly as possible; (b) pressure washer, chemicals and training; and (c) partnership with Quality Forward on supplies.

On public property the graffiti was removed as soon as possible; coordinated efforts with the APD, N.C. Dept. of Transportation, Quality Forward, neighborhoods and associations; and sporadic (a) 'tagged' areas vary; and (b) volume varies.

The key challenge is removal from private property (a) property owners are victims of graffiti crime; (b) many property owners do not live in community; (c) requires constant vigilance (time and money); (d) requires cooperation/effort from entire community; (e) no current ordinance requiring removal; and (f) three key options (1) continue to encourage voluntary removal; (2) City

removes it which will require an ordinance; liability release from damages, if any; and staff and equipment; and (3) ordinance requiring removal within 24 hours (enforcement required).

The following is a summary of policy options (1) maintain current program (APD focus/removal on rights-of-way/partnerships); (2) require removal on private property (a) property owner responsible for removal – ordinance, enforcement system required; and (b) City staff removes (with liability release) – staff/equipment/administrative resources and ordinance authorizing such work required; and (3) other.

Councilman Mumpower felt graffiti is a form of urban terrorism. He could not support penalizing business owners who are really victims of the crime. Since the City cannot keep up with removing graffiti off public property it is not fair to lay harsh demands on private property owners. He wondered if there are any additional civil penalties for people who abuse the City. He also advocated for some establishment of a reward program. He would be happy to contribute to the initial effort to get it started.

In response to Mayor Bellamy, Councilman Mumpower said this program would be different from the Asheville-Buncombe Crime Stoppers program. This would be a more specific targeted element. He suggested we partner with some other organizations, like the Tourism Development Authority (TDA) and others, who are affected by this crime. Mayor Bellamy noted that a letter was sent to the TDA requesting a meeting with them and this is a possible item that may be included in that meeting discussion.

Vice-Mayor Davis noted that Mr. Kelly Miller, Executive Director of the TDA, came to the Downtown Commission meeting and outlined a list of what the TDA saw as the community needs and graffiti was very high on the list. He asked Mr. Keller forward the list to all of Council.

Mayor Bellamy felt that since the City is responding quickly to removal, we should request the N.C. Dept. of Transportation remove graffiti on their properties in a timelier manner. She noted our corridors are being impacted tremendously.

In response to Councilman Newman, Mr. Combs said that the City is investing approximately $5,000 in graffiti removal now.

Councilman Russell responded to Councilwoman Cape's inquiry about whether property owners can purchase insurance for this kind of damage. He noted that insurance is optional and business deductibles are fairly high.

Councilwoman Jones suggested a prominently placed phone number on the City's website for citizens to call in and report graffiti. She felt that everyone needs to become more actively involved in reporting graffiti.

Police Chief William Hogan responded to Councilwoman Cape's inquiry on whether graffiti adds to the dangers of crime in the community. He felt that if graffiti is not removed immediately it leaves the impression the City doesn't care. Private property owners need to be encouraged to remove graffiti from their property quickly. The City and private property owners need to be hard core about taking it down quicker than they are about putting it back up.

In response to Councilwoman Jones, Police Chief Hogan felt there is a profile for "taggers" and a pattern that is sometimes associated with other activities and specific age groups. He felt there is some informal network of taggers that is inter-connected with each other.

Councilman Newman suggested that if there is an ordinance requiring property owners to remove graffiti on their property that there be an opt-out clause for property owners to call to say they do not want the City or Quality Forward not to come onto their property for graffiti removal.

In response to Councilwoman Cape regarding a property owner signing a release, City Attorney Oast said that if we are operating pursuant to an ordinance that the City may enjoy some kind of immunity.

Mayor Bellamy summed up the discussion by saying that Council would like more options before it gives policy direction. She suggested staff research best practices for other cities on how they handle removal of graffiti. Once staff has compiled that information it will be scheduled on Council's agenda for further consideration.

B. E-VERIFY SYSTEM

Human Resources Director Lisa Roth said that the purpose of this memorandum is to respond to a request made by Councilman Mumpower on July 15, 2008, for the following information:

- An evaluation of how the e-verify tool could be utilized for verification of citizenship. This would apply to verification of citizenship for (a) city employment and (b) contractor / subcontractor employment
- A review of the acceptability of how E-verify is displayed as a link on our city web pages.

E-Verify, formerly known as Basic Pilot, was developed in 1996 and is operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). The purpose of the internet-based system is to verify employment eligibility in the United States by cross-checking identification information presented for employment with information in the Social Security Administration's (SSA) database. The system is not equipped to verify the authenticity of the identity, immigration status or citizenship.

Once employment information has been entered, the system provides either a confirmation or a tentative non-confirmation of a match in the SSA database. If a tentative non-confirmation is received, the employee must be contacted to notify him or her of the right to contest the tentative non-confirmation. The employee must be allowed to continue to work during this period. If a final non-confirmation is received, which can take up to several weeks or months, and then the employer can terminate the employee.

It is important to note that it is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. U.S. citizenship is not a requirement of work eligibility.

The city's current employment processes include steps to ensure compliance with Federal requirements regarding work eligibility and Social Security number verification. In addition, the city's contracting process includes a clause that requires all contractors to comply with local and Federal laws, including the same work eligibility requirements with which the City of Asheville must also comply.

Employment Eligibility Verification

All U.S. employers are responsible for completion and retention of a Form I-9 for each individual they hire for employment. This includes citizens and noncitizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. The City of Asheville complies with this requirement.

Identification Verification

When a new employee is hired by the City of Asheville, his or her Social Security number is verified when he or she is entered in the payroll system and a contribution is sent to the SSA and Medicare. If the Social Security number is not valid, the city receives a "no-match" letter. On

average, the city receives two "no-match" letters per year, usually due to clerical errors in the employee's paperwork. Asheville has resolved all "no match" issues to the SSA's satisfaction, and the organization has not terminated anyone in recent years due to a fake social security number.

The processes described above are required by Federal law. Based on these requirements and the city's current employment practices, the use of E-Verify would create a redundant system for verifying identification information. Implementing the system would require additional staff work and resources to manage. In addition, the use of E-Verify in conjunction with city contracts would also require additional resources to track and monitor compliance by third-party vendors.

Concerns about the U.S. Citizen and Immigration Services' ability to provide adequate staffing resources to properly manage E-Verify's appeal and reverification process have been raised by the U.S. Government Accountability Office in testimony to Congress. Additional concerns about the system's error rate (4.1 percent error rate on routine verifications and as high as 10 percent for legal foreign-born workers) have also been noted.

Based on previous Council direction, staff has included a link to the e-Verify system at www.ashevillenc.gov. The link can be found under the section entitled "Doing Business with the City" and is called "Voluntary Participation in e-Verify." Staff believes the link's placement and title are reflective of Council's current policy direction and are ready to modify the placement based on additional Council feedback.

If the majority of the City Council is interested in further pursuing the use of E-Verify, staff would recommend additional in-depth analysis be conducted to thoroughly examine the concerns noted above, other legal considerations, required resources and potential benefits of utilizing the system.

Chief Financial Officer Ben Durant provided Council with comparative information about enforcement practices from other cities. Ms. Roth reviewed with Council a survey of other cities about their use of E-verify.

Councilman Mumpower explained that E-verify is a federal system to validate the legal work status of a potential employee. He feels the City is part of a conspiracy to ignore illegal immigration (not of the City's own employees) but our subcontractors, especially with the contract work on the City's water system upgrades. He felt the City should be encouraging our subcontractors to use E-verify and the City should be a model for others.

In response to Councilman Mumpower, Mayor Bellamy said that there is a visible link on the City's website regarding the use of E-verify. She felt that to ask our contractors to take the extra step to validate work status shouldn't be too hard. In addition, she noted that the City will be looking at living wage information.

In response to Councilwoman Cape, Ms. Roth said that at this time this is a free government service from the U.S. Dept. of Justice. They are in the process of discussing charging for this service in the future.

There was a brief discussion, initiated by Councilwoman Cape, about the 4.1% error rate has been documented by the U.S. Government Accountability Office and the 10% for legal foreign-born workers. She asked for additional information about the error rate and if there is an appeal process in place. Councilwoman Cape agreed in that it's not easy to fix things in the federal system if something is wrong. She too would like some clear process in safeguarding civil liberties.

Councilman Mumpower moved that the City of Asheville immediately require our subcontractors to use the federal E-verify system in affirming the legal employment status of all employees connected with City contracts.

In response to Councilman Russell regarding staff recommending an additional in-depth analysis be conducted to thoroughly examine legal considerations, required resources and potential benefits of utilizing the system, City Attorney Oast said that the City currently has a requirement that contractors and sub-contractors comply with all applicable federal, state and local laws which he interprets to include immigration laws.

Councilman Mumpower withdrew his motion noting that the City does require our subcontractors pay a certain wage. He was pleased that the City can also require subcontractors affirm, in a legal manner, the legal status of their employees. He would like to refer this to the City Attorney for further research.

Mayor Bellamy corrected Councilman Mumpower's statement in that the City does not require subcontractors to pay a certain wage. However, there is research being conducted that will come back to Council in the very near future.

In response to Vice-Mayor Davis, Ms. Roth said that staff feels we are doing a thorough job in meeting the federal requirements. She noted that the other North Carolina cities she surveyed do not use this system. She felt this would require additional staff to monitor, however, she would be happy to proceed with Council's direction.

It was the consensus of the majority of Council to instruct the City Attorney's Office conduct an additional in-depth analysis regarding the legal considerations, required resources and potential benefits of utilizing the system for contractors and sub-contractors and report back to Council on November 11, 2008. In addition, his research will also consist of (1) whether the City can require as a condition of the contract or subcontract that they further produce verification of employment eligibility status; (2) what ability the City has as a political subdivision of the state to be monitoring compliance with federal law; (3) what are the unintended consequences for contractors and what that would mean in terms of bidding on our contracts; (4) what kind of administrative burden this will put on the City and our contractors to monitor this, as many of the contractors we have employ labor that is not well paid or have a different work force show up every day; and (5) will the City be taking on any legal liability by requesting this of our contractors and subcontractors.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-198 – RESOLUTION SUPPORTING A FULL AND PROPER CLEANUP OF THE FORMER CTS OF ASHEVILLE

Councilwoman Cape said that this is consideration of a resolution of support for the CTS/Asheville efforts to encourage Environmental Protection Agency (EPA) restoration of soil and water quality in the area impacted by the CTS facility. On August 20, 2008, Mr. Barry Durand appeared under Public Comment at the meeting of Council's Planning and Economic Development Committee. Mr. Durand informed the Committee of the petition effort in the neighborhood, and he requested action from the City of Asheville. She said that all of our federal representatives are looking into this issue and have a great deal of interest in helping this community move this clean-up forward. It would be useful for the City of Asheville to say we are interested in having this clean-up happen, especially in terms of groundwater and water supplies in this area. This kind of contaminant is extremely dangerous and will continue leeching into the groundwater. The sooner we can get this cleaned up the better. This is in the Dingle Creek Watershed which the City has spent so much money to figure out how to make a good watershed. She urged City Council to adopt the resolution in support of the EPA doing a full and

proper clean-up of this site, which is something they said they would do, but it has slowed down and it needs to be reactivated.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-198, as amended. This motion was seconded by Councilman Mumpower.

The following individuals spoke to Council about the history of this contamination site and the history of sickness and death from individuals who breath the vapors and drink the water from subdivisions and neighborhoods surrounding the plant, noting that the EPA has know about this issue since the mid 1980's. Since then contaminants have shown up in several springs and wells surrounding the property. It has been almost a year since residents living near the plant began asking federal, state and local county officials to clean up the site after tests indicated the contaminants might be spreading. They urged Council to request the EPA to perform a full and proper clean-up of the contributing source area of contamination and to endorse the efforts being made by the federal government to hold the EPA administrators accountable for enforcing, addressing and containing further groundwater contamination by effecting an expeditious clean-up at the plant site.

Mr. Tate MacQueen, Buncombe County resident in affected area
Mr. Aaron Penland, Buncombe County resident in affected area
Mr. Jerry Rice, Buncombe County resident (who suggested amendments to the resolution regarding public health, safety and welfare)
Mr. James Wilson, Buncombe County resident in the Oaks Subdivision
Buncombe County resident who lives 500 feet from contamination site
Mr. Eric Penland, family member of individuals who lived in affected area
Mr. Scott Hollowell, Buncombe County resident in affected area
Buncombe County resident in affected area (School Board will not move bus stop which is contaminated with the highest toxic fumes tested by the EPA)

Councilman Mumpower noted that this area is out of the City's jurisdiction. However, it is such an important matter that he suggested area residents update Council in the future under the information discussion and public comment section of their agenda.

At Councilman Mumpower's request, it was the consensus of City Council to instruct City Manager Jackson to prepare a short staff report regarding Mr. Rice's assertion that the Enka Plant, located in the City limits, is the most hazardous waste site.

Mayor Bellamy requested City Manager Jackson provide Council with information on the City's waterline extension plans for this area, because there may be opportunities to partner with Buncombe County to provide the area with clean drinking water.

Mayor Bellamy asked for a friendly amendment as outlined by Mr. Rice. Said amendment would be to (1) amend the first Whereas as follows: "The Asheville City Council ... supports the protection of ... groundwater resources ... in the interest of protecting the health, safety and general welfare of its citizens."; and (2) amend the Now, therefore paragraph as follows: "The City Council ... request of the EPA for a full and proper cleanup ... to protect the public health, safety, welfare and environment from a still pending threat from release." Councilwoman Jones and Councilman Mumpower accepted the friendly amendment.

At Mayor Bellamy's request, it was the consensus of Council to send a letter to the Buncombe County School Board requesting they move the bus stop which area resident alleges is contaminated with the highest toxic fumes tested by the EPA.

The amended motion made by Councilwoman Jones and seconded by Councilman Mumpower carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 321

B. RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Vice-Mayor Davis said that the term of Davidson Jones (east representative) expired on June 30, 2008.

At the September 16, 2008, worksession, it was the consensus of Council to interview Kyle Ann Ross, Brock Moore and Ronald Maynard. Mr. Maynard was not able to attend the interview due to fuel conservation measures. Therefore, it was the consensus of Council to postpone action on this appointment until Mr. Maynard could be brought in for an interview.

C. RESOLUTION NO. 08-199 - RESOLUTION APPOINTING A MEMBER TO THE TRANSIT COMMISSION

Vice-Mayor Davis said that Yuri Koslen has resigned from the Transit Commission, thus leaving an unexpired term until December 31, 2010.

At the September 16, 2008, worksession, it was the consensus of Council to interview Michael Orford, Bruce Emory and Larry D. Chapman. In addition, David Lack was a candidate; however, no interview is necessary. Mr. Orford could not be reached by telephone or letter arranging the interview.

After Council spoke highly of the candidates, Michael Orford received no votes, Bruce Emory received 1 vote, Larry Chapman received 3 votes, and David Lack received 1 vote. Therefore, Larry Chapman was appointed to serve the unexpired term of Mr. Koslen, term to expire December 31, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 322

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Davis reported to Council the Tree Commission's report on tent worms. Councilwoman Cape asked that Ms. Steiner, who brought this to Council's attention, be sent the report.

Vice-Mayor Davis presented Council with a draft timeline for replacement of vacant Council seats. He asked that Council review the draft and contact him with any additions or corrections.

Mayor Bellamy congratulated the Minority Enterprise Development (MED) Committee for their hard work on the 26th Annual Awards Luncheon. She also congratulated the several MED Week Award nominees from Asheville and Buncombe County.

Mr. Jerry Rice questioned the purpose of the bridge over to the Enka Plant.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:46 p.m.

Magdalen Bullock
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – October 7, 2008 - 5:00 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy announced the purpose of this special meeting is to (1) receive staff briefings on the City's financial market and fuel shortage impacts; and (2) consider policy directions.

Fuel Update

Assistant City Manager Jeff Richardson said that the City of Asheville continues internal conservation efforts in order to maximize fuel supplies necessary to provide basic city services to Asheville's citizenry and stakeholders.

Since the recent storm damage experienced at the gulf coast, oil refineries have struggled to provide adequate supplies of fuel to various areas of the southeast, including Western North Carolina. City staff continues to monitor fuel availability for city use, as well as external availability to the general public.

As of today, the public fuel supply is (1) 80% of gas stations have fuel; (2) production is increasing, deliveries escalating; and (3) supplies supplemented from other east coast courses.

As of today, regarding the City's fuel supply, Purchasing staff has been able to procure fuel as follows: (1) current diesel and unleaded gas supply is improving; (2) sources from as far away as Baltimore and Cleveland; and (3) local distributors also working hard to find fuel.

Regarding Asheville's fuel status, our two-week conservation efforts include (1) diesel fuel usage is down 20%; (2) unleaded fuel usage is down 19%. The operational effect is (1) reduction/postponement of selected operational services: street/sidewalk services, minor water system repairs, building inspections, code enforcement; and (2) Asheville Police Department bike/foot patrols, less idling and no air conditioning.

He explained the current status of modified Level II (1) public safety remains at 100%; (2) Water Department at 100%; (3) Building safety at 100%; (4) recreation centers, Nature Center, Golf Course re-opened on October 3; (5) yard waste, tree maintenance, construction projects reinstated; (6) code enforcement reinstated; and (7) administrative staffing levels at full status.

The City will continue to (1) procure fuel to maintain maximum operations; (2) promote telecommuting; (3) suspend street sweeping and storm drainage maintenance; (4) minimize trip and carpool; (5) use GNC, electric and hybrid vehicles if possible; (6) minimum vehicle idling; and (7) adjust service levels as necessary.

The next steps for fuel for City government include (1) explore mutual aid fuel agreements (a) stronger 'web of connectivity'; and (b) seek partnerships with federal, state and other local agencies; and (2) explore other logistical opportunities (a) example – increased fuel storage capacity.

In summary, (1) fuel supplies and deliveries continue to stabilize; (2) City staff can reliably get to work; (3) staff will continue to monitor and adjust as necessary; and (4) long term (a) partnership development; and (b) logistical planning.

Councilwoman Cape explained why this is a good time to have a conversation with the community on the City's emergency preparedness plan so if we are in a more complex situation, the community understands the City's contingency plans.

Mayor Bellamy said that she and Vice-Mayor Davis (who have been representing Asheville) have been meeting on a regular basis with the Buncombe County Commissioners and the Emergency Management team to talk about plans that will be brought before Council for consideration moving forward. She noted that some long-term planning items do have budgetary impacts. Some items include how we use our transit system, opportunities for park and ride, additional fuel storage especially as it relates to emergency management needs and the police department needs, and how can we work with the gas stations that were successful because they were receiving gas shipments from connections in Wilmington.

Vice-Mayor Davis said that Fire Chief Grayson will have a report on the emergency management team discussions which will be useful to include in the discussion regarding emergency management plans.

Mayor Bellamy wanted to be sure that Council was aware that September 30 was the last day that Environmental Protection Agency (EPA) had authorized for allowing delivery to North Carolina of fuel having an alternative formula. The State of Georgia has asked for the EPA to extend their standards until the end of this year. We also talked about the need to have the EPA standards reduced until the end of the year to ensure that our community has enough fuel and heating oil. Senator Burr has supported an EPA waiver for our area until the end of the year. Other conversations are moving forward to discuss natural gas, heating oil and the overall fuel needs for our community will include not only the City and Buncombe County, but other municipalities, PSNC Energy as well as Progress Energy.

In response to Councilwoman Jones about communication, Mayor Bellamy noted that it was not communicated that the refineries were going to shut down in advance. When the City received word that was happening, that item was immediately placed on Council's agenda and a press release was issued asking people to start conserving.

City Manager Jackson said the two hurricanes in Texas set off an unusual set of circumstances, culminated with the seasonal switchover of fuels. The lead at this point needs to be taken by the emergency preparedness people, and the Department of Energy at both state and interstate commerce levels. Some aspects anticipated include the interstate impact; the dependence upon centralized refineries; and the limited amount of storage and terminals along the pipeline. In fact, that there may be some alternative federal bills regulating and investing in decentralization of some of these facilities and enhancing some of the supplies and terminals along such pipelines and facilities. In respect to emergency preparedness, both on a local, regional, state and federal level, we need to have good plans for what we have in place now and understand the limits of the infrastructure and how that infrastructure will impact not only our fuel supplies, but deliver of food and the delivery of heating fuel. These are interstate commerce issues and can't be solved at a local level; however, we do need to have emergency preparedness plans in place. That task was delegated to our emergency preparedness people by the individuals at the meetings that the Mayor and Vice-Mayor attended.

Mayor Bellamy noted that the relationships are now in place to get information (e.g., delays, maintenance, etc.) from Colonial, which is the fuel distributor to Spartanburg. They are to contact the Mayor and/or City Manager's Office. That system was not in place prior to this incident. She said that the Federal Emergency Management Agency (FEMA) advises cities that they are on their own for 72 hours before federal assistance comes in. We must have a plan to

make sure that we take care of ourselves, e.g., water availability, working with the Red Cross, as well as advising the community where the emergency shelters are located in advance.

Mayor Bellamy met with a representative from WLOS-TV and they have put in place a good plan for the City to disseminate accurate information. She congratulated City staff for their regular updates on the City's website, which included valuable information and links to obtain more like information. Moving to the 4-day, 10-hour workweek was a great conservation measure. One thing we did not do, but will in the future, is daily updates with the news media to calm the community's fears – with WLOS-TV being the host. We did send out press releases, but that wasn't as successful as a daily update with the news media. Also, we need to be mindful of people who are visiting our community and how we made sure those people have factual information as well. We will provide information to our hotel/motel industry. UNC-Asheville and A-B Technical Community College were at the discussion table; however, we will be expanding those meetings to include Warren Wilson College and Montreat College.

Councilman Mumpower felt the most important key is providing timely, consistent, reliable information with maximum our use of the City's website, television stations and daily releases. He felt that all those tools should have a date and time noted so people are aware that they are receiving the most current information.

Mayor Bellamy said that we will be clear moving forward to provide all pertinent information, noting that we were providing facts on percentages of the amount of fuel going to the pipeline, but didn't explain that it takes 5-7 days to get from the refinery to the Spartanburg distribution center. We will work on being as clear as possible going forward.

Councilman Newman suggested a larger conversation between the City and gas station operators to encourage them to implement voluntary policies limiting the amount of gas for each vehicle. The limited supply was compounded by people who went our of their normal behavior to fill up extra gas tanks, top of their gas tanks, etc. That just makes the situation collectively worse.

Vice-Mayor Davis noted that if we asked for voluntary policies with our gas stations within the City limits, people would be driving to stations in the County. Oddly enough, different counties had different fuel problems. Mayor Bellamy noted that after speaking with most of the local gas station owners, people ignored the voluntary limits. The issue of enforcement arose and it was determined that enforcement would have to be through the Asheville Police Department and Buncombe County Sheriff's Department. They have asked that the Land-of-Sky Regional Council be a forum of that discussion to see how that can be addressed as a region rather than just in the City.

Mayor Bellamy noted that October if Fire Prevention Month and we must realize that if people don't have good fuel, they will use kerosene heaters and they may not have a good carbon monoxide detector or a good smoke detector. Regardless of what we do, some people will panic and they will use whatever means they have. She felt it would be better to give out a carbon monoxide detector rather than send out a fire truck.

City Manager Jackson spoke about the concerted City team effort through this process and recognized various individuals for their extraordinary efforts during this period of time.

Mr. John Mitchell said that Senator Burr asked him to read the following statement: "Senator Burr continues to be in daily communication with state and local officials as well as the Department of Energy concerning the situation in western North Carolina. He is continuing to press distributors and others to bring more product into the mountains, some from as far away as Alabama, Georgia and Virginia. Although the shipment of gas is returning to pre-hurricane levels, the Senator is continuing to ask citizens to conserve. Finally, the Senator believes that we should now begin to look at both the causes of this shortage and how we can prevent it from happening

in the future. We look forward to working with the City of Asheville on this important issue. Senator Burr's office will be available as we move forward."

Mayor Bellamy noted that she had talked to Senator Burr several times during this process and he has already written to the Governor asking him to request the EPA for a waiver for our area for the blend that we usually get until the end of this year to ensure that we have on-going fuel and heating oil.

In response to Councilwoman Cape, Vice-Mayor explained how the Western North Carolina Air Pollution Agency is diligent in watching the issue regarding the EPA standards and what they mean to Asheville regarding the ozone season from April to mid-September. She raised concerns about allowing fuels of a lower standard.

Mr. Richardson noted that no Council action is necessary. He said this report was for updating purposes only.

Financial Update

Chief Financial Officer Ben Durant said that the City of Asheville is beginning to see the impacts of current national economic trends.

The City of Asheville continues to monitor the national and international financial markets for potential impact on our budget, our investments and capital project planning.

He described the national trends of (1) instability in the financial markets; (2) borrowing slowdown; and (3) weakening economy.

The local economy statistics are (1) Asheville unemployment - Fiscal Year 2007 – 3.4%; Fiscal Year 2008 – 4.3%; (2) residential building permits - Fiscal Year 2007 – 764; Fiscal Year 2008 – 598; and (3) City business licenses – Fiscal Year 2007 – 7,150; Fiscal Year 2008 – 7,036.

He summarized the budget trends regarding revenues as follows (1) Fiscal Year 2008 property tax growth is 2.0% vs. 10-year average of 3.3%; (2) Fiscal Year 2008 sales tax growth (excludes change in City's share of local distribution) is 2.0% vs. 4-year average of 7.0; and (3) Fiscal Year 2009 Powell Bill revenue is down 9.0%.

He then summarized the budget trends regarding expenditures in significant price inflation in key areas as (1) employee health care is 28% increase in City contribution vs. Fiscal Year 2008; (2) fuel is 25% increase since last year this time; (3) asphalt is 89% increase since 2006; (4) concrete is 77% increase since 2006; (5) road salt is 121% increase over prior contract; and (6) utilities from December 1 Progress Energy increase is $143,000 annual cost.

Using a graph he showed the budget trends regarding capital markets for (1) fixed interest rates on highest quality bonds; (2) variable interest rates; and (3) capital markets.

Steps taken during the budget process include (1) eliminated 10 positions in the General Fund; (2) reduced Capital Improvement Plan contribution by $1.6 Million; (3) reduced training budgets to defer non-essential training; (4) eliminated the Manager's Contingency; (5) reduced items for professional services and small capital; and (6) delayed implementation of take-home vehicles.

Next steps under consideration include (1) further reduce capital and equipment; (2) continue re-engineering; (3) service level prioritization; and (4) operating reductions.

At the request of Mayor Bellamy for clarification, Mr. Durant said that local governments can't invest in the stock market. We typically invest in low risk instruments, such as treasury notes, CD's and money market accounts. He said our investment portfolio is fine.

In response to Councilwoman Jones, Mr. Durant said that staff will update Council in detail during their first quarterly report in November regarding the City's finances. At this point, he felt we will miss our mark on our sales tax estimates. Even though we did start the year with a conservative estimate of 2% on our sales tax growth, he didn't believe we will reach that and that we will probably come in under by about $600,000 by the end of the year. In addition, he guessed we will probably miss our mark on the property tax revenue estimate. Some other revenues will come in higher than budgeted and after it all settles down, he thinks we will have a net figure of less than what we budgeted, but again we will monitor that on a regular basis and report back to Council as needed.

In response to Councilwoman Jones, City Manager Jackson said that are not in a hiring freeze but are being selective in positions and cutting back on staffing through attrition. The more we can manage at this point the less we can avoid those kinds of actions. Likewise on the capital side, we are also in discussions about postponing projects and postponing equipment purchases until we have a better handle on the budget. He said we are off about $250,000 in revenue estimates, and the inflation numbers on key supplies we are buying show similar number on those expenses. He felt that number is manageable. We are really concerned, however, about an economic slowdown going into the Christmas season and the heavy retail purchases. We are monitoring that weekly and will report back in the first quarterly report.

In response to Councilman Mumpower's concern about the state reaching into cities pockets, City Manager Jackson said the state's direction for their departments to find cost-cutting measures inevitably will roll down to cities. The City's two greatest concerns are (1) sales tax; and (2) what will be passed down to us from the state.

Mayor Bellamy said that City Managers Association and the U.S. Conference of Mayors are putting together information for the N.C. League of Municipalities to use to educate our legislators about the local impacts of whatever is passed down to cities across North Carolina.

Councilman Mumpower supported the City's efforts in being conservative financially and encouraged the City Manager to be overly conservative in anticipation of what might happen financially.

Councilwoman Cape also supported the City's conversation efforts. She asked that City staff continue to provide Council with the right information in order for them to make good decisions regarding reduction of capital improvement investments vs. the rising costs of energy, gas, materials, etc. City Manager Jackson responded that staff will provide Council with options regarding specific policy decisions, noting that in times of economic decline we need to have strong public safety services. He said we are right-sizing the Capital Improvement Plan before we raise expectations about what we are going to do. Mr. Durant and our Budget Director Tony McDowell have seeking outside financial advice in looking at what our capacity is in the municipal markets compared to other organizations. That report should be coming to Council later this month.

Mayor Bellamy looked forward to the continuous updates to the City's website and urged citizens to sign up for the City's e-News for up to date information.

Mr. Durant said that no Council action is necessary. He said this report was for updating purposes only.

Adjournment

At 6:17 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – October 14, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2008 AS "FIRE PREVENTION MONTH"

Vice-Mayor Davis read the proclamation proclaiming October, 2008, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Fire Chief Greg Grayson, who briefed City Council on some important safety issues. He also urged the community to sign up on the City's website for the free CodeRed service which allows officials to deliver pre-recorded emergency telephone information to targeted areas regarding emergencies.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 2008, AND THE SPECIAL MEETING HELD ON OCTOBER 7, 2008

B. RESOLUTION NO. 08-200 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 2008, TO CLOSE A PORTION OF SUMMIT AVENUE

Summary: The consideration of a resolution of intent to close excess right-of-way located on both sides of Summit Avenue and setting a public hearing on November 11, 2008, regarding this issue.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close a portion of Summit Avenue.

The Greenway Commission reviewed the closure of a portion of Summit Avenue at their meeting on October 9, 2008, and concluded there was no visible use for retaining this portion of Summit Avenue.

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.
- The closing on both sides of Summit Avenue will not affect possible future roadway improvements.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for November 11, 2008, to close excess right-of-way located on both sides of Summit Avenue.

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C. RESOLUTION NO. 08-201 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 28, 2008, TO CONSIDER THE VOLUNTARY ANNEXATION OF CROWELL APARTMENTS LOCATED ON CROWELL ROAD AND FARM STREET IN WEST ASHEVILLE

Summary: The consideration of a resolution fixing the date of a public hearing on October 28, 2008, for the voluntary annexation of properties located on Crowell Road and Farm Street.

Crowell Apartments, LLC has petitioned the City of Asheville for the annexation of two parcels located at Crowell Road and Farm Street containing a total of approximately 3.53 acres. The area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in N. C. Gen. Stat. sec. 160A-31.

The lot contains the Crowell Apartments, comprised of 63 affordable dwelling units. A tax valuation has not yet been placed on this development as it has only recently been completed.

Pursuant to N. C. Gen. Stat. sec. 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation. Should City Council decide to proceed with this request, the effective date for the annexation would be December 31, 2008.

This action complies with the Strategic Operating Plan in that it complies with the Council goal of working to enable voluntary annexation to support healthy growth of the City.

Pros:

- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal increase in service costs.

The fiscal impact is not yet available as the development of the site has only recently been completed. The 2008 assessed value for the land alone is $270,500. Additional fiscal impact information will be provided in the staff report for the public hearing.

City staff recommends City Council adopt a resolution setting the date for a public hearing on October 28, 2008, on the annexation petition.

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D. RESOLUTION NO. 08-202 - AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION, DIVISION OF EMERGENCY MANAGEMENT, FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

ORDINANCE NO. 3658 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY DIVISION FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, in order to accept a non-matching grant in the amount of $205,714 for the procurement of equipment to be used by Hazardous Materials Regional Response Team 6 – Asheville, and the associated budget amendment.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2008-GE-T8-0033 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $205,714.00 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.

- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council authorize the City Manager to enter into the agreement and accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFR's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

RESOLUTION BOOK NO. 31 – PAGE 327
ORDINANCE BOOK NO. 25 – PAGE 49

E. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "JUST BECAUSE YOU'RE ASHEVILLE' OUTDOOR SPECIAL EVENT ON OCTOBER 25, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. RESOLUTION NO. 08-203 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE "JUST BECAUSE YOU'RE ASHEVILLE' OUTDOOR SPECIAL EVENT ON OCTOBER 25, 2008

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the "Just Because You're Asheville" outdoor special event on October 25, 2008.

Dogwood Alliance in conjunction with Mountain Roots Management has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at "Just Because You're Asheville" and allow for consumption at this event.

"Just Because You're Asheville" will be held on Saturday, October 25, 2008, from 4:00 PM – 10:00 PM within the boundaries of the 100 block of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

This action does not tie-in with the Strategic Operating Plan or any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

There is no fiscal impact associated with this action.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at "Just Because You're Asheville".

Councilman Mumpower would not support the motion in that he felt there is a remarkable difference in the quality of a festival that allows alcohol vs. a festival with no alcohol.

Councilman Newman moved for the adoption of Resolution No. 08-203. This motion was seconded by Councilman Russell and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 328

III. PRESENTATIONS & REPORTS:

A. FUEL UPDATE

Mayor Bellamy asked for this update regarding our fuel status.

Assistant City Manager Richardson briefed the Council on the following e-mail to all City employees on Wednesday, October 8, 2008: "Thank you for your commitment over the past days to conserve fuel. Our region has really been challenged with fuel supply for both public consumers and governmental agencies. Your efforts have enabled city government to continue to provide core health and public safety services through this difficult time. Indicators now advise us that most of our community has fuel available again at local stations. Also, our purchasing and fleet divisions have been more successful in securing a fuel supply for our city government operations. Due to these improving conditions, city government is able to return to level 1 of our accelerated fuel conservation plan at this time. This complete plan is available for you on the city's intranet at: http://cityhall-nt/citynet/policies/COA%20Fuel%20Conservation%202008-3.PDF. Please discuss any concerns that you may have about this move with your supervisor or department director."

"It is important that we continue to conserve fuel in every manner possible to offset the budget impact of higher fuel costs. We will remain under the level 1 accelerated fuel conservation measures until further notice. Again, thank you for working together to be able to continue to provide excellent municipal services to our citizens."

He then advised Council that we continue to track fuel availability for our community. As of today, gas merchants are reporting a 96% gas availability across all service stations. Internally, while the City is remaining at Level I in our fuel conservation plan, most all services are operating normal and we will continue our conservation efforts.

Mayor Bellamy asked the community to continue to conserve as well. She noted that the City will be meeting with the Chamber of Commerce to discuss fuel, heating oil, natural gas, etc. in the next 3 weeks after which she will update the community on that discussion.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED PORTION OF SHADY LANE

RESOLUTION NO. 08-204 - RESOLUTION PERMANENTLY CLOSING AN UNOPENED PORTION OF SHADY LANE

Mayor Bellamy opened the public hearing at 5:18 p.m.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution to permanently close an unopened portion of Shady Lane. This public hearing was advertised on September 19, 26, October 3 and 10, 2008.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close an unopened portion of Shady Lane.

The Greenway Commission reviewed the requested closure at their meeting on August 14, 2008, and concluded there was no visible use for retaining this unopened parcel of Shady Lane

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close an unopened portion of Shady Lane.

An attorney with Roberts-Stevens, representing Skyland First Baptist Church, spoke in support of the closing.

Mayor Bellamy closed the public hearing at 5:20 p.m.

In response to Councilman Russell, Mr. Al Braddock representing Skyland First Baptist Church, explained that right now the space will be left open. He did note that the Church is expanding and suspect that the property may be used for additional parking.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-204. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 330

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS ALOFT – MIXED USE DEVELOPMENT, LOCATED AT 51 BILTMORE AVENUE, FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 145 UNIT HOTEL, 83 SEAT RESTAURANT, 2,600 SQUARE FEET OF RETIAL SPACE, AND A PUBLIC PARKING DECK

ORDINANCE NO. 3659 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS ALOFT – MIXED USE DEVELOPMENT, LOCATED AT 51 BILTMORE AVENUE, FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 145 UNIT HOTEL, 83 SEAT RESTAURANT, 2,600 SQUARE FEET OF RETIAL SPACE, AND A PUBLIC PARKING DECK

Mayor Bellamy opened the public hearing at 5:21 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Aloft – Mixed Use Development, located at 51 Biltmore Avenue, from Central Business District (CBD) to Central Business District/Conditional Zoning for the development of a 145 unit hotel, 83 seat restaurant, 2,600 square feet of retail space and a public parking deck. This public hearing was advertised on October 3 and 10, 2008.

Ms. Bernstein said that this is a request for review of a proposed Conditional Zoning in the CBD to accommodate the construction of a mixed-use development including a City-operated public parking structure.

The project area consists of 2 parcels with a combined area of 1.11 acres. The site is located at 51 Biltmore Avenue, towards the southern end of the CBD and is bounded by Biltmore Avenue to the east, Aston Street to the north and South Lexington Avenue to the west. Currently this site consists of a surface parking lot and a single-story commercial structure (Hot Dog King).

Structure: The proposal includes the construction of a mixed-use development, including a 145-room hotel; 2,600 square feet of retail space, an 83-seat restaurant and a public parking deck. The hotel and retail uses occupy the frontage along Biltmore Avenue and above a portion of the street level on Aston Street, with pedestrian entrances along Biltmore. The structure is 7-stories along Biltmore Avenue and measures just under 94' to the top of the structure along that street frontage. The upper floors of the structure are stepped-back approximately 10-12' from the property line (which corresponds to the front of the 2nd story balcony) which results in the structure having a less visually-bulky mass from the pedestrian perspective.

Parking: The parking deck is proposed to include 433 spaces on six levels – 85 spaces will be dedicated (leased) to McKibbon Hotel Group and Public Interest Projects on a 24/7 basis and an additional 115 spaces will be dedicated to McKibbon Hotel Group during evenings and weekends. This arrangement leaves between 233 to 348 spaces available for public use, depending on the time of day, resulting in a net gain of between 136 - 251 parking spaces available to the public (97 spaces currently exist on the site). The deck is accessed via three locations: a right-turn in (entry-only) point on Biltmore Avenue, an exit-only point on Aston Street and an ingress/egress on Lexington Avenue. Several garage levels are below grade, accommodating the natural terrain changes to meet Aston and Biltmore at grade (approximately 15' change from Biltmore to Lexington).

These uses occupy approximately 36,628 square feet (0.8 acres) of this 1.1 acre site. The project proposal includes a lot recombination which will result in a separate, undeveloped parcel fronting along Lexington Avenue. The parcel will be approximately 30' deep by

approximately 240' long (+/- 7,200 square feet) and will not be designated as CBD/Conditional Zoning (it will remained zoned straight CBD). There will also be a small area along Biltmore Avenue left undeveloped. There are no current proposals for these locations, although they are under common ownership.

Streetscape: Streetscape improvements are proposed with this project, including street trees and planters along Biltmore and Aston. Sidewalks on Biltmore will be 10' wide; however the sidewalks along Aston are less than the required 10' in width which requires approval by the City Traffic Engineer. Existing sidewalks along Lexington are approximately 5' in width. There is a passenger drop off/loading zone along the Biltmore frontage. No improvements are proposed along Lexington Avenue.

Signage: The signage proposed for this project appears to comply with the City's sign ordinance except for the individual tenant identification signs along Biltmore Avenue. According to Section 7-13-4(c) of the UDO, when more than two tenants share a common entrance, each tenant is allowed a window sign only, not to exceed 25-square feet. The developer has proposed ground floor retail that may result in a restaurant and up to three other tenant spaces, all of which gain access through the same entrance. These spaces are each proposed to have individual attached/awning signage. The restaurant sign would be 20-square feet and the individual retail space signs would each be approximately 6-square feet or approximately 17-square feet for a single-tenant option, with approximately 16-square feet of signage for the WXYZ bar located on the 2nd-level and 25-square feet of signage for the tenant identification sign on the canopy over the common entrance.

Staff is supportive of this modification request, as the individual attached signage is equal to or less than the size limits that these tenants would be allowed, per the ordinance, and is compatible with signage found on other retail spaces along Biltmore.

Development Agreements: According to submitted concept plans, the end result for this project will be four parcels under separate ownership with a number of easements and air right agreements. As submitted, the hotel would occupy a parcel fronting on Biltmore Avenue - owned by McKibbon Hotel Group. A second parcel would be owned by the City and would contain the parking garage and include the area underneath the hotel's Biltmore frontage. The remaining parcels, which would remain vacant for now include the one along the entire Lexington Avenue frontage and the other along Biltmore Avenue (where the Hot Dog King is presently located), both owned by PIP, who would also retain air rights over the garage structure.

The structure of these ownership and access agreements has not yet been finalized. Currently the building code does not allow for structures to cross property lines in the manner proposed; however, this proposal is currently being reviewed with other cases across the state and may result in changes to the building code that would allow such an arrangement. In the event that the necessary code changes do not occur, two parcels may be created (one containing the hotel/parking garage structure and Hot Dog King site and one containing the Lexington Avenue property) with the proposed development being accommodated through a condominium association.

Approval from Council on air rights is also required for an awning over the hotel entrance on Biltmore Avenue and the architectural "swoof" on the roof and the "angle" on the Aston Street façade. These will require a separate approval from the Conditional Zoning proposal.

Impact to the Built Environment: This project involves the demolition of one small, single-story retail structure (the Hot Dog King) and will necessitate temporary sidewalk closures along Aston Street and Biltmore Avenue.

As mentioned, undeveloped portions of the site include the parcel fronting on Lexington and a small area on Biltmore Avenue, just south of the hotel. Until these future phases are

completed, there will be a blank façade on both the Biltmore parcel and the entire Lexington Avenue length. It should also be noted that the Lexington Avenue parcel is only approximately 30' deep and any proposed development would be constructed against the garage façade. Structure design and streetscaping for any project proposed along Lexington would have to work with this shallow lot depth. Further, due to the hotel design, development on this site could not exceed the height of the garage or it would conflict with the hotel's pool deck and five floors of the hotel fronting Aston Street.

Public Benefits: The creation of additional parking capacity in this area of downtown and a commitment to some level of sustainable design are the primary public benefits offered for this project.

Regarding sustainable design, although not committing to achieving LEED-certification with this development proposal, the McKibbon Hotel Group has provided information regarding their planned measures toward sustainable development. This includes a list of 29 proposed "green" building features that the developers indicate they will attempt during the design/construction phase of the hotel project. Many of these items are directly from the LEED project checklist.

McKibbon has also submitted their intent to follow an "Environmental Policy," which focuses on running hotels dedicated to energy reduction, water conservation, air quality improvement, recycling and education. Additionally, information has been provided regarding the *Florida Green Lodging Program,* which although not applicable in North Carolina, is regularly implemented by the McKibbon Hotel Group and is dedicated to sustainable day-to-day operations in the hotel industry.

The modifications supported by the Downtown Commission would allow a stretch of solid wall greater than 20 feet in length along Aston Street. Commissioners felt this modification was acceptable due to the challenges of incorporating the garage structure and the change in grade as Aston falls away from Biltmore Avenue. To mitigate the stretch of blank wall along Aston Street, the developer has indicated an intent to install a public art piece and will work with the City's Public Art Board in the future to implement the art after construction of the garage is complete.

Required Reviews

Downtown Commission Review: The project was reviewed and approved (4-0 with 4 members present) by the Downtown Commission on September 12, 2008. After several informal design review meetings, the applicant modified aspects of the design to accommodate recommendations by the Commissioners and to better meet the Downtown Design Review Guidelines. Future phases of this development will be required to return for separate design review.

Members of the Commission commented on aspects of the project, including:

- praise for the incorporation of design changes that result in increased activation along Biltmore,
- concern regarding the blank facades along Biltmore and Lexington prior to future phase completion and how to deter graffiti on the site,
- concern regarding traffic congestion along Biltmore and that sufficient Wayfinding measures can be incorporated to direct motorists approaching from the south to the Aston Street entry.

Commissioners added two conditions to their vote recommending approval of this project:

- that the applicant consider applying construction mitigation measures (similar to those recommended for the Haywood Park mixed-use project, including Wayfinding and directional signage), and
- if Phase 2/3 has not started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

At the Downtown Commission meeting, a member of the community provided written concerns which included the potential traffic impact of additional cars on Biltmore Avenue due to the public parking deck.

Technical Review Committee (TRC) Review: This project was approved with technical conditions by the TRC on September 15, 2008. There were no citizen comments received regarding this project at the meeting.

Planning & Zoning Commission: The project was considered by the Planning & Zoning Commission on October 1, 2008. The request was approved by a vote of 5-0. There was one member of the public present (a resident of a confronting structure) who expressed positive comment regarding the proposal and design. The Commission modified language for the additional condition (#7) included in this report, agreeing with the Downtown Commission's suggesting of requiring a mitigation plan for the blank façades along Lexington and Biltmore Avenues prior to construction of "future phases."

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by The TRC to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   There are no significant natural or topographic features on the site that will pose a major issue with this development. The project has been designed to accommodate the existing (+/-15') grade change from Biltmore Avenue to Lexington Street with parking deck levels entering and exiting at the street level and ramps up within the structure.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   When the project is complete, there should not be a negative impact to adjoining or abutting property. The uses proposed should complement existing businesses and augment the needs of both residents and visitors. The parking garage with its public parking is expected to add value to the surrounding area by supporting nearby businesses and will be a benefit to downtown visitors during the daytime and after hours while promoting a safe 24-hour downtown area.

   Concern has been expressed that the blank façades along Lexington and Biltmore Avenues until the completion of future phases could have a negative visual impact on these streetscapes and the properties across from them. The Downtown Commission and P&Z Commission added a condition to their approval that if Phase 2/3 has not

started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The project is proposed at a height and scale similar to other buildings in this part of the historic core of the downtown and substantially below the 305' height of the Ellington project approved in 2007. The retail uses along Biltmore will complement the active pedestrian experience along this corridor. Also, the upper floors (3-7) have been designed to step-back 10-12' from property line after the 2nd story balcony, which reduces the perceived mass of the structure from the pedestrian level.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Smart Growth principles adopted in the 2025 Plan encourage mixed-use infill developments. Retail, restaurant and hotel uses align with economic development priorities, supporting the lives of local residents as well as the tourism industry, helping the downtown become and remain a "destination". The building has been designed in such a way that the streetscape maintains an appropriate pedestrian scale and encourages pedestrian activity, by including active retail openings along Biltmore Avenue and a balcony at the second story).

This site is identified in the Center City Plan as a potential future catalytic development area – a site that has the potential to stimulate additional investment or provide Downtown with missing uses that are critical to maximizing economic vitality. The plan indicates that a proposal such as this should be "managed to achieve maximum public benefit" which is why staff feels the future phases will be critical.

Parking in the Downtown is often identified as a persistent problem and this project does include 433 structured spaces – a net gain of between 136 - 251 parking spaces available for public use (the project site was identified as in a zone with a parking deficit, per the Comprehensive Parking Study, 2008). The Center City Plan identifies parking structures as a key solution to the parking deficit and encourages wrapping the structure with retail or other active uses at the street level. The proposal to include a city parking garage is a public/private partnership, which is noted in the Plan as essential for maximizing the success of economic development efforts.

One area of possible discord with the plans is that both stress the need for a variety of housing options in the Downtown. The applicant has indicated that they may include housing (workforce) in a future phase, but the current proposal does not include any residential component nor is there any surety of what will be submitted in the future.

City Council adopted the following four strategic goals: sustainable, affordable, green and safe; this development proposal supports the strategic goal of sustainability and reflects other vision plans by providing infill growth where infrastructure currently exists and encourages economic development in the downtown.

On April 24, 2007, the City Council passed a resolution that all City-owned buildings will be LEED certified at the Gold level. There are noted difficulties with obtaining LEED certification of a parking structure, which is further complicated by the multiple entities involved in ownership of this proposal, however, as a development project that the City is involved in directly, there should be a clear dedication to sustainable design practices. The applicant has expressed the intent to incorporate LEED-eligible design elements and has provided additional information regarding their environmental policy.

Increasing the amount of housing in the downtown (especially at affordable or workforce rates) is a major component of the sustainable and affordable goals. At this time, the project does not provide any affordable residential component.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed project is anticipated to generate 241 vehicles per hour (194 vph ingress and 47 vph egress) during the morning peak hour and 246 vehicles per hour (74 vph ingress and 172 vph egress) during the afternoon peak hour at full build-out conditions (two years). In addition, the proposed project could generate 1,200 vehicles per day during a typical weekday. Existing weekday traffic volumes along Biltmore Avenue are about 12,000 vehicles per day. The proposed traffic that could be generated by the Ellington Hotel, a project that was approved earlier in the year, was included in the subject traffic study.

   Based on these anticipated peak hour traffic volumes, a traffic impact study was required. The scope of work included six intersections (five signalized intersections and one unsignalized intersection) in the immediate area of the project site and the annual traffic growth rate was 4%. Three access points, one along Biltmore Avenue, one along Aston Street, and one along South Lexington Avenue will serve the proposed project. Several scenarios regarding the operation of the access points were analyzed in the traffic impact study and all of them produce satisfactory results. The recommended scenario that should ensure safe, efficient operation and traffic flow includes a right-in only ingress access point along Biltmore Avenue, an egress only access point along Aston Street, and a full-movements ingress and egress access point along South Lexington Avenue.

   The traffic impact study has demonstrated that it is reasonable to conclude that the proposed development should not have an adverse impact on the surrounding street network provided the following mitigation measures are made, which the developer has agreed to in writing:

   1. *Intersection of Biltmore Avenue and Patton Avenue/Pack Square – Re-optimize the traffic signal timing/intersection splits and follow through with planned geometric changes to the eastbound approach. Estimated Cost = $7,000.*
   2. *Intersection of Biltmore Avenue and Hilliard Avenue – Revise the eastbound approach to provide a shared left-turn and through lane and an exclusive right-turn lane. Estimated Cost = $3,000.*
   3. *Intersection of Biltmore Avenue and Proposed Access Point – Prohibit ingress left turns. Estimated Cost = $100.*
   4. *Construct all three access points to enable future changes to their traffic operation if needed.*

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Garage component supplies needed public parking spaces in a zone identified as deficient – a net gain of between 136 - 251 public spaces

- Building design follows urban design principles (retail activation at the street level, 2nd story balcony further creates activity and pedestrian level interest, building steps back 10-12' after the 2nd story which reduces massing when viewed from the street)
- Proposed "green" features in the design and construction of the project as well as the daily operations of the hotel show a strong commitment to environmentally-sustainable development.

Cons:

- Does not include any residential units, with no firm commitment to residential in future phases.
- No commitment to achieve LEED certification.
- Project design results in blank undeveloped façades along Biltmore and Lexington Avenues until future phases are completed, and may be a target for graffiti.

Staff recommends approval of the project and the sign modifications, subject to the conditions recommended by City staff and the Planning & Zoning Commission.

Mr. W. Louis Bissette Jr., representing the McKibbon Hotel Group (one of the partners in the project), said the project is a little unusual as it is a public/private partnership with the City, the McKibbon Hotel Group and Public Interest Projects. He said the project does meet a number of the downtown needs, including 433 structured parking spaces. He said that this project is in harmony and scale with the surrounding neighborhood, and he hoped the Commission will act favorably on their request.

Mr. Wes Townson, representing McKibbon Hotel Group, said this is collaboration in the finest sense of the word and was excited to be a partner in this effort.

Ms. Cathy Ball, the City's Director of Transportation and Engineering, explained the City's need for parking in that area, as shown by a Parking Study and a Downtown Parking Action Plan. With the opportunity to look at working with the private development sector and being able to work with the property owner, the challenge was going to put that parking in, make it look good on the site, and have a multi-use development structure. She stressed that the City's involvement in this project is the public parking component.

Mr. Pat Whalen, representing Public Interest Projects, explained how the lot on the Lexington Avenue side is only conceptual at this point, but it is their intention that it be affordable housing. He was proud of their involvement in this public/private partnership.

Mr. Jesse Plaster, representative of the Downtown Commission, said that the developer made changes to the project to address the Commissioner's concerns. The result is a better project and this is a good example of the design review process. The project did receive full support of the Downtown Commission and he urged Council to approve this good public/private partnership. He reiterated the two additional conditions the Downtown Commission requested (and staff has included in their recommendation), being (1) that the applicant consider applying construction mitigation measures (similar to those recommended for the Haywood Park mixed-use project, including Wayfinding and directional signage); and (2) if Phase 2/3 has not started within 1-year of completion of the hotel and garage structure, a mitigation plan should be established for the blank façades along Lexington and Biltmore Avenues.

Ms. Betsy Rose Weiss, owner of American Folk Art and Framing on Biltmore Avenue across the street from this project, was concerned about (1) inability to turn left onto Aston Street; and (2) diluting Asheville's uniqueness with the possible addition of corporate chain entities.

At 5:38 p.m., Mayor Bellamy closed the public hearing.

City Attorney Oast said that on October 28, 2008, City Council will be reviewing the downtown development agreement, and other documents, that will set up the City's and the other private partner's participation. He said that Council's vote on this item will not bind Council with respect to their vote on the other items.

In response to Councilman Russell, Ms. Ball said that Aston Street will be two-way.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on information provided in the staff report and as stated in the staff recommendation, Councilman Russell moved to approve the project identified as Aloft – Mixed Use Development, located at 51 Biltmore Avenue, from Central Business District (CBD) to Central Business District/Conditional Zoning for the development of a 145 unit hotel, 83 seat restaurant, 2,600 square feet of retail space and a public parking deck and the sign modifications, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) During construction, all sidewalks around the project area will be kept open (safely covered) if possible and when not possible, a diverted pedestrian route will be clearly defined; (7) If future development on Lexington and Biltmore Avenue frontages is not in progress (meaning an application submitted to the Planning Department) within one-year of the completion of the hotel and garage structure (meaning a Certificate of Occupancy has been granted), the City shall take appropriate action in conjunction with the developer (Public Interest Projects) to cover, screen or decorate the wall in a manner approved by the Downtown Commission; (8) The traffic mitigation improvements have been identified and agreed upon; (9) A traffic mitigation/staging plan should be submitted and reviewed by appropriate City staff prior to the issuance of any permits; and (10) Future development on the Lexington Avenue parcel and the area south of the hotel along Biltmore Avenue will not be required to return to City Council for review as an amendment of this Conditional Zoning permit. This motion was seconded by Councilman Newman.

In response to Councilman Mumpower, Mr. Townson was concerned about the economy, but they are very much committed to the project. They have been located in Asheville for over 10 years and intend to proceed with preparation of construction documents with the hope that after the first of the year the financial markets will certainly be more clear and everything will go as planned. The financing and timetable will be discussed with the documents on October 28.

Councilman Mumpower was concerned about locking the City into anything that has the potential of putting the citizens of Asheville at risk. City Attorney Oast responded that in the downtown development agreement there are a number of contingencies - one of those is that we are able to obtain financing. There will be a period of time between when we approve that agreement and when we would be committed beyond the ability to get back out of it. The same thing is true of the developer. We are hopeful that within that time the financial picture will clear up enough that we can provide you more assurance than we can today.

When Councilman Mumpower asked if there was a performance bond component, Mr. Townson said no. He did say that there would be bonding required for the general contractor who they anticipate will be doing the entire project.

Councilman Mumpower felt this is a major investment and was concerned about moving forward in our current economy. However, as the issue before Council now is a land use issue, he will base his vote on that issue alone. But, he noted that unless the fog clears dramatically with regard to the economy, he would not be able to support moving forward with this project.

In response to Councilwoman Jones, Ms. Ball explained how they will utilize the property along Lexington Avenue for staging, however, that doesn't mean that sections of the street won't need to be closed off periodically. She also noted that when the infrastructure and sidewalk work commences along Biltmore Avenue and Aston Street, that work will be coordinated with the work on The Ellington project.

In response to Councilwoman Jones and Councilman Newman, Mr. Whalen spoke to Council about the plans for the affordable housing component on Lexington Avenue in Phase 2 of the project. They are uncertain at this time whether the units will be rental or for sale, but they do intend for them to be workforce housing prices. The project is not very complicated and it will give them a chance to test protocol types of new workforce lofts in downtown.

Mr. Whalen responded to Councilwoman Jones' hopes that whatever unfolds on the retail floors that they keep in mind the independent entrepreneurial flavor that we currently have in the downtown area.

Vice-Mayor Davis agreed that our economy is weak. If for some reason the Phase 2 doesn't occur within a year, he would not be in favor of any parking garage today that wouldn't involve a wrap on the Lexington Avenue side. Mr. Whalen said that PIP and the City have agreed to each bear half the cost of softening the wall with something that has some architectural or artistic character if for some reason the affordable housing units are not built right away. However, they didn't want to spend a lot of time on that because they plan on building the affordable housing.

Councilwoman Mumpower advised the developer of the following issues he would like addressed at the October 28 meeting when the downtown development agreement is discussed: (1) performance bond; and (2) timeline on project regarding the economy and financing. Regarding chain stores, since that is not a criteria in our ordinances, he didn't think it was appropriate to put subjective pressures on developers by telling them who they should lease their private property space to..

In response to Councilman Mumpower, City Attorney Oast said that the conditional zoning approval is valid for two years from the date it is adopted by Council. That two year timeframe is not for the developer to complete the project, but it is for making substantial progress on the project.

In response to Mayor Bellamy, Assistant Director of Traffic and Engineering Ken Putnam explained the entrances and exits and how they will be built if in the future a change in the access needs to occur.

When Mayor Bellamy asked about the apparatus in the parking deck, Mr. Putnam said the same type system will be used as our other parking decks to make sure the traffic flows smoothly.

In response to Mayor Bellamy, Mr. Putnam said that adding the signage to this parking garage into the Wayfinding Program is already a condition, subject to Council's approval the project.

When Mayor Bellamy asked about site lines on Aston Street, Mr. Putnam explained that site lines are addressed in the Traffic Impact Study and all site lines, even for pedestrians, are to be accounted for.

Mayor Bellamy felt that as the project begins to be built from the ground up, screening the area, similar to the Bohemian project in Biltmore Village, would be a benefit to the community from a safety and appearance reasons. When she asked for a friendly amendment to the motion for screening, Councilman Russell did not accept the amendment as he felt that (1) it is a public safety issue to be addressed by the general contractor to protect the public; and (2) there may be better technology out there when the project begins. City Attorney Oast did note that this project will go back to the TRC once the design is in place and those are the kinds of details that are covered.

Mayor Bellamy suggested the developer contact Ms. Cindy Weeks with Mountain Housing Opportunities (MHO) for creative ideas MHO has done regarding financing with affordable housing and mixed-income developments.

The motion made by Councilman Russell and seconded by Councilman Russell carried unanimously.

Councilwoman Jones felt it might be beneficial for Council to receive information the financial benefits of doing development downtown, with particular emphasis on local employment. Council can then weigh that information against the debt that would be incurred.

Mayor Bellamy also felt it would be important for Council to have information on how much we have saved for this parking deck, what we anticipate the debt service on the parking deck will be, etc.

Councilman Mumpower advised Council that he will be asking questions, if it is appropriate within the confines of our ordinances, about whether their protocol is for hiring legal citizens as well.

ORDINANCE BOOK NO. 25 - PAGE 51

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-205 - RESOLUTION OF APPRECIATION TO THE N.C. DEPT. OF TRANSPORTATION AND THE FEDERAL HIGHWAY ADMINISTRATION FOR SUPPORT IN THE EVALUATION OF ALTERNATE 4B OF THE I-26 CONNECTOR PROJECT

Mayor Bellamy has asked that City staff prepare the following resolution: "Whereas, the North Carolina Department of Transportation and the Federal Highway Administration are developing a highway improvement project known as the I-26 Connector; and Whereas, in response to considerable public desire for constructive input into the design of this critical highway project, the City of Asheville and the Asheville Metropolitan Planning Organization requested additional opportunities for this input to occur while simultaneously maintaining the construction schedule for the I-26 Connector project; and Whereas, , during the summer of 2000, the Community Coordinating Committee, in cooperation with the North Carolina Department of Transportation and the Federal Highway Administration, held two extensive public meetings-the Education Forum and the Design Forum-to educate and involve the public regarding the necessity and the design of the I-26 Connector project; and Whereas, the Asheville Design Center identified an alternative alignment for the I-26 Connector know as Alternate 4B, which reduces the amount of right-of-way required to complete the project and separates interstate and local vehicular traffic; and, Whereas, the City of Asheville and Buncombe County funded an additional engineering study by Figg Bridge Engineering to further evaluate Alternate 4B for the purposes of consideration as the preferred alignment for the I-26 Connector; and, Whereas, the

North Carolina Department of Transportation and Federal Highway Administration had accepted Alignment 4B as one of four alternate designs for the I-26 Connector; and, Whereas, the North Carolina Department of Transportation and Federal Highway Administration held a public hearing for said project on September 16, 2008; and, Whereas, City Council wishes to provide official public comment on the Draft Environmental Impact Statement for the I-26 Connector Project. Now, therefore, be it resolved by the City Council of the City of Asheville that the North Carolina Department of Transportation and the Federal Highway Administration are hereby commended for their cooperative spirit and willingness in consideration of Alternate 4B of the I-26 Connector Project, particularly in their efforts to visually communicate the various alternates during the September 16, 2008, Public Hearing. Be it further resolved that Council supports expediting the design and construction of the I-26 Connector project. Be it finally resolved that based on review of the four alternates for the I-26 Connector Project that City Council supports selection of Alternate 4B in that it meets many of the community's strategic goals by reducing the amount of right-of-way required for the construction of the project and separates local and interstate vehicular traffic." She felt this action is important in that the City did get Alternate 4B looked at by the N.C. Dept. of Transportation (NCDOT). The engineering part was a joint effort paid by the City and County in order to get Alternate 4B to a level which the NCDOT could take it over, which they did. She did note that City Council and the community were informed that the process would not slow down what the NCDOT was doing. This did not negatively impact the timing of the project. She felt it was important to acknowledge the time and involvement by the community in Alternative 4B.

Director of Transportation and Engineering Cathy Ball reiterated the amount of cooperation they received from the NCDOT and the Federal Highway Administration in being able to move into a process that was unchartered for the work that they do. To be able to have the County and the City come together and bring in a consultant that could review a community proposal and be able to understand that that could become a viable alternative. Also, we were very pleased with the staff level interaction and willingness to share data and a true willingness on the state's part to be able to find solutions to the problems that we came up with through this alternate. We have also been able to put the information shared at the public hearing on the City's government channel. The effort that NCDOT and the Federal Highway Administration put into making visuals so that people could understand them is outstanding. We propose, as an input way into the environmental impact assessment, that Council, from the community perspective, would support Alternate 4B which meets a lot of the community's goals, separating state and local traffic, reducing the amount of right-of-way that is required for the project, reducing the amount of surface from pervious to impervious, as well as having overwhelming community support.

In response to Councilman Newman on whether the NCDOT has recognized that Alternate 4B is an official alternative within the context of the Environmental Impact Statement (ESI) process, Ms. Ball said that a draft EIS has been released and there has been an amendment to that draft. She thinks that the state has reserved the right, through the process, to say that if for some reason this alternate falls out before they re-issue in paper that final EIS then it would not be included. She thinks it's more of a technicality. She does hear them say it is a viable alternative.

Councilman Newman hoped that Alternate 4B is the preferable alternative for the project as it seems to have a lot of common ground and the most advantages for the community.

In response to Councilman Mumpower, Ms. Ball said the Connector project has 4 alternates, two of which do not separate the local and interstate traffic and two which do. Alternate Numbers 2 and 3, which do not separate local and state traffic, are in the neighborhood of $221-261 Million. Alternates 4 and 4B range from $368-425 Million. These estimates were completed using standard NCDOT methods and measures that they would use to install things. We would hope to work with them to provide engineering and looking at different types of bridge structures to be able to try to reduce that. These numbers do include right-of-way. We are

having discussions to see the value of that right-of-way and get further clarification on that number. These costs do not include bridge costs nor do they include some new types of bridge designs that actually cost less to build.

Councilman Mumpower felt that Alternate 4B is the nicest alternative but it would roughly double the cost of the next lowest alternative. He felt that Asheville politicians have delayed this project to death and was concerned that we are considering this resolution in the face of what is happening with our economy. He felt we have borrowed ourselves nationally in a terrific hole and didn't think the federal government would be in any position to proceed with this kind of activity in the foreseeable future. He would have to speak against the motion in that he did not feel it was appropriate to endorse a project that costs twice as much as what will work.

Councilman Newman briefed the Council on the original concept back in the1980's when the plan was to have an interstate loop around Asheville, but due to the high costs of building roads through our mountainous terrain and the high environmental impact, the community decided to bring the project through the heart of our City. The NCDOT supported that largely for financial reasons. If Asheville would have insisted on the same type of loop project that other cities had done, the price tag would have been 2-3 times what the most expensive way of building it through the City would be. In light of our community is saving the state taxpayers a lot of money by accepting that this project be built in the very heart of our City, it is fair for our community to say we want a really good project.

Mayor Bellamy noted that the process, outlined in the resolution, did not delay the process for this project, as specifically stated by the convener of a prior meeting that was open to elected officials.

Councilman Newman moved for the adoption of Resolution No. 08-205. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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B. ADOPTION OF THE CITY COUNCIL CANDIDATE TIMELINE

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that there has been discussion in the past about how to fill a vacated Council seat during the middle of a term. The Boards & Commissions Committee initiated the process of the following timeline. If such process proves to run smoothly, it was the consensus of the Committee to include this process in the City Council's Rules and Regulations. He noted that this accelerated timeline is necessary as City Council's Retreat will be held on January 9-10, 2009, and it was imperative that the new Council member(s) be oriented and be a part of the retreat. The process is below:

Monday, 10-13	-	Clerk to send out e-mail to all Council asking for two questions each for Council candidate. Questions must be received by Thursday, October 16 at 5 pm
Thursday, 10-16	-	Deadline for Clerk to receive Council questions (2 each)
Friday, 10-17	-	Clerk to send to City Council Boards & Commissions Committee all 14 questions
Tuesday, 10-21	-	Boards & Commissions Committee to narrow down 14 questions to 5
Wednesday, 11-5	-	Receipt of Notice of Resignation

Wednesday, 11-5	-	Begin advertising for City Council vacancy
Wednesday, 11-5	-	Any interested person will be given an application form, with a request for a resume to be attached, along with the 5 essay questions - ½ page response each. Deadline for all applications is Wednesday, November 26 at Noon
Wednesday, 11-26	-	Deadline for applications - Noon
Wednesday, 11-26	-	Clerk to verify all candidates of (1) City of Asheville residency; and (2) that they are registered to vote in Buncombe County
Wednesday 11-26	-	Clerk to send to City Council all eligible candidates applications, along with resume and completed essay questions. In addition, a letter will sent to all candidates notifying them that if they are chosen the City Council orientation will be held one day during the week of December 15
Tuesday, 12-2 FORMAL MTG	-	City Council determine (1) how many to interview; (2) who to interview; (3) length of interviews; (4) date of interviews – December 9 before formal meeting; and (5) time interviews are to begin
Wednesday, 12-3	-	Clerk to contact candidates to arrange Interviews on December 9
Tuesday, 12- 9 FORMAL MTG	-	Interviews in Council Chamber – Interviews to be held prior to meeting **AND** listing on the formal 12-9 agenda – Appointment of new Council member
Friday, 12-12	-	New Council member sworn in with brief reception
One day during week of 12-15	-	New Council member orientation

If Council chooses to adopt the timeline, it will be necessary to amend the 2008 City Council Meeting schedule to include December 2 as a formal meeting; and December 12 as a special meeting to swear in the new Council member(s).

There as a brief discussion about the application deadline.

In response to Mayor Bellamy, City Clerk Burleson said that all applications, resumes and responses to the essay questions will be available for public inspection on Wednesday, November 26, as part of the City Council meeting agenda.

In response to Councilman Newman, City Attorney Oast said that the last meeting of the Council member resigning depends on when they make their resignation effective, which is normally the last day before they get sworn in to another office. They cannot serve on City Council once elected to the other office, whether they submit a letter or resignation or not. He said that the Council member(s) can remain on Council until they are sworn in to the other office – Buncombe County Commissioners take office on December 1, 2008; and the U.S. House of Representatives take office on January 20, 2009.

In response to Mayor Bellamy, City Attorney Oast said that a Council member who is elected to another office cannot vote on their replacement because the vacancy on Council does not exist until that Council member's resignation is effective. Their leaving Council is what creates the vacancy.

It was the expectation of Council that any Council member elected to another office would plan to participate in their City Council capacity only through November 30, 2008.

In response to Councilman Newman, City Attorney Oast said that the City's Charter reads "The mayor and members of the council, and all other officers, elected under the provisions of this Charter, shall at the time of their election be qualified electors of the City of Asheville." It was his opinion that that means the applicant must be 18 years of age and be registered to vote.

Councilman Mumpower, who is campaigning for the U.S. House of Representatives seat, assured Council that if he is elected, it will be his desire to work with the Council in whatever way he can to set up a good future for this Council and cooperate in any way possible. He thanked Vice-Mayor Davis for creating a healthy, fair process for filling vacant Council seats.

Councilwoman Jones confirmed that all Council members (including those running for other offices) can participate in the process by submitting two essay questions.

Councilman Mumpower moved to adopt the City Council Candidate Timeline as outlined above. This motion was seconded by Councilwoman Jones and carried unanimously.

C. CITY COUNCIL MEETING SCHEDULE FOR DECEMBER, 2008

Due to potential vacancies on City Council, Councilman Mumpower moved to instruct City Clerk Burleson to place an item on an upcoming agenda to amend the 2008 City Council meeting schedule for (1) December 2, 2008, be a formal meeting; and (2) December 12, 2008, be a special meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Bellamy noted that at the special meeting on Friday, December 12, 2008, not only will the new Council member(s) be sworn in but that the former Council member(s) who were elected to another office will be recognized as well.

Regarding the December 16, 2008, worksession, it was the consensus of Council to cancel that worksession; however, if there is a need for action prior to the end of the calendar year, he hoped that the Council members would be amenable to keeping that date available.

VII. OTHER BUSINESS:

N.C. League of Municipalities Board of Directors

Mayor Bellamy was pleased to announce that today she was elected to the Board of Directors to the N.C. League of Municipalities (League) to represent the City of Asheville. She explained the League is a nonpartisan, voluntary association of cities, towns and villages with 542 member municipalities as of July 1, 2008. It is a 27-member Board of Directors, elected by the membership, which oversees all League activities, which include direct services to municipal officials of member cities and towns and advocacy at the state and federal levels on behalf of cities and towns. Municipal officials representing member cities and towns develop and adopt the advocacy agenda that determines municipal legislative goals. The membership also adopts the core principles that determine and guide the organization's advocacy efforts. The area she represents will not only include Asheville, but municipalities in the following counties: Mitchell, Yancey, Buncombe, Madison, Henderson, Haywood, Jackson, Transylvania, Macon, Swain, Graham, Cherokee and Cherokee counties.

Mayor Bellamy then briefly reported to Council items of interest from the League's annual meeting, with special interest on the state's budget as it relates to transportation, in particular the taking of cities Powell Bill funds. Other pressing issues addressed were state highways, gang violence, and sustainability, all of which conversations will continue.

Award by N.C. League of Municipalities – Green Challenge

Mayor Bellamy was also pleased to announce that the City of Asheville was awarded the Level One of the N.C. League of Municipalities Green Challenge, which acknowledged the City's commitment to efficient, energy saving operations and practices. She thanked the City's Energy Coordinator Maggie Ullman for her work on the application.

Claims

The following claims were received by the City of Asheville during the period of September 13 – October 2, 2008: William Marquissee (Police), AT&T (Water), AT&T (Water), Charter Communication (Water), Dallas Norris (Water), Dawn Banks (Sanitation), David Love (Streets), Donnie Isley (Fire) and Gerald Echols (Transit).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City was served with the following Complaint on September 18, 2008: Carroll Anderson and Ruby Anderson vs. Allstate Insurance Company and the City of Asheville. The nature of the proceeding is a complaint for property damage resulting from a waterline break. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Jeffrey L. Meadows Sr. spoke to Council about Darwin-ism. Assistant City Manager Richardson said that he would be happy to meet with Mr. Meadows.

Rev. Christopher Chiaronmonte spoke to Council about his prophecy regarding the direction of the nation.

Closed Session

At 7:05 p.m., Councilwoman Jones moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, City of Asheville, County of Buncombe, Asheville Regional Airport Authority; Asheville Jet Inc., d/b/a Million Air - The statutory authorization is contained in G.S. 143-318.11(a) (6); and to prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes that information privileged and confidential is N. C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Newman.

Councilman Mumpower said that Council has made a commitment in the past to not conduct water agreement negotiations in closed session. He felt that Council's deliberations regarding negotiations should be discussed in the open forum. He would speak against the motion.

In response to Councilman Russell, Mayor Bellamy said that Council will be discussing the Sullivan Act lawsuit.

The motion made by Councilwoman Jones and seconded by Councilman Newman carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

At 8:11 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:11 p.m.

Magdalen Burnson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – October 21, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

FUEL UPDATE

Assistant City Manager Jeff Richardson updated City Council on the fuel status. He said that our gas stations are almost to full capacity and internally, we are continuing the exercise Level I conservation efforts. At Mayor Bellamy's request, City Manager Jackson said that we would provide information on our website regarding the ridership numbers on our buses for the different routes.

HEALTH OF DOWNTOWN PRESENTATION

Vice-Mayor Davis, member of the Asheville Downtown Commission (ADC) suggested that Mr. Kelly Miller, Executive Director of the Buncombe County Tourism Development Authority (BCTDA), address Council with the following points from a tourism perspective on issues that are currently affecting or could affect our vital tourism industry.

Mr. Miller said that some of these items made their way to them via phone calls, e-mails, and letters from visitors, residents, and Chamber members, representing consistent themes. Others, such as a master lighting plan similar to Quebec City, are suggestions by Chamber staff that would enhance the Central Business District experience for both residents and visitors.

He presented the following points, which were also presented to the Asheville Downtown Commission:

1. Overall cleanliness: Graffiti, filth, litter, and weeds growing from sidewalks and vacant lots are getting worse. Vacant store fronts remain untidy long after tenants have relocated or closed.
2. Panhandling: This seems to be increasing and is more aggressive, which translates into the perception that downtown is becoming increasingly unsafe.
3. Towing: We have got to collectively get our arms around the towing situation. The installation of the BCTDA funded wayfinding project will help direct traffic to public lots, so this should offer some relief. Still, we receive a fair number of letters from both extremely upset visitors and residents whose autos have been towed. The Chamber is ready to roll up its collective sleeves with other groups to come up with deployable solutions and welcome your input.
4. New construction and visitation coordination: An integrated staging plan that considers visitation patterns (both residents and tourists) with new downtown construction and/or infrastructure improvements could greatly mitigate the impact of these improvements. Encouraging dialog on the front end with all affected parties before work begins or is approved could pay huge economic dividends.
5. Lighting: Asheville needs a lighting master plan like Quebec City. There are streets, nooks and alleys in the Central Business District (CBD) that are fairly dim. Visitors and residents feel safer with better lighting. This might be a great way to save energy if newer technology is considered, as well.
6. Retain longer store hours: More consistent and longer retail hours in downtown

have been suggested by visitors to downtown.

7. Downtown tenant mix: Visitors continue to offer positive comments about downtown's authentic tenant mix. Preserving unique downtown shopping and dining experiences aligns with Asheville's brand promise of enrichment. Greenville, South Carolina, targets key businesses that could improve the downtown experience and recruits them into its urban fabric. Is this something the Asheville Downtown Association might want to pursue?
8. Customer service: It's all of our jobs to make sure that we are informed brand ambassadors, going the extra mile to ensure our guests (and residents) feel welcomed, not just in downtown Asheville, but in Buncombe County and western North Carolina. The Asheville Conventions Visitors Bureau (CVB) has an online program designed to achieve this goal and it is being rolled out to area businesses.

He said that downtown Asheville, as a stand-alone destination brand, is at a very critical crossroad. A vibrant, clean, safe, graffiti-free downtown offers enormous strategic advantages for business recruitment, positive visitor experiences, and improved quality of life for residents. It is reassuring to know that you and City staff are working on several of these issues as we speak and for that, we thank you. We welcome the opportunity to assist where we can to develop sustainable solutions that deliver Asheville's brand promise for years to come.

Vice-Mayor Davis said that the City has put resources in to address some of these issues but there are other tasks ahead. He noted there is a tremendous amount of litter, weeds, panhandling and prostitution in our west gateway area into the City. He was concerned about the bad impression being given for people entering the City from this area. He suggested the placement of more trash receptacles along that western gateway area would at least be a start.

Councilwoman Jones was sympathetic to the concerns and recognized how tourism is a part of our economy; however, this is a huge financial impact on the City. She suggested perhaps we could find a cost-sharing formula with the TDA to address some of these concerns.

Mr. Miller said that on any given day there is only about 6-7% of visitors on our streets. He agreed that this isn't so much of a visitor problem but a community problem. He would be willing to work staff and a variety of stakeholders to see how we can address these problems without going to just industry and asking to cost-share.

Mr. Vic Howard, President and CEO of Western Carolina Rescue Ministries (WCRM), dispelled some myths about the homeless and briefed the Council on some statistics from their shelters. He said that some of the clients from the WCRM have worked with Councilman Mumpower on his very successful Top A Stop program. In addition, they are considering a graffiti removal program as follows: (1) the money received by WCRM will go back into the community to help the poor and homeless; (2) they will hire from the people they serve; (3) they will recapture and recycle the waste water from the pressure washing; (4) they will use biodegradable removable products; (5) they recognize that the quicker you remove graffiti, the more it discourages the tagger or artist; and (6) they also recognize that the quicker you catch and remove graffiti, the easier it comes off. He also noted that last year they had less than 1 Police Department call a week to their shelter.

Mayor Bellamy was pleased that the WCRM is willing to be a partner with the City and that they are working to hold the people who use their services accountable. Some people who cause problems in the City are not going to the WCRM shelter. She also noted that the WCRM is working with Buncombe County to provide wet shelter beds. She said the WCRM has men who take ownership and discourage misbehavior and she hoped to see this accountability throughout all our homeless service providers.

Councilman Mumpower noted that there are now about 55 Top A Stops in Asheville and thanked the WCRM for their part in that effort. He suggested the City establish a reward program for graffiti vandals. The City needs to send a clear message that these people are not artists, but vandals. He felt the City should be a role model in removing graffiti off public property quickly. He also suggested a task force made up of approximately six stakeholders that has a sunset date of 30-60 days to address a specific issue. Regarding towing, he felt our goal is to provide a balance between enforcement and fairness. He urged the merchants with parking lots to contact their predatory towing service and let them know their fees represent extortion. He felt that a task force might be able to address the towing issue as well.

Mayor Bellamy was supportive of a task force as well. We are now picking up trash seven days a week, opposed to the 3-4 days. She felt we need to provide the task force with the cost of more trash receptacles downtown along with information on where they are needed. Regarding Pritchard Park, we have refurbished it, added programming and a park ranger. We now also have restrooms downtown. She wondered if the park ranger should be a sworn police officer because there is a noticeable difference between a ranger vs. a police officer. Regarding panhandling, she would like to meet with the magistrates (similar to a previous meeting with the judges) to actually get some accountability through maybe some community service. Regarding towing, perhaps the letters on the signs need to be even larger. Perhaps for the lots that aren't open on the weekends and are not leasing them out to others, maybe we can request they put a chain across the parking lot. We do have a lot of development in our downtown area and she felt we could better coordinate our infrastructure improvements with that development so as not to adversely affect our downtown merchants. The lighting issues could be a topic for the task force. She noted that City Council has invested a lot of money in seeing some steps move forward to make downtown better but there must be some kind of accountability on the users, tenants and the homeless population.

Councilman Mumpower said he wasn't suggesting one task force, but at least two committees to tackle these issues. He also spoke against using a sworn police officer as a site specific babysitter. He felt Council needs to tell the City Manager what we want to see accomplished.

Councilwoman Jones noted that we did have a Downtown Social Issues Task Force that brought Council some creative solutions, most of which didn't work for us. There was also an Asheville Cleanliness Task Force. In terms of cleanliness, we don't really need a task force – just a plan on how to get some money or how to get some volunteers. We know the answers for some of these issues, but just need the money to invest in them.

Vice-Mayor Davis said that we have implemented parts of the Downtown Social Issues Task Force's recommendations after the fact. The City has grown since then. He explained how we need help with the court system to discourage misbehavior. Regarding Pritchard Park, people feel that the park ranger does make a positive difference in the Park and the use of the Park by the general public has gone up a great deal. He felt we need to continue that effort. He felt we will also need to review the programming at Pritchard Park at the appropriate time. He supported efforts to make people feel safe downtown.

Mayor Bellamy suggested Council look at a one capital investment of some type of cleanliness tool to be able to pressure-wash the sidewalks on a regular basis. She recalled that the 2006-07 Cleanliness Task Force was collaboration between the Chamber of Commerce and City of Asheville. It would be great to have a regular schedule of clean-ups. Some immediate items to address might be the need for additional trash cans, cleaning the weeds out of the sidewalks, and pressure-washing the sidewalks. We can also work with the N.C. Dept. of Transportation and find out when they will clean up their roadways into the City.

Councilman Mumpower felt that in Charleston, South Carolina, it's very rare that you are approached by panhandlers or see people misbehaving in that environment. They have found an

equation that works for them and we are basically operating under the same laws. His idea of a Task Force is that we create some urgency around it and suggest they be specifically devoted to a single mission, with the outcome of solutions that are cost efficient, legal, creative and that they have accountability. He would be curious to find out where the professional panhandlers are living and if there are ways for us to create some accountabilities for those people. He also suggested we create an expectation in this community that if you come to Asheville and are seeking assistance, there is an expectation that you behavior yourself.

It was the consensus of Council to instruct the City Manager to work on the Task Force concept with Mr. Miller's involvement, if he is agreeable.

Mr. Miller felt we can get our arms around overall cleanliness in a quick way. There is a huge movement around the country about urban gardening. He wondered if there was a way to utilize some of the WCRM clients to train them to work with local businesses to do some beautification. Regarding lighting, the Tourism Product Development fund grant cycle is about ready to begin and they will be closing those applications in January. He would be willing to work with City staff on that and if there is a capital project that fits within the guidelines, that might be something to put forth. They did fund $1.5 Million for the Wayfinding Program which will help tremendously on the towing problem.

Mayor Bellamy looked forward to the conversations with the BCTDA at the scheduled meeting soon. She also felt Mr. Howard would be open to discussing how his clients can work with the BDTDA. She also noted that Pat Carver from First Citizens might be a good partner on some endeavors.

PROPOSED REVISIONS TO THE CIVIL SERVICE LAW

Mayor Bellamy said that Council received information earlier this year that there had been legislation drafted and submitted to our legislators for consideration that had to deal with the Civil Service Board. She and Vice-Mayor Davis met with some members of the Civil Service Board on September 19, 2008, after which time she said she would schedule a City Council worksession to discuss the issues as they relate to legislation only and then discuss the next steps.

She presented Council with the following "proposed Civil Service changes for 2008 (to be placed within or amend current language)."

"1. **Add the following to Section 2**: Former employees of the City shall be eligible to serve as a member of the Civil Service Board provided they have been separated from City employment for a period of not less than ten (10) consecutive years prior to becoming a member of the Commission. No person shall be eligible to serve as a Commission member if such person directly, or indirectly, benefits financially or otherwise from a business or professional relationship with the City, or if such person has an immediate family member or spouse of the immediate family member who directly or indirectly benefits financially or otherwise from a business or professional relationship with the city. No person shall engage or benefit or indirectly benefit from any contractual work or employment with the City for a period of not less than two years following the expiration date of that person's term of office as a member of the Commission."

2. **Add the following at the end of Section 2**: The Commission Secretary shall perform all required ministerial functions and duties for the Commission including, but not limited to, the electronic recording of and the preparation of minutes of all Commission meetings and hearings, the custody of all Commission records and the posting and issuing of meeting notices to the Commission members and to the public in accordance with the North Carolina Public Meeting Laws. To assist the Secretary in performing the functions and duties, all Commission meetings shall be electronically recorded and transcripts,

thereof, made available to the Commission members upon request without charge. All other persons shall be entitled to the Commission's recordings and records upon request pursuant to the North Carolina Public Records Act.

3. **Add the following as Section 9 and renumber the Subsequent Sections accordingly**: By a majority vote of its members present at any of its official meetings, the Commission, is authorized to designate independent counsel of its choice to advise and/or to represent the Commission on such occasions and in such matters as the Commission may, from time to time, deem appropriate and necessary. The City shall be responsible for the payment of such professional legal services as the Commission deems necessary for the conduct of its official functions and duties. In order to avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to and/or as attorney for the Commission only for those matters or proceedings when specifically requested to do so in writing that has been signed by not less than four members of the Commission.

4. **Add the following to the end of Section 2**: Regular meetings of the Commission shall be held at least once every month at a time and place to be determined by the Commission. The deadline for receiving items for the regular monthly Commission's meetings shall be seven (7) days prior to the meeting. Special Commission meetings may be called by the chairman and shall be called upon written request signed by two or more Commission members and submitted to the Commission Secretary not less than seven (7) days prior to the date of requested meeting. The notice for all meetings shall contain a meeting agenda which shall include a section for other business to hear and consider any other matters related to the Commission's function and duties, which may be addressed by any member of the Commission and/or by any person in attendance.

5. **Add these words to the end of what is now Section 10**: Willful or deliberate violation of the Asheville Civil Service Law or Civil Service Rules by any person shall constitute a misdemeanor punishable by fines not to exceed the sum of $500.00. Any City employee or any City official who threatens or intimidates other employees from exercising their rights under the Civil Service Law or Civil Service Rules shall be subject to discipline by the City, including dismissal of employment with the City.

6. **Add to the end of Section 2**: No uniform employees of the City of Asheville shall be prohibited, directed or discouraged in any manner by a supervisor from wearing his/her uniform while in attendance at any Commission meeting.

7. If any section, subsection, subdivision, sentence, clause or phrase of this act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion if this act.

8. All laws, rules or clauses in conflict with the provisions of this Act are hereby superseded and/or repealed.

9. These amendments shall become affective upon Ratification."

Councilman Mumpower, liaison to the Civil Service Board, felt this is not the appropriate forum to tackle this comprehensive undertaking. With us being currently involved in litigation, he didn't feel this was the ideal time for us to initiate this undertaking. It would seem that the model that was used in the past to modify our Civil Service Law would be appropriate today. That model included City staff, legal advisors, members of the Civil Service Board, employee representatives and others that did the brunt work to create a recommendation for the Council.

In response to Councilman Mumpower, City Attorney Oast said the last time the Civil Service Law was amended was in 1999 and when that happened there were employee

representatives, management representatives, member of local delegation, and perhaps a member of Council. It was a task force that reviewed and suggested some changes to Civil Service Law. There was a lot of give and take and we went to Raleigh to talk with the legislatures too. The outcome was the result of a lot of negotiations, but the Law is better as a result of it. What they were dealing with was a Law that had last been amended in 1977 and before that 1953. We updated a lot of it and the process went well.

In response to Councilman Mumpower, City Manager Jackson said that Assistant City Manager Richardson prepared a memorandum with the recommendation of establishing a City Council Blue Ribbon Committee Proposal: Study of the Asheville Civil Service Board: Analysis on Performance Measurement and Cost Control. That would be his recommendation in terms of a comprehensive review of the statute.

Mayor Bellamy's goal is that these revisions be negotiated and if that happens we may not need legislative changes. She felt the Civil Service Board was open to negotiations with Council for Board changes and/or legislative changes.

Councilman Mumpower felt the City should wait until the outcome of the legal entanglement regarding the 5th member to the Civil Service Board. He spoke strongly against any action today but would support the model for a comprehensive review of the Civil Service Law as recommended by City Manager Jackson. If we move forward with this, he felt it was fair to say our legal representation and management might have some issues where improvements might be made; however, he feels that a committee could target the potential modifications of the ordinance.

Councilman Russell agreed with Councilman Mumpower in supporting the City Manager's recommendation of a comprehensive review of the statute by a City Council Blue Ribbon Committee.

City Manager Jackson said that in order for the City to be an employer of choice, we need to have an open and inclusive process to review the proposed changes. We have no predetermined idea what the next step might be for this organization, but are open to any ideas brought forward by the employees as well as the Civil Service Board. He said he didn't believe the 9 proposed changes outlined by Mayor Bellamy was a recommendation of the Board, but just of certain members on that Board.

Mr. Sidney Bach, member of the Civil Service Board since October of 2007, said that in 1988 and 1999 attempts were made by the previous City Manager, in concert with the Office of the City Attorney, to abolish the Civil Service Law. That was met with opposition in the state legislature by interested parties. Then another maneuver was orchestrated. He said the state laws say a "Civil Service Board shall have the powers and shall perform the duties specified in this Act and the City Manager shall provide the operational needs of the Civil Service Board in assigning a budget." More importantly, in his view, the state law has been totally stymied from actions of the City staff. The state law says "the Civil Service Board shall make rules for promoting efficiency in the classified civil service and the Council shall act upon such proposed rules and amendments when approved by the majority vote of the Council. The Council may, before approving the rules, amend the rules and amendments." The Civil Service Board's function is to propose to Council Civil Service rules for the efficiency of operating the classified personnel. Then it's up to Council to accept, reject or modify. These rules apply to standardization, classification of positions and employment with the City, grievance hearings, part-time employment, etc. After the failure to abolish Civil Service in 1999, the Civil Service Board adopted rules of procedure on November 13, 2003, and adopted by City Council on January 11, 2005. Those rules are adopted in accordance with the Civil Service Law and shall govern proceedings held before the Board. What City staff has used to justify for abolishing all the rules is at the end of the rules of procedure where it says all other rules and regulations approved by the Asheville City Council as proposed by the Civil Service Board are hereby

repealed. The rules start off saying that they only govern the rules before the Board, but City staff uses that language about abolishing all other rules, which means all other procedural rules, to say the City administration, through the Human Resources Department, can come up with new rules. He said the Civil Service Board has held only two meetings this year to perform their statutory duties. The law requires the Board to have meetings every month and only the Secretary can call the regular meeting but she's in Human Resources and she's at the beck and call of the City Manager. So, if the City Manager tells her to do or not do something, she has to listen. Special meetings can be called by the Chair of the Board or by the Secretary. He is trying to make changes to the legislation so they can have regular monthly meetings and do the business of the board. He wants to be fair to the City and the employees. He said they are stymied and broken.

Mr. John Miall, Chair of the Civil Service Board, clarified that there were actually 4 or 5 meetings after he was appointed Chair in November of 2007 that the two employee-elected members did not appear for. There have also been two meetings that the two employee-elected members did attend but they walked out when votes were trying to be held before the Board. The concept that the Board is not trying to perform its duties is not correct. He said that he has no interest at stake here, nor an agenda at play, other than to serve as your appointed Chair to this Board. Whatever actions Council may take, or opt not to take, it is simply his desire to have a system that allows process to govern what we do. Nothing else. He is an amateur student of history. He believes life's best lessons to guide us can be found in where we have been. Stated succinctly, "We have to know where we have been in order to see where we are going." The concept of municipal civil service laws grew out of the 1950's when there was a genuine and real need to remove politics from the business of hiring, promoting, and firing public workers. Over the intervening years the Congress, our legislature and the courts have created such a huge body of law affecting individual rights and means of redress that the original intent of Civil Service has long been negated. We have more rights afforded and guaranteed us under the laws of this nation and state than Civil Service ever intended. Asheville is the only city remaining in the state of North Carolina besides the City of Raleigh with a civil service system for the majority of its employees. Of the other 4 cities so constrained, New Bern's law pertains only to police; Charlotte and Statesville's law pertains only to police and fire personnel; and the City of Wilmington's law pertains only to some police and fire, and not all of them. The present Civil Service Law serves only one genuine need of employees at this time, and that is the grievance procedure added by the legislature in the early 1980's at the request of the City. Over the past 20 years the City has made every good faith effort to live with, support, and at times to do away with the Civil Service Law. The City has worked with its legislative delegations in the past, and without them at times to effect desired changes. Nothing has worked well. Sadly, over the past 50 years the law has been abused for all manner of personal interests and purposes. Promotional testing in the early 1980's resulted in a major scandal when it was found that some employees were paying for copies of answers to promotional tests. In more recent years different administrations have sought strategically to de-emphasize the system and relegate it to virtual obscurity. But, such is the nature of systems created by imperfect humans. None of these misuses have resulted in a better, fairer system of employment. And today, we stand before you to consider yet another of those many changes in the process. He asked the members of City Council to consider the following facts before acting on any designed change to the current system: (1) What is wrong and needs to be fixed? (2) Who are the people here advocating change? Do they represent a cross-section of our community whose interests are clearly linked to better governance and seek change based on best practices and proven models of reform? (3) Are the taxpayers served by these changes? and (4) Do these changes assure the City is served by the best educated, skilled, and capable people in the workforce? In summary, he asked the Council to take a long view of this issue. Were there problems a year ago that were bought to your attention that now require exactly this solution, or is this a solution looking for a problem? If you really want to seriously reexamine this, start with a blank slate and ask yourselves or a task force to create what we really need for the 21st century. Odds are the recommendations would not look anything like what either exists today or would become if this proposal is enacted. Don't allow the city to slide backward by fifty years or more. And lastly, he said that in his 30 years of service to this wonderful organization and the people it represents he has never seen better leadership from a

City Manager and Human Resource Director than the combination presently serving the City of Asheville. It would seem to him that Council has the requisite expertise and leadership currently on your payroll to deal with this matter and do not need to waste the time hearing from the likes of him or others seeking changes for no apparent reason.

When Councilman Mumpower asked if there has been any pattern of difficulty or failure to uphold processes established in 1999, City Attorney Oast said that he was not aware of any.

Councilman Mumpower felt it was obvious that we have an internal problem in this Board and he feels it's inappropriate for City Council to become involved in that. He again suggested an action committee be formed to fairly review the statute. But, to do that before we get the legal issues resolved regarding appointment of the fifth member and before this Board makes some effort to internally solve this discord and conflict, he believed is premature. In summary, he encouraged (1) improvement in the relationship amongst the Civil Service Board itself; and (2) resolution of the legal concerns; and (2) then proceed with the creation of a committee as recommended by the City Manager. He does not believe there is any demonstrated urgency for action. He also pointed out that the 9 proposed changes are not brought to Council by the majority of the Board and it is not appropriate for Council to engage with the Board on them.

Councilman Newman felt it would be a good idea for stakeholders to meet with a goal of finding common ground. The outcome might be several recommendations, some of which the Board can implement itself, some might have to come to Council and some may have to go to the legislature. His only concern was the proposed appointment of community business leaders in that they are not really stakeholders in this process.

In response to Councilman Newman, City Attorney Oast said that out of the 9 proposed changes outlined above, there are some things that the Board can, by rule, do for itself, e.g., recording of meetings.

Mayor Bellamy said that since there is concern about the make-up of the Blue Ribbon Committee, she suggested the Boards & Commissions Committee look at that issue and bring it back to Council for their consideration.

When Councilman Mumpower asked if the Blue Ribbon Committee was to be established before the legal issue is resolved, City Attorney Oast said that he didn't believe a hearing date for a motion on summary judgment, which is the next procedural step, has been set yet. It would likely be after the end of the year before that is resolved, if resolved with a summary judgment.

Mayor Bellamy suggested a parallel track of the Blue Ribbon Committee and the legal issue.

Vice-Mayor Davis felt was comfortable with the make-up of the Blue Ribbon Committee as proposed by Assistant City Manager Richardson with Human Resources people from the private and public sector. He did find it difficult to have a Board that should be an advocate for the City and its employees institute a lawsuit against us.

When Mayor Bellamy asked if there was consensus of Council for a parallel track of the legal issue proceeding and having the Boards & Commissions Committee look at the make-up of the Blue Ribbon Committee to evaluate the efficiency and effectiveness of the Civil Service, City Attorney Oast said Council must proceed carefully. There is a division on the Board and it's fair to say they don't speak with one voice. The litigation is about the seating a 5th member. But the issues they raise here are not related to the lawsuit and he didn't think they would necessarily interfere with each other. If we can get around the internal difficulties on the Board, there is a possibility we can work on these.

Councilman Russell preferred to wait until the lawsuit litigation is resolved before establishing a Blue Ribbon Committee.

Vice-Mayor Davis understands the frustrations of the Board. He too would support waiting until the lawsuit litigation is resolved prior to establishing a Blue Ribbon Committee as suggested by the City Manager.

Mayor Bellamy announced that three members of Council prefer to wait until the lawsuit litigation is concluded prior to establishing a Blue Ribbon Committee is established, and three members of Council prefer a parallel track of the Blue Ribbon Committee and the legal issue. Therefore, it is the consensus of Council to appoint a Blue Ribbon Committee, but the question is when.

Mayor Bellamy requested the current Civil Service Board go through mediation because this is not healthy for our City to have a Board operating like this. If each Board member does not desire to go to mediation, she asked City Attorney Oast what other alternatives are available to Council. City Attorney Oast said that he would investigate what would be required in order for the mediator to take action.

Mayor Bellamy explained that the Civil Service Board potentially will begin to hear grievances impacting the lives of the employees of the City of Asheville. Do we want our employees have to deal with people who won't even talk with each other to have an effective meeting? The bigger issue is the right of our employees to appeal to a body that is ready to deal with their issues, not the issues amongst the Board members.

Councilman Mumpower said that in fairness to the Board, in the past two meetings there has been some efforts on the Board to be more civil and more cooperative. There is reason to believe that either through their own efforts, or through mediation, they can make progress to the point of serving their role more effectively.

Mr. Miall said that speaking for himself, he would be glad to participate in any process that will lead to a better functioning Board. He pointed out that the rules say that the Civil Service Board will make recommendations to the Council about rule changes. These 9 proposed Civil Service changes outlined above leap-frogged right to the Council. Not one of these rules has been brought before the Board for action. What is needed is to follow process.

Mr. Bach said that we are talking about changes in legislation that would make the Board function properly as the statute requires. In the spirit of civility, Mr. Miall and he met and reached an understanding as to what we thought would work to resolve the litigation. Unfortunately Mr. Miall came back to him and said he was sorry, but it has not been approved by Councilman Mumpower and staff.

When Mayor Bellamy asked Mr. Bach if he would be willing to attend mediation, he said he would be happy to participate if a meeting is called.

Ms. Virginia Robinson, member of the Civil Service Board, said that she feels comfortable in moving forward to hear issues and follow through to the best of her judgment. She said that if mediation is needed, that would be fine. She wanted the issues to be looked at fairly and open mindedly, but she didn't feel like that is a factor that will happen.

Councilman Mumpower clarified that he has no authority over the Civil Service Board. He is only the City Council liaison. At no point has he been in any position to tell anyone to do anything, and that includes the Board, the Chair, the staff or City Council.

Mayor Bellamy said that in order to be transparent, had not she been in Raleigh lobbying on transportation, City Council wouldn't have known about this because Council was not engaged

at any level. There are some issues about following procedures. This is the first time that City Council as a whole has seen or addressed the wording on these proposed Civil Service changes. Her goal is how do we get past where we are so the Board can work together and have regular monthly meetings. This is not about the Board members, it's about the process and how do we make it a good process for our employees going forward.

At 5:06 p.m., Mayor Bellamy announced a short recess to allow City Attorney Oast to talk with Assistant City Attorney McGlohon who is the attorney who is familiar with the lawsuit, prior to making a decision regarding mediation.

City Attorney Oast said that the status of the litigation is such that we don't know when it will get resolved. He thought it may be about six months, but there is no way to put a particular date on it.

When Mayor Bellamy asked about mediation, City Attorney Oast asked Ms. McGlohon if this matter had been referred for mandatory mediation. It has not been. The only issue that can be mediated in that context is the issue of the litigation, which is the appointment of the fifth member. However, he understands that the Mayor Bellamy is requesting mediation with a facilitator that can help the Board get to a point that they can conduct its business. He will look into that and report back to Council.

Mayor Bellamy said that she will write a letter to Representative Goforth to let him know what Council is doing on this matter. She will include in that letter the date that Council met on the issue and that they will seek mediation for the Civil Service Board. She would also like to point out that the Council will establish a Blue Ribbon Committee to analyze the efficiency and effectiveness of the Civil Service Board but from the discussion today that it is still an outstanding issue.

Councilman Mumpower suggested we advise Representative Goforth that after we establish a functional relationship of the existing Civil Service Board and after the lawsuit is resolved that the Blue Ribbon Committee will be appointed to discuss the proposed civil service changes.

In response to Councilman Newman, Mr. Miall said that there is a grievance that has recently been filed that will require the attention of the Civil Service Board. A meeting will be scheduled.

It was the consensus of Council to instruct the City Attorney to provide Council with information on mediation/facilitator for the Board to work together.

Mayor Bellamy said she felt there was enough support for a Blue Ribbon Committee to be established. The outstanding issue is when it would be established (with the Boards & Commissions Committee looking at the make-up of such a Committee) - on a parallel track with the lawsuit or after the lawsuit is resolved.

FEE IN LIEU OF – HOUSING TRUST FUND

Community Development Director Vann McNeill said that recent downtown development projects have been submitted to the City that have resulted in project developers voluntarily offering to pay fees in lieu of providing affordable housing units to ensure those projects meet City 2008-09 Strategic Plan goals. The Council's Housing and Community Development (HCD) Committee and the Affordable Housing Working Group are developing recommendations for the use of any such funds received by the City.

On June 24, 2008, City Council received the 2008 Affordable Housing Plan (the Plan) as presented by the Mayor's Affordable Housing Task Force. In support of the Plan, City Council asked

the HCD Committee to continue to develop the Plan's recommendations, several of which propose additional policies related to the City's Housing Trust Fund. To assist with this task an informal group of committed former task force members (now named the Affordable Housing Working Group (Working Group)) continues to work with the HCD Committee on recommendations for implementation of the Plan.

In the context of that work, during the September 15, 2008, HCD Committee meeting, committee members discussed the issue of the City accepting fees in lieu of providing affordable housing units from downtown development projects. The loss of affordable housing units when a fee in lieu is accepted was of great concern to the HCD Committee members, and it was felt that any fees offered by these projects should be paid to the City's Housing Trust Fund for the construction of more affordable housing. The HCD Committee requested that the Working Group also consider this issue and discuss options and make recommendations on the City's accepting fees in lieu of providing affordable units by project developers.

The Working Group met on October 7, 2008, and discussed this issue at length. They developed four recommendations for discussion by the HCD Committee at the October 20, 2008, committee meeting in prelude to the Council Worksession discussion on October 21. Those recommendations are provided below.

The Working Group recommendations being evaluated by the HCD Committee are as follows:

1. The City should accept fees in lieu of producing affordable units; however, this was not the Working Group's preferred option. The Working Group's desire was to see each project provide the affordable units within the project itself so as to promote the goal of mixed-income developments throughout the city, including developments proposed for downtown, and all projects requesting Conditional Use Permit and Conditional Zoning designations;

2. All fees accepted from project developers should be placed in the City's existing Housing Trust Fund for the production of affordable units. The Working Group also expressed concern that if the City accepts these fees what implications would that have for future general fund allocations to the Housing Trust Fund? The Working Group does not support a reduction in the annual allocation and fees in lieu should not been viewed as a "substitute" for the annual allocation;

3. Fees in lieu should be used according to the current Housing Trust Fund guidelines to provide loans for the production of affordable units; and

4. The current practice of annually providing seven to ten percent of the funds available in the Housing Trust Fund for program administration should be continued.

Again, the HCD Committee recommendations are being determined on October 20, but the following summarize the staff views on the benefits and concerns related to the recommendations of the Working Group:

Benefits:

- Acceptance of a fee in lieu increases the funding available in the Housing Trust Fund for the production of affordable units in the City and ensures these funds follow the program's established guidelines.
- Placing these fees in the Housing Trust Fund is consistent with City's policy and practice, and furthers the affordable housing goals of the City's 2008-09 Strategic Plan, the recommendations of the 2008 Affordable Housing Plan, and the goals and objectives of the City's 2005-10 Consolidated Strategic Plan for Housing and Community Development.

- Placing these fees in the Housing Trust Fund continues the structured, objective approach currently in place and continues this practice for accepting these fees from future development projects.

Concerns:

- Accepting a fee in lieu, instead of providing the affordable units within the proposed development, does not further the goal of providing mixed-income housing throughout the City.
- Current and future economic trends would seem to indicate that a consistent fee in lieu revenue stream from projects is unlikely, and these fees should not be seen as a dependable source of revenue for the City's Housing Trust Fund.

Regarding the fiscal impact, potential exists to increase the available Housing Trust Funds for affordable housing projects.

This staff report gives background on the issues surrounding the questions raised by the potential of the City accepting fees in lieu of providing affordable housing units in proposed development. The HCD Committee, the Affordable Housing Working Group, and City staff are presenting the City Council options for how to address this potential. The staff, however, believes that even if they are accepted, this would be only a partial policy.

If the City adopts a formal policy regarding the acceptance of fees in lieu, the important and difficult remaining question will be how to objectively calculate what fees will be contributed by future projects. A preliminary review including research into other communities, has found that there are many ways to arrive at such a fee. If a "fee in lieu use policy" is adopted, the staff recommends work to begin on a formal fee policy through a coordinated approach with the HCD Committee, the City Attorney, the Planning staff, and the Affordable Housing Working Group. The recommendations of that group would be presented to City Council in the near future for their consideration.

The HCD Committee concurs with the Affordable Housing Working Group's recommendations concerning development projects when a developer has voluntarily offered to pay fees in lieu of providing affordable housing units as one available option to demonstrate support for City adopted goals and plans.

This is a follow-up to the HCD Committee meeting which members met on October 20, 2008. The four (4) recommendations offered by the Affordable Housing Working Group were reviewed by the Committee. Those recommendations were as follows:

1. The Working Group proposed that all CUP and CZ housing development projects include affordable housing units within those projects; however, when infeasible the City could accept fees in lieu of providing these units;

2. Fees should be placed in the City's Housing Trust Fund (HTF) to produce affordable units; but any fees received in lieu should not be considered a "substitute" for the City's annual allocation to the Housing Trust Fund;

3. Fee use should be consistent with HTF policies and provide loans that produce affordable units; and

4. The current practice of annually providing seven to ten percent of the funds available in the HTF for program administration should be continued.

Benefits

- Fees in lieu can increase the Housing Trust Funds available for increasing the affordable housing units in the City.
- Producing these units achieves goals of the City's 2008-09 Strategic Plan, 2005-10 Consolidated Strategic Plan for HUD funds and the 2008 Affordable Housing Plan developed by the Mayor's Affordable Housing Task Force.
- Provides City Council with a framework for accepting fees in lieu that will directly result in the production of affordable housing units.

Concerns:

- If the option is used too consistently for projects downtown, it could result in an inordinate concentration of high-end housing there.
- Fees in lieu cannot be viewed as a predictable source of revenue for the HTF given the current state of the economy.

Potential exists to considerably increase the funds available in the Housing Trust Fund for affordable housing projects over time.

The HCD Committee concurs with the Affordable Housing Working Group's four (4) recommendations and proposes that they be considered a partial policy for addressing fees in lieu proposals that may be considered by City Council prior to the completion of a formal policy.

Planning and Development staff recommends the continued development of a complete policy for City Council review, which will require the creation of an objective, fair and equitable fee schedule, along with other administrative recommendations.

Preliminary review of similar policies in other communities indicates there are a variety of ways to establish such a fee structure. Staff will work closely with the HCD Committee, Affordable Housing Working Group and the City Attorney to develop a complete policy for City Council review in the near future.

Councilman Newman, Chair of the HCD Committee, said that the Committee was supportive of the Affordable Housing Working Group's recommendations. At this time there is no requirement for developers to include affordable housing in their developments. But, obviously in our community development goals and all our community development plans point to affordable housing as a very important need in the community. We have many developers who do include affordable housing in their developments. In some developments we see it's not realistic to include affordable housing in their development, but they recognize it's an important need in the community and they initiate other ideas, e.g., The Ellington suggested earmarking a certain percentage of the real estate transactions of the condominiums in The Ellington be directed to a fund to build affordable housing in downtown. If developers are going to make financial contributions to support affordable housing and if they are pointing to that as part of how their project will be contributing towards meeting the City's community development goals, we believe those funds should be placed into the Affordable Housing Trust Fund. This is an established public process and we know those funds will be accounted for. He asked for Council to support their recommendations as well. This is not a recommendation to make inclusion of affordable housing in future developments. This is only if a developer initiates the idea of affordable housing and if the project is approved, that the funds be allocated to the Affordable Housing Trust Fund.

In response to Councilman Russell, Councilman Newman assumed Council will have this discussion at a formal Council meeting to formally accept the four (4) recommendations offered by the Affordable Housing Working Group.

Councilman Mumpower suggested that the Affordable Housing Working Group's make-up is out of balance and that it's comprised of people who have an affordable housing interest. He would have to speak strongly against this action in that he feels it represents a socialistic

agenda to reach into one group's pocket and put it into another group's pocket. He felt the best way to help affordable housing in the City is by good policies, keeping taxes low and keeping the City safe.

Councilman Mumpower felt that developers are faced with a number of regulations and judging the political mindset of Council, which can be arbitrary at time, the developers are often given the impression that if they meet our expectations (bearer of gifts), they can successfully achieve the developmental process. He speaks strongly against those policies.

Councilman Newman reiterated that there is no requirement proposed for developers to include affordable housing components in their projects.

Councilwoman Jones took issue to Councilman Mumpower's comments in that while on City Council she has made a lot of decisions and none of them were arbitrary.

Councilman Russell felt that if developers wish to contribute to affordable housing, it is their will. He would prefer, however, that those developers be able to designate the funds where they want to because there are many charitable organizations that help the community.

Councilman Newman noted that the Affordable Housing Trust Fund is not the only place those funds could be directed. They are simply saying that if the developer thinks that affordable housing is important and they want the funds to go specifically to affordable housing , then they feel it should go to the Affordable Housing Trust Fund. Regarding the composition of the Affordable Housing Trust Fund, there are representatives from the Community Foundation of WNC (which was the recipient from the first significant development where the developer proposed those funds). Those representatives felt the most effective way to use those resources would for them to be invested in the City's Affordable Housing Trust Fund. That is an already established public process that is accountable.

Councilwoman Jones explained that if a developer thinks affordable housing is a strategic goal that they want to contribute to, through the conditional use process, the way that will happen is to increasing the supply of affordable housing via the Housing Trust Fund. She understands that part of the use of the conditional use process is that the developer gets special allowances to help the project, but the trade-off is there are things they have to help the City with as well. It is intended to facilitate a good project and also to facilitate the City's goals.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that this process grew out of the suggestion from The Ellington project. The law does say with regard to conditional use districts that conditions applicable to these districts may be proposed by the petitioner or by the City or its agencies, but only those conditions mutually approved by the City and the petitioner may be incorporated into the zoning regulation permit requirements. There needs to be some nexus between the impact of the project on the housing community and what would be required to mitigate that impact. What Council is trying to do is to derive at a formula to let them know what is needed to address this particular impact.

WORKSESSION MEETING TIME

Mayor Bellamy said that Council has been starting their worksessions for the last several months at 3:00 p.m. and was following up to see if that time was satisfactory to Council members.

After a brief discussion, it was the consensus of the majority of Council to continue the worksessions at 3:00 p.m. on the third Tuesday of the month.

UNIFIED DEVELOPMENT ORDINANCE APPROVAL REQUIREMENTS

City Manager Jackson asked for Council direction to allow City staff to look at, in light of the financial market conditions, over the next 60-90 days look at our Unified Development Ordinance (UDO) approval requirements and see if we can agree on some relaxing of those non-public safety requirements (sidewalks, landscaping, etc.) What triggered this was a specific redevelopment project that was trying to bring businesses into the former Square D building and was running into our very strict requirements that even non-public safety improvements needed to be bonded or completed in order to get their permanent Certificate of Occupancy. In this particular case we resolved that issue by granting a temporary Certificate of Occupancy which they will look at periodically to determine if the market conditions have changed to allow them to get the bonding necessary to commit to do those non-public safety improvements.

It was the consensus of Council to authorize the City Manager to develop proposals for revised standards in the UDO for requirement thresholds, approval extensions, and financial guarantees for non-public safety related development requirements.

CONSERVATION EASEMENT IN CITY-COUNTY PLAZA AREA UPDATE

City Attorney Oast said that at Council's request, he has been exploring ways in which the use of the City's park lands may be limited to park and recreational uses. Prior to 1982, there was some question as to whether a city could change the use of and sell property it acquired for governmental purposes. In 1982, N.C.G.S. 160A-265 was amended to provide for this. There are several methods for restricting the use of park property; the following list does not include them all, but these are the most conventional:

1. Zoning. Cities can create zoning classifications specific to park land, which limit the use of the property. However, these regulations may be changed in the same manner as any zoning ordinance.

2. Conveyance to City with restrictions on use. Grantors may place restrictions on the use of property conveyed to the City. If this is done, it is important that the instrument of conveyance contain some enforcement language, such as a reversion, to provide a remedy if the restrictions are violated (the absence of such a reversion is an issue in the Parkside case).

3. Dedication. This occurs when public facilities are created, usually as part of a development, and offered to the City for the public use and enjoyment. This is how the City obtains streets and sidewalks in new subdivisions, but it can also be done for park property. Acceptance of dedication usually implies some sort of promise by the government that the dedicated property will remain in use for that purpose, barring a change in circumstances that makes the use inappropriate. Dedication can also occur as a result of lay use for a particular purpose (another issue in the Parkside case). The public has some ability to require that dedicated land be used for its dedicated purpose (although this may have been affected by the 1982 law), and certain procedures are required to change the use.

4. Conservation Easements. Like private individuals, governments may convey conservation easements to organizations whose mission includes the policing and enforcement of the restrictions thereby created. Cities have the ability to make such conveyances pursuant to N.C.G.S. 160A-266. This process, however, assumes that there is an organization willing to accept the easement, which acceptance carries some responsibility. Most such organizations work with large tracts, and the City has conveyed at least one such easement on the North Fork property. Smaller tracts, like most City parks, are more difficult to "place."

At Council's direction, he could explore any of these methods more fully, and make recommendations applicable to all or some of the City's parks.

Mayor Bellamy said that the Buncombe County Commissioners and the Pack Square Conservancy would like to have a conservation easement on the City-County Plaza as well.

There was a brief discussion about whether the City wanted to restrict the use of park property.

It was the consensus of the majority of Council to instruct the City Attorney to start working with Buncombe County and the Pack Square Conservancy on a conservation easement for the City-County Plaza area only.

BOARDS &COMMISSIONS

It was the consensus of Council to instruct the City Clerk to arrange interviews for Jodi Schell, Arthur Allen and Brian Woods for a vacancy on the Civic Center Commission. Regarding County residents on the Civic Center Commission, Mayor Bellamy said that when the Buncombe County Commissioners agree to support the renovation of the Civic Center, we would be happy to have County representation on the Commission.

Regarding the Civil Service Board, it was the consensus of Council to delay interviews for that vacancy.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Susan Barlow, Russell Pierce, Stephanie Pankiewicz, Justin Fletcher, Ellen Bailey, Brian Etheridge and David Borcherding for a vacancy on the Greenway Commission. It was noted that there will be two additional vacancies on the Greenway Commission on December 31, 2008.

At the request of the Downtown Commission, and the recommendation of the Boards & Commissions Committee, it was the consensus of Council to extend the term of Mr. Pat Whalen on the Downtown Commission until the Downtown Master Plan process is complete or April 1, 2009, whichever occurs earlier.

CLOSED SESSION

At 6:30 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a) (5); and to prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes that information privileged and confidential is N. C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in G.S. 143-318.11 (a) (1). This motion was seconded by Councilwoman Jones and carried unanimously.

At 6:38 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:38 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – October 28, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 30, 2008, AS "INSULATE! DAY"

Councilwoman Cape read the proclamation proclaiming October 30, 2008, as "Insulate! Day" in the City of Asheville. She presented the proclamation to Mr. Phillip Ray Gibson, Director of Community Outreach at Warren Wilson College, and others, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING NOVEMBER 2008 AS "LONG-TERM CARE AWARENESS MONTH"

Councilman Newman read the proclamation proclaiming November 2008 as "Long-Term Care Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Betty Doll, with Long Term Care Insurance Services, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "A" was removed from the Consent Agenda for discussion and/or an individual vote.

At the request of Councilman Mumpower, Consent Agenda Items "B", "C", "E","F","G", "I", "K", "L" and "M" were removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON OCTOBER 14, 2008; AND THE WORKSESSION HELD ON OCTOBER 21, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

B. ORDINANCE AMENDING CHAPTER 9 OF THE CITY OF ASHEVILLE CODE OF ORDINANCES TO LEVY A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

RESOLUTION LEVYING A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

These items were removed from the Consent Agenda for discussion and/or an individual votes.

C. BUDGET AMENDMENT TO TRANSFER FUNDS FROM THE STORMWATER ENTERPRISE FUND TO THE DINGLE CREEK PROJECT FUND TO COVER THE COST OF THE CONTRACT AMENDMENT WITH MCGILL ASSOCIATES FOR A STORMWATER ENGINEERING ANALYSIS OF THE DINGLE CREEK WATERSHED

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 08-207 – RESOLUTION SETTING A PUBLIC HEARING ON DECEMBER 2, 2008, TO CONSIDER PERMANENTLY CLOSING A PORTION OF WALLACK STREET

Summary: The consideration of a resolution of intent to close an unopened portion of Wallack Street and request a public hearing for December 2, 2008, regarding this issue.

N. C. Gen. Stat. sec.160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, property owners Asheville Buncombe-Community Christian Ministry Inc. and Robert and Joan Ledford have requested the City of Asheville to permanently close an unopened portion of Wallack Street.

The Greenway Commission is scheduled to review the closure of the unopened portion of Wallack Street at their meeting on November 13, 2008.

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for December 2, 2008, to close an unopened portion of Wallack Street.

RESOLUTION BOOK NO. 31 – PAGE 334

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGRICULTURAL LEASE WITH GLADHEART FARMS, LLC, FOR THE COMMERCIAL PRODUCTION OF AGRICULTURAL CROPS ON UNUSED PORTIONS OF CITY-OWNED PROPERTY AT AZALEA PARK AT 395 AZALEA ROAD

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. BUDGET AMENDMENT FROM THE U.S. DEPT. OF JUSTICE TO CREASE A BUDGET FOR THE THIRD YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED INITIATIVE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION TO CREATE A BUDGET FOR THE WEST RIVERSIDE GUN VIOLENCE PREVENTION PROJECT IN ASHEVILLE'S WEEK AND SEED TARGETED AREA

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION NO. 08-209 – RESOLUTION ACCEPTING EAST SCHENCK CRESCENT, COLUMBINE ROAD, DEARBORN STREET, TOWN SQUARE BOULEVARD AND DAYFLOWER DRIVE AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution accepting various developer constructed streets as City-maintained streets in the recently annexed area of the City of Asheville known as Town Square East that is described in the Annexation Services Plan dated April 26, 2005.

Ordinance # 7-15-1(e)(4)a requires that streets dedicated for public use by accepted by resolution of the City Council.

- East Schenck Crescent from Schenck Parkway to Columbine Road is a developer constructed street that has an average width of 38 feet, a length of 0.18 mile, and a right-of-way width of 50 feet.
- Columbine Road from Town Square Boulevard to Heathbrook Circle is a developer constructed street that has an average width of 26 to 42 feet, a length of 0.18 mile, and a right-of-way width of 50 feet.
- Dearborn Street from Town Square Boulevard to Leucothoe Lane is a developer constructed street that has an average width of 38 feet, a length of 0.12 mile, and a right-of-way width of 50 feet.
- Town Square Boulevard from Schenck Parkway to Schenck Parkway is a developer constructed street that has an average width of 32 feet, a length of 0.10 mile, and a right-of-way width of 42 to 46 feet.
- Dayflower Drive from Columbine Road to Dearborn Street/White Ash Drive/Olmsted Drive is a developer constructed street that has an average width of 24 feet, a length of 0.24 mile, and a right-of-way width of 45 feet.

Transportation and Engineering Department staff and Public Works Department staff have inspected these streets and recommend their change of ownership from privately-maintained streets to City-maintained streets.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure as a part of a voluntary annexation which helps support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to maintain the streets *(Total mileage = 0.82 mile)*.
- The streets provide access and connectivity in a residential and non-residential community *(town center)*.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to $1,886 per mile compared to the City's maintenance cost of $8,200 per mile.

Staff recommends that City Council accept the subject streets as city-maintained streets.

RESOLUTION BOOK NO. 31 – PAGE 336

I. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE OF COMMUNITY ORIENTED POLICING SERVICES METHAMPHETAMINE PROGRAM GRANT

BUDGET AMEMENT FROM THE DEPT. OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES TO ASSIST THE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB INVESTIGATIONS

These items were removed from the Consent Agenda for discussion and/or an individual vote.

J. ORDINANCE NO. 3665 – BUDGET AMENDMENT TO ACCEPT A $500 DONATION FROM EMPLOYMENT STAFFING INC. FOR THE PURPOSE OF DISBURSING THIS DONATION TO WESTERN CAROLINA RESCUE MINISTRIES INC.

Summary: The consideration of a budget amendment to accept a five hundred dollar ($500) donation from Employment Staffing, Inc. (ESI) for the purpose of disbursing this donation to Western Carolina Rescue Ministries, Inc. (WCRM).

After discussion at the Tuesday, August 26, 2008, the City Council responded to a request from WCRM asking the City to provide transit passes for some of the agency's homeless clients who had been offered work opportunities at Arvato Digital Services in Weaverville and needed transportation assistance. On Friday, August 29, 2008, ESI donated $500 to the City for this purpose. However, to provide the funds to WCRM an outside agency agreement would be required. In the end, ESI purchased the transit passes for the homeless clients directly from the City Transit office.

Shortly thereafter, City staff requested direction from ESI as to the final use of the $500 donation. Mr. Bobby Walker, CFO of ESI, requested that the City disburse the donation directly to WCRM.

This request supports and implements the City's 2008-09 Strategic Plan goal of affordability by supporting initiatives to end homelessness. This request also supports the City's Continuum of Care and 10-year Plan to End Homelessness through partnering with other agencies that provide services and support to the homeless.

Pro:

- Completes the request by ESI to disburse the $500 donation to Western Carolina Rescue Ministries.

Con: None noted.

Budget amendment is only a technical adjustment to reflect the $500 ESI donation; therefore, it will have no impact on the City's budget. Recognizing the donation is required to then disburse the funds to WCRM.

City staff recommends City Council approve a budget amendment to accept a five hundred dollar ($500) donation from Employment Staffing, Inc. (ESI) for the purpose of disbursing the funds to Western Carolina Rescue Ministries, Inc.

ORDINANCE BOOK NO. 25 – PAGE 67

K. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE RURAL ECONOMIC DEVELOPMENT CENTER FOR P.E.G. SUPPORT FUNDS FOR A PASS-THROUGH GRANT TO URTV, INC.

BUDGET AMENDMENT TO ACCEPT A GRANT FOR P.E.G SUPPORT FUNDS FROM THE RURAL ECONOMIC DEVELOPMENT CENTER AND FACILITATE A PASS-THROUGH GRANT TO URTV, INC.

These items were removed from the Consent Agenda for discussion and/or an individual vote.

L. BUDGET AMENDMENT FROM A COMMUNITY DEVELOPMENT BLOCK GRANT AND AVAILABLE TRAFFIC CALMING FUNDS FOR THE BURTON STREET TRAFFIC CALMING PROJECT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

M. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED MEMORANDUM OF UNDERSTANDING FOR THE FRENCH BROAD RIVER METROPOLITAN PLANNING ORGANIZATION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON OCTOBER 14, 2008; AND THE WORKSESSION HELD ON OCTOBER 21, 2008

Upon inquiry of Councilwoman Cape, City Attorney Oast said that Councilwoman Cape could abstain from voting on the October 14 and October 21 minutes since she was not in attendance of either meeting.

Councilman Newman moved for the adoption of the October 14 and October 21, 2008, minutes. This motion was seconded by Councilman Mumpower and carried unanimously (with Councilwoman Cape abstaining from voting).

B. ORDINANCE NO. 3660 – ORDINANCE AMENDING CHAPTER 9 OF THE CITY OF ASHEVILLE CODE OF ORDINANCES TO LEVY A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

RESOLUTION NO. 08-206 – RESOLUTION IMPOSING A TAX ON GROSS RECEIPTS FROM THE RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

Summary: The consideration of (1) an ordinance amending Chapter 9 of the Code of Ordinances to levy a tax on gross receipts derived from retail short-term lease or rental of heavy equipment; and (2) a resolution imposing a tax on gross receipts from the retail short-term lease or rental of heavy equipment.

Senate Bill 1852 entitled "An Act to Resolve Problems with Applying Property Tax to Heavy Equipment Rented on a Short-Term Basis by Replacing the Property Tax on this Equipment with a Tax on the Gross Receipts from Renting the Equipment" (the "Act") was signed into law on August 2 and has been designated as Session Law 2008-144. Prior to the enactment of this legislation, municipalities had the authority to levy ad valorem property taxes on heavy equipment. The Act repeals that authority with regard to heavy equipment, now designating these items of heavy equipment as property classified and excluded from the tax base.

The Act does, however, provide a mechanism to replace the ad valorem property tax previously levied on this equipment. The Act authorizes a municipality to levy a gross receipts tax on the gross receipts from the short-term lease or rental of heavy equipment at retail. Under the terms of the statute, the tax is eight tenths (0.8%) percent. This gross receipts tax is in addition to the privilege taxes authorized by G.S. § 160A-211 and any other gross receipts tax that may be applicable in a municipality.

The Act states that the new gross receipts tax may not become effective before January 1, 2009. However, in order to begin collecting the gross receipts tax on January 1, 2009, municipalities must adopt a resolution imposing the tax prior to the end of October 2008. Staff is recommending that Council adopt this resolution and ordinance in order to ensure that the City of Asheville begin receiving this gross receipts revenue on January 1, 2009.

Pro:
- Offsets the loss of property tax revenue on heavy equipment.

Con:
- None noted.

According to the Buncombe County Tax Assessor, the City of Asheville previously collected approximately $56,000 in property tax revenue from heavy equipment business owners. Adoption of

this resolution will replace this lost property tax revenue with revenue from a gross receipts tax. Thus, there is no fiscal impact associated with this resolution.

City staff recommends City Council adopt (1) an ordinance amending Chapter 9 of the Code of Ordinances to levy a tax on gross receipts derived from retail short-term lease or rental of heavy equipment; and (2) a resolution imposing a tax on gross receipts from the retail short-term lease or rental of heavy equipment.

Councilman Mumpower felt this was not the time to levy any taxes on any business, especially heavy equipment companies.

When Mayor Bellamy asked for a motion on these two items, none was received and thus the ordinance and resolution failed due to lack of a motion.

Councilman Newman then asked for these items to be revisited.

Budget Director Tony McDowell said that this is basically shifting the tax burden from the owners of the equipment to the users of the equipment.

Mr. McDowell confirmed Councilman Newman's statement that if Council does not take action on these items, there will be a kind of property in the community exempted from taxation of any form.

Councilman Newman moved for the adoption of Ordinance No. 3660. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 55

Councilwoman Jones moved for the adoption of Resolution No. 08-206. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 333

C. ORDINANCE NO. 3661 – BUDGET AMENDMENT TO TRANSFER FUNDS FROM THE STORMWATER ENTERPRISE FUND TO THE DINGLE CREEK PROJECT FUND TO COVER THE COST OF THE CONTRACT AMENDMENT WITH MCGILL ASSOCIATES FOR A STORMWATER ENGINEERING ANALYSIS OF THE DINGLE CREEK WATERSHED

Summary: The consideration of a budget amendment, in the amount of $21,000, to transfer funds from the Stormwater Enterprise Fund to the Dingle Creek project fund to cover the cost of the contract amendment with McGill Associates for a stormwater engineering analysis of the Dingle Creek Watershed.

On August 26, 2008, City Council adopted resolution authorizing the City Manager to execute an agreement with McGill Associates for the Dingle Creek Stormwater Engineering Analysis in the amount of $21,000 for additional survey work and application of a Clean Water Management Trust Fund grant.

Money for this project is budgeted in the current year fiscal budget in the Stormwater Utility Enterprise Fund and this budget amendment is necessary in order to transfer $21,000 from the Stormwater Enterprise Utility to the Dingle Creek project.

This action complies with the Dingle Creek Watershed Master Plan in that the engineering analysis conducted is necessary in order to apply and obtain the Clean Water Management Trust Fund Grant in which will be used to implement a portion of the watershed master plan.

Pros:

- Implement a portion of the watershed master plan through the Clean Water Management Trust Fund Grant
- Improve water quality to the area

Con:

- None

Money from this project is budgeted in the current year fiscal budget in the Stormwater Utility Enterprise Fund.

Staff recommends City Council adopt the budget amendment, in the amount of $21,000, to transfer funds from the Stormwater Enterprise Fund to the Dingle Creek Grant fund to cover the cost of the contract amendment with McGill Associates for a stormwater engineering analysis of the Dingle Creek Watershed.

Councilman Mumpower felt that due to the economic climate, the timing of this is less than ideal and we continue to spend dramatic dollars on planning.

Councilwoman Jones moved for the adoption of Ordinance No. 3661. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 59

E. RESOLUTION NO. 08-208 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGRICULTURAL LEASE WITH GLADHEART FARMS, LLC, FOR THE COMMERCIAL PRODUCTION OF AGRICULTURAL CROPS ON UNUSED PORTIONS OF CITY-OWNED PROPERTY AT AZALEA PARK AT 395 AZALEA ROAD

Summary: The consideration of a potential agricultural lease with Gladheart Farms, LLC, a locally based certified organic farm, for 11 +/- acres of land for commercial agricultural production at Azalea Park.

Prior to the City's acquisition of the Azalea Park, the land was used as an agricultural farm. Now, the former farmland has been converted to a state-of the-art soccer and park facility, however there is still potential for unused lands within the park to be utilized in farm production. Gladheart Farms, LLC is proposing to use 11+/- acres of Azalea Park for certified organic vegetable, fruit and hay production. Gladheart has offered to enter into a three-year lease with option to renew for one additional three year term at a rent of $1,500 per year, with an annual escalation of 4%. The rental rate was generated through input provided by area farmers, the NC Cooperative Extension Service, and the National Park Service, a governmental agency that also administers agricultural leases on public lands. In that 5 acres of the property will require extensive clearing of overgrowth of native and invasive plant species, such as bamboo, tree of heaven and privet, Gladheart proposes to perform the clearing in lieu of paying the first two years' rent.

Gladheart sells only within the wholesale market, therefore no retail or U-pick operations would exist on the City Park property. The proposed lease will respect all stream buffers, conservation easements, wetlands and proposed greenway paths that exist at Azalea Park. Gladheart will maintain all necessary liability insurance for the property as well as limit access to

authorized personnel and representatives of Gladheart. Only USDA organically certified fertilizers, pesticides and herbicides will be permitted at the property and annual soil and water quality reports will be provided to the City. The proposed agricultural use will have no impact on the recreational use of the Azalea Park or the soccer facility. The Parks & Recreation Advisory Board reviewed and approved this proposed agricultural lease on October 13, 2008.

This complies with the Strategic Operating Plan in that it promotes sound land management per the Parks and Recreation Master Plan.

Pros:

- Increased income to dedicate to the Parks Department Land Banking fund.
- Clearing of overgrowth is compatible with the future uses of Azalea Park.

Con:

- There is no negative impact.

The fiscal impact will be $1,500 per year beginning in November 2010, with 4% annual escalations thereafter.

The Economic Development staff recommends adoption of this resolution.

In response to Councilman Mumpower, Real Estate Manager Nikki Gunter confirmed the rent is appropriate for the use of City property.

Councilman Mumpower moved for the adoption of Resolution No. 08-208. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 335

F. ORDINANCE NO. 3662 – BUDGET AMENDMENT FROM THE U.S. DEPT. OF JUSTICE TO INCREASE A BUDGET FOR THE THIRD YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED INITIATIVE

Summary: The consideration of a budget amendment, in the amount of $150,000, for a grant from the U.S. Department of Justice to create a budget for the third year of the West Riverside Operation Weed and Seed initiative

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The strategy was introduced to the community via a series of public meetings to determine the concerns of residents of the target area, and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

An application was submitted in October 2005 to the U.S. Department of Justice for official recognition as an official Weed & Seed site. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed & Seed funds once a year over a five year period. The first funding application was approved and awarded in August 2006.

In July 2008, Acting Assistant Attorney General, Jeffrey L. Sedgwick announced the City of Asheville's application for third year funding as a continuing site was approved in the amount of $150,000. 50% of the funds will be used to support law enforcement and community police programs; and 50% will be used to support neighborhood initiatives such as youth services,

parenting programs, health and nutrition programs, vocational programs, neighborhood clean ups, housing services, and the salary of the Weed & Seed Site Coordinator. No additional City funding will be required to support this third-year grant.

The West Riverside Operation Weed and Seed Steering Committee, residents and several community based resource agencies such as the Housing Authority, Asheville City Schools, Children First, OnTrack Financial Education and Counseling, Quality Forward and others continue to collaborate to improve quality of life for the residents of the West Riverside area and Asheville.

This action complies with the City Council Strategic Operating Plan in that it supports small business development in the Affordable Focus Area. It also complies with the following goals in the Safe Focus Area: 1) expand community policing initiatives, 2) reaffirm commitment to eliminate open air drug market in Asheville, 3) partner with intergovernmental agencies including the judicial system to comprehensively address drug-related crime, and 4) support recreation and employment alternatives for youth at risk of gang exposure. Finally, it complies with the Sustainable Focus Area in that it expands partnerships with UNCA, AB Tech and other institutions to achieve goals in health and wellness, workforce development, and economic development.

Pros:

- Significantly reduce violent crime and drug activity in an area of Asheville that has high crime activity.
- Provide a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for the residents of the target area.
- Mobilize community residents to collectively improve the conditions in the target area.
- Provide resources for residents as a means of personal growth and development.
- Multi-agency collaboration to address the social, educational, economic and cultural issues in the target area.
- Leverage resources to sustain the program and replicate the strategies in other problem areas in the city.

Con:

- Some resistance to change by the residents who live in the target area.

The fiscal impact is grant revenue of $150,000 to implement the comprehensive Weed & Seed strategy which funds police overtime, police equipment, a coordinator position, and community service contracts among other things at no additional cost to the City. The effort will sustain itself after the fifth year of implementation when Weed & Seed funding is no longer available.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to establish a budget in the amount of $150,000 for the third year of the West Riverside Operation Weed and Seed initiative.

Councilman Mumpower had no problem with the Weed and Seed Initiative other than it is a federal initiative to fix local problems. He was concerned that we have a $11 Trillion national debt and he could not support the City accepting a federal grant of borrowed money from foreign counties that our children and grandchildren will have to repay.

Mayor Bellamy thanked the people who are helping to lead the Weed and Seed, which include people from the non-profit sector as well as the residents of the impacted neighborhoods. She also thanked the police officers who are working additional time in these particular neighborhoods because we are seeing, through collaboration, a decrease in crime in these areas.

Councilwoman Cape moved for the adoption of Ordinance No. 3662. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 61

G. ORDINANCE NO. 3663 – BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION TO CREATE A BUDGET FOR THE WEST RIVERSIDE GUN VIOLENCE PREVENTION PROJECT IN ASHEVILLE'S WEED AND SEED TARGETED AREA

Summary: The consideration of a budget amendment in the amount of $15,000 for a grant from the N.C. Governor's Crime Commission to create a budget for the West Riverside Gun Violence Prevention Project in Asheville's Weed & Seed targeted area.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents of the target area, and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Weed & Seed sites are required to leverage additional funds to carry out their respective goals and objectives. This grant award will address the community driven Weed and Seed goals of: 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, and 4) increasing parent involvement in education and after-school activities.

An amount of $10,010 will be used for Asheville Police officer investigative overtime and FICA in the Weed and Seed area with a concentration on crimes related to gun violence and gang activity. The project also provides a prevention element in which gang detectives will teach the "Gang Resistance Education and Training Families" (GREAT) curriculum in the Weed and Seed area. This will enhance the GREAT curriculum currently being taught at Randolph Learning Center. The GREAT curriculum is also being taught at Asheville Middle School as classes become available. An amount of $4990 will used for gang suppression unit detective supplies and equipment. No additional City funding will be required to support this grant.

This action complies with the City Council Strategic Operating Plan in that it supports the following goals in the Safe Focus Area: 1) Expand community policing initiatives, 2) reaffirm commitment to eliminate open air drug market in Asheville, and 3) support recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Reduce gun crimes and gang activity in an area of Asheville that has high crime activity.
- Enhance the Weed and Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the target area.
- Mobilize community residents to take an active role in gun violence and gang prevention.
- Provide resources for residents as a means of personal growth and development.
- Multi-agency collaboration to address gun violence and gang prevention in the targeted area.
- Leverage resources to sustain the GREAT Families program which can be replicated in other areas of the city.

Con:

- Some resistance to change by the residents who live in the target area.

The fiscal impact is grant revenue of $15,000 for new equipment for Gang Suppression Officers and the facilitation of Gang Resistance Education and Training Families program at no additional cost to the City.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to establish a budget in the amount of $15,000 for the Project Safe Neighborhoods Gun Violence Prevention Project for the Weed & Seed area.

Councilman Mumpower felt the state should be investing their resources into addressing our court systems.

Councilwoman Jones moved for the adoption of Ordinance No. 3663. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 63

I. RESOLUTION NO. 08-210 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE DEPT. OF JUSTICE OF COMMUNITY ORIENTED POLICING SERVICES METHAMPHETAMINE PROGRAM GRANT

ORDINANCE NO. 3664 – BUDGET AMEMENT FROM THE DEPT. OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES TO ASSIST THE POLICE DEPARTMENT WITH THE PURCHASE OF METHAMPHETAMINE LAB INVESTIGATION EQUIPMENT, PROVIDE FOR OFFICER TRAINING AND OFFICER OVERTIME IN METH LAB INVESTIGATIONS

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under Department of Justice Office of Community Oriented Policing Services Methamphetamine Program Grant; and the associated budget amendment in the amount of $93,530.

The City of Asheville has been awarded a grant from Department of Justice Office of Community Oriented Policing Services for the Methamphetamine Program in the amount of $93,530 with no local match. The purpose of the grant program is to fund Methamphetamine projects, allowed under the grant program designed to train officers in proper handling and evidence collection, train the public on cues to meth lab operation, to pay for officer overtime for investigation of suspected methamphetamine sales, and provide needed equipment for proper response to meth labs.

This action complies with Asheville City Council Goals and Vision Priority Area: Community Building- Development strategies for youth and educational programs; and Priority Area: Economic Development- Continue commitment to public safety and drug enforcement priorities.

Pros:

- Will provide the public with needed information on how to spot possible meth lab operation which will enhance public safety.
- Proper officer training will aid in reduction of injure to officers responding to possible meth labs.
- Will provide special concentrated investigations into methamphetamine sales

- The equipment will increase officer safety in response to possible meth labs.

Cons:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment purchased
- Provide overtime pay for officer's investigation illegal meth activities once the grant funds were depleted.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with Department of Justice Office of Community Oriented Policing Services Methamphetamine Program Grant for grant monies in the amount of $93,530; and (2) the budget amendment in the amount of $93,530.

Councilman Mumpower felt we should not be accepting money from the federal government with their trillion dollar deficit, and that we should fund our own police and services.

Councilwoman Cape stated that the federal government gets its money from local people and this is coming back to help us with an issue that causes a lot of problems in our community.

Mayor Bellamy said that the City is following the correct process by writing grants and competing against cities across our nation. Since the federal government has said they would no longer earmark monies, we must compete for those funds via grant applications.

Councilwoman Cape moved for the adoption of Resolution No. 08-210. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 342

Councilwoman Cape moved for the adoption of Ordinance No. 3664. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 65

K. RESOLUTION NO. 08-211 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE RURAL ECONOMIC DEVELOPMENT CENTER FOR P.E.G. SUPPORT FUNDS FOR A PASS-THROUGH GRANT TO URTV, INC.

ORDINANCE NO. 3666 – BUDGET AMENDMENT TO ACCEPT A GRANT FOR P.E.G SUPPORT FUNDS FROM THE RURAL ECONOMIC DEVELOPMENT CENTER AND FACILITATE A PASS-THROUGH GRANT TO URTV, INC.

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Rural Economic Development Center to provide funds for expansions and improvements to the Public Access Media Center; and the associated budget amendment, in the amount of $24,960, to accept a grant for P.E.G. support funds from the Rural Economic Development Center and facilitate a pass-through to URTV, Inc.

The State of North Carolina has made funds available through a grant from the E-NC Authority, grant number: 2008-101-80315-102, to implement improvements to the public access media center managed by URTV, Inc. under a management agreement with the City of Asheville.

The purpose of this grant is to continue activities of the Public Access Media Center and provide needed capital expenditure improvements.

The City of Asheville submitted this grant on behalf of URTV, Inc. under the terms of the NC State Video Franchise Law which allows for the award of a grant up to $25,000 for P.E.G. channel operations. This is a matching grant with P.E.G. funding already allocated by the city to URTV, Inc. in the city's 2007/2008 adopted budget.

This action complies with the City Council Strategic Operating Plan in that it keeps costs for services to the public as low as possible.

Pros:
- Provides for expansion of media center technical capabilities by URTV, Inc.
- Improves cost effectiveness and support of public access media center activities conducted through the management agreement with URTV, Inc.
- Grant provides additional funding designated for public access television from a source other than the City of Asheville.

Con:
- None noted

There is no fiscal impact associated with this grant as it is a matching grant that matches funding previously provided to URTV, Inc. This action simply seeks City Council approval of the budget amendment needed to pass through the grant funds.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with the North Carolina Rural Economic Development Center to provide funds for expansions and improvements to the Public Access Media Center; and the associated budget amendment, in the amount of $24,960, to accept a grant for P.E.G. support funds from the Rural Economic Development Center and facilitate a pass-through to URTV, Inc.

Councilman Mumpower felt that the state should spend their monies on our dysfunctional court system and not on a public access station.

Councilman Newman moved for the adoption of Resolution No. 08-211. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Newman moved for the adoption of Ordinance No. 3666. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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L. ORDINANCE NO. 3667 – BUDGET AMENDMENT FROM A COMMUNITY DEVELOPMENT BLOCK GRANT AND AVAILABLE TRAFFIC CALMING FUNDS FOR THE BURTON STREET TRAFFIC CALMING PROJECT

Summary: The consideration of a budget ordinance, in the amount of $16,850, to set up the project budget for the Burton Street Traffic Calming Project.

This project includes the installation of five 14-foot asphalt speed humps along Burton Street from US 19-23 (Haywood Road) to Florida Avenue.

The Transportation & Engineering Department received and publicly opened bids on Friday, October 10, 2008, at 2:00 p.m. Two bids were received and opened, one from JLS Company, LLC for a total bid amount of $26,800 and the other one from Asphalt Unlimited of Asheville, Inc. for a total bid amount of $18,470. After a thorough review of the bid documents by the Transportation & Engineering Department, Asphalt Unlimited of Asheville, Inc., was found to be the lowest responsible bidder with a total bid of $18,470. All contract work was solicited in accordance with Federal guidelines including the Davis-Bacon wage requirements since Federal Funds are involved. At a pre-construction meeting that was held on Wednesday, October 15, 2008, it was agreed by the City of Asheville and the contractor that the signing items would be deleted from the contract thereby reducing the total bid to $16,850. The Public Works Department will install the appropriate signs at a potential savings of about $1,400.

The total anticipated cost to complete the project is $20,825 and is itemized as follows:

Design	$3,975
Traffic Calming Devices Construction	$16,850
Total =	$20,825

The project will be financed with monies received from a Community Development Block Grant (CDBG) in the amount of $15,000 that was approved during April 2007 and $1,850 from the traffic calming account. The $3,975 in funding for the design work came from the Fiscal Year 2007-08 Traffic Engineering operating budget.

Asphalt Unlimited of Asheville, Inc. has demonstrated in a satisfactory manner that it has satisfied all of the requirements as stated in the contract documents including evidence that it will adhere to the requirements of the City of Asheville's "DRUG FREE WORKPLACE".

Asphalt Unlimited of Asheville, Inc., a minority owned company, has submitted a responsive bid according to Minority Business compliance guidelines for the City of Asheville.

The construction time period for the project is identified as not more than 15 calendar days from the written notice to proceed as stated in the contract documents. The work to be performed shall commence from the written notice to proceed as stated in the contract documents. Depending on weather conditions, the contractor anticipates completing all work within five calendar days during the timeframe between November 3, 2008, and November 18, 2008.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Green Focus Area by supporting traffic calming as a means to reduce vehicular speed and "cut-through" traffic to provide a better quality of life for the Burton Street community.

Pros:

- The subject project will satisfy the wishes of the Burton Street community as indicated in the verified 60% petitions.
- The revised bid amount of $16,850 for the construction of the Burton Street Traffic Calming Project is equitable, as compared to the engineer's estimate of $15,500, considering current economic conditions.

Con:

- The only foreseeable disadvantage of constructing the subject project is that up to 40% of the affected community members might be opposed to the recommended traffic calming devices/measures.

The total financial impact for the subject project is $20,825 including $15,000 from a CDBG grant, $1,850 from the traffic calming account, and $3,975 from the Fiscal Year 2007-08 Traffic Engineering operating budget.

Staff recommends that City Council adopt a budget amendment, in the amount of $16,850, to set up the project budget for the Burton Street Traffic Calming Project.

Councilman Mumpower felt that due to the economy we should conserve our resources and not spend it on non-essential things.

Councilwoman Cape moved for the adoption of Ordinance No. 3667. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

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M. RESOLUTION NO. 08-212 – RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED MEMORANDUM OF UNDERSTANDING FOR THE FRENCH BROAD RIVER METROPOLITAN PLANNING ORGANIZATION

Summary: The consideration of a resolution authorizing the Mayor to sign an amended Memorandum of Understanding (MOU) for the French Broad River Metropolitan Planning Organization.

The French Broad River Metropolitan Planning Organization is in the process of revising its Memorandum of Understanding. A new MOU is required to reflect the change in Lead Planning Agency (LPA) from the City of Asheville to Land-of-Sky Regional Council. NCDOT has also requested several other minor changes to the MOU, in part to bring it into compliance with the Open Meetings Law.

The change in Lead Planning Agency is based on a resolution of the Transportation Advisory Committee adopted in March 2008.

This action does not directly tie to the City Council Strategic Operating Plan, but it is a necessary action based on the changes in the structure of the Metropolitan Planning Organization.

Pros:

- Demonstrates continued cooperation by the City of Asheville in regional transportation planning.

Con:

- None noted.

Transferring the planning responsibilities to the Land of Sky Regional Council reduces unrecovered overhead costs for the City of Asheville.

City staff recommends City Council authorize the Mayor to sign a resolution adopting the amended Memorandum of Understanding.

Councilman Mumpower felt there is some merit to this action at some level; however, he was concerned that we support a large bureaucracy in the Land-of-Sky Regional Council.

Councilwoman Jones and Vice-Mayor Davis were very supportive of this action. This is a perfect example of Asheville being regionally geared.

Councilwoman Jones moved for the adoption of Resolution No. 08-212. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. FUEL UPDATE

City Manager Jackson briefed Council on the fuel conservation measures in that the fuel supplies have stabilized and we have more than adequate reserves. We are shifting from short-term conservation to long-term planning.

Mayor Bellamy said there are continuing community meetings with municipalities in our county and other service providers to address the fuel issue as well.

Councilwoman Cape noted that the biggest energy peak is in the mornings. As we face the possibility of fuel oil shortages, she urged the community to consciously thing about conservation and turn down their thermostats, don't turn on extra appliances, etc.

B. ORDINANCE NO. 3668 – BUDGET AMENDMENT TO ACCEPT SPONSORSHIP FROM THE GROVE PARK INN FOR THREE FIREWORKS SHOWS IN DECEMBER 2008

Mayor Bellamy was pleased to announce an initiative with the Grove Park Inn, the Chamber of Commerce, the Buncombe County Tourism Development Authority, the Asheville Citizen-Times and hopefully the City of Asheville to look at ways to increase ways to attract people to our downtown during the month of December. The initiative is called "21 Days of Holiday Sizzle." The Grove Park Inn has offered to donate $40,000 to the City of Asheville for fireworks on December 6, 13 and 20, 2008, with each night being called "Seasonal Sizzle at Seven."

Mr. Ron Warren, the Grove Park Inn's Executive Director of Operations, was pleased to offer the City of Asheville a $40,000 gift to fund the downtown fireworks display at 7:00 p.m. on December 6, 13 and 20, 2008. The purpose of the display is to add more excitement to downtown during the upcoming holiday season. We have a unique variety of independent restaurants and shops and we hope that the fireworks will draw residents and visitors downtown to visit these shops and visit these restaurants, as we have a lot of people employed downtown. If Council chooses to accept this gift, they are ready to move forward in marketing these events, while working with City staff.

Mr. Kevin Schwartz, the Grove Park Inn's Assistant Director of Food & Beverage and board member of the Independent Restaurants Association (AIR), felt that engaging the community into action during these challenging times is the best course of action. The AIR is working on "Experience the Sizzle" in the restaurants. He explained some of the promotions they are working on to tie into the overall Seasonal Sizzle campaign. He felt this will be a well organized promotion to stimulate both the Asheville economy and the confidence of the Asheville community. He reminded Council that when you dine in local independent restaurants, a large amount of that stays within the community.

Mayor Bellamy explained that the request to Council is to oversee the fireworks portion. The location is the Public Works Department parking lot with the City in charge of that portion.

Councilwoman Cape suggested having a canned drive promotion be folded into this initiative, or some component where people are bringing into the community that which we can give back outward. Mr. Schwartz felt this is a great idea which he will pass along to the AIR.

In response to Vice-Mayor Davis inquiry about fireworks for Light Up Your Holidays, Ms. Diane Ruggiero explained that that was an event produced by an outside organization. The City produced the Downtown Countdown and First Night, which happened on New Year's Eve, which we are currently seeking a sponsor.

Mayor Bellamy said that this is not just about tourism, but about our local economy and making sure that the people who work in our community remain employed.

After a brief discussion about the next step, City Attorney Oast said that a budget amendment can be done at anytime.

Councilman Mumpower supported the concept; however, if there are City dollars involved for police, fire, traffic management, etc. he suggested they be raised by outside sources. Because we have established procedure in place for co-sponsorship of events, he could not support any motion that did not include language along the lines that the taxpayers will not incur any costs associated with this event.

City Manager Jackson said that his plan of action is to pursue three shows at an estimated cost of $35,000 and some to be left in reserve to offset police and fire overtime, if necessary.

The following individuals spoke in support of the City accepting the $40,000 gift from the Grove Park Inn for this initiative:

Joint President of the AIR
Mr. James Sheeler, west Asheville resident
Mr. Isaac Coleman
Ms. Raya June, Executive Director of AIR

Councilwoman Cape moved for the adoption of Ordinance No. 3668. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. CAPITAL IMPROVEMENT PLAN PLANNING PROCESS UPDATE

Chief Financial Officer Ben Durant said that the purpose of this presentation is to provide Council with an overview the City's existing and future debt capacity as it relates to a potential General Obligation Bond Issue.

During deliberations on the Fiscal Year (FY) 2008-09 Annual Operating Budget, City Council requested that staff evaluate the financial feasibility of issuing General Obligation Bonds to support an expanded capital improvement program for critical infrastructure and basic services. Staff was directed to report back to Council in the September/October timeframe to coincide with presentation of the First Quarterly Financial Report for FY 2008-09.

To assist with the feasibility study, staff engaged the services of Davenport & Company, a financial advisor that specializes in capital planning and local government finance. As part of the feasibility study, Davenport produced the following deliverables:

- A series of Peer Group Comparisons and benchmarks on the City's current and future financial position
- A detailed analysis of the City's Existing Debt Profile

- A series of key financial ratios indicating the City's existing debt profile and Future Debt Capacity
- An initial perspective on "Debt Affordability"
- Measurements of the impact of potential future borrowings to position the City to develop Financial Policies and Guidelines.

Mr. Bob High, First Vice-President/Head of North Carolina Group of Davenport & Company, LLC, reviewed the following aforementioned deliverables from the feasibility study:

He explained the goals and objectives being (1) develop a series of meaningful Peer Group Comparables and benchmarks with which to gain a perspective on the City's current and future financial position; (2) present a Detailed Analysis of the City's Existing Debt Profile; (3) apply the comparatives and benchmarks to a Series of Key Financial Ratios so as to Better Understand the City's Existing Debt Profile and Future Debt Capacity; (4) provide the City staff and Council with an initial perspective on "Affordability" of Potential Funding and obtain detail on the City's Capital Improvement Program such that we may measure the impact of specific projects (i.e. Debt Affordability); (5) use a number of Key Financial Ratios to measure the impact of Potential Future Borrowings and position the City to set/amend parameters in the form of Financial Policies and Guidelines; and (6) identify All Capital Improvement Projects and work towards establishing a Responsible Comprehensive Plan of Finance which produces minimum impact on the constituency while maintaining a healthy financial position.

Using charts he showed the market overview and regarding peer group comparisons he showed tax rates, assessed value, a 5-year assessed value growth, total general fund balance vs. revenue, debt per capita, debt vs. assessed value, and debt service vs. expenditures.

Using charts he explained the General Fund revenues, General Fund expenditures; General Fund revenues vs. expenditures; General Fund balance; and General Fund balance as of % of General Fund expenditures.

Using charts he explained the existing debt service, decline in debt service, payout ratio, debt per capita, debt vs. assessed value, and debt service vs. expenditures.

Mr. Mitch Brigulio, Associate Vice President of Davenport & Company then explained the following cases with charts to illustrate: (1) Case 1: maximize debt vs. assessed value – limit of 1.3% debt vs. assessed value – results (a) $169 Million of debt issued 2010-2016; (b) debt services increases from $4.9 Million to $16.9 Million in 2016; and (c) equivalent real estate tax impact of 11.6 pennies; (2) Case 2: maximize debt service vs. expenditures – limit debt service vs. expenditures at 10% - results (1) $128 Million of debt issued 2010 – 2016; (b) debt service increases from $4.9 Million in 2009 to $13.3 Million in 2016; and (c) equivalent real estate tax impact of 8.1 pennies; (3) Case 3: maximize debt without an equivalent tax impact (no structuring) – use decline in existing debt service to layer in new debt without an equivalent tax impact – results (a) $34.6 Million of debt issued 2010 – 2016; (b) no increase in debt service from 2009-2016; and (c) no equivalent tax impact; (4) Case 4: maximize debt without an equivalent tax impact (structured) – (a) interest only for one year, maximized 4:1 backfilling of principal (b) maintain payout ratio of at least 55% - results (a) $28.6 Million debt issued 2010-2016; (b) no increase in debt service from 2009-2016; and (c) no equivalent tax impact; (5) Case 5: additional $1,000,000 in revenue available for debt service – an additional $1,000,000 per year is available to pay debt service – results (a) $46.3 Million of debt issued 2010-2016; (b) debt service increases from $4.9 Million in 2009 to $5.9 Million in 2016; and (c) no equivalent tax impact; and (6) Case 6: $75,000,000 debt issued from FY 2010 – FY 2015 - $75,000,00 issued over 6-year Capital Improvement Plan – results (a) $75.0 Million of debt issued 2010-2016; (b) debt service increases from $4.9 Million in 2009 in 2016; and (c) equivalent real estate tax impact of 3.7 pennies.

He then explained the debt capacity/debt affordability summary of results as follows (1) Asheville can issue approximately $34 Million over the next five Fiscal Years without any equivalent tax impact; (2) Asheville can issue approximately $46 Million over the same period without an equivalent tax impact if $1 Million is dedicated to debt service vs. pay-go funding; and (3) A $75 Million borrowing program over the same period would require an equivalent tax impact of approximately 3.7 pennies.

Mr. Durant said that this study complies with Council's direction to initiate policy discussions regarding a potential General Obligation Bond issue to support critical infrastructure and services.

City staff recommends that City Council provide further direction to the City Manager to regarding issuance of General Obligation Bonds and development of an expanded Capital Improvement Plan.

Throughout discussion of Council members voicing their stance on this issue, Mr. High responded to various questions/comments from Council, some being, but are not limited to: what is an estimate of interest rates on debt; is Asheville too conservative; and how does a General Obligation Bond stack up against what people are choosing to invest in.

Mayor Bellamy said that this presentation was an overview the City's existing and future debt capacity as it relates to a potential General Obligation Bond issue. She didn't think there is any desire on behalf of Council to issue General Obligation bonds at this time, but we do need to plan for the future. It would be her goal that the underlying reason for any debt would be for quality of life for the individuals who live in our community. She would support looking at our community centers and other places within the community that need an infusion of renovations and improvements.

City Manager Jackson said that staff did an extensive inventory of the deferred maintenance, the current demands we are hearing from the community, and some long range planning for City facilities. At this point there are two questions. One is timing – is this the time to go to the next step. The second step is to seek community prioritization of that inventory. He recommended Council take this under advisement and look at it at the Council retreat or in a future worksession. But before we raise expectations and start seeking community input, he felt it is important to determine what really is affordable and then let's prioritize to that level.

City Manager Jackson said that what staff does with each project is to ask for fiscal impact, focusing largely on what is the operating impact. However, we will try to do some benchmarking on the secondary and economic impacts of public construction projects and provide information to Council.

In response to Mayor Bellamy's request that there be a component that we hire locally, City Attorney Oast said that we have a local vendor encouragement program that is administered by the City's Office of Economic Development.

At 7:15 p.m., Mayor Bellamy announced a short recess.

D. HOMELESS INITIATIVE ANNUAL UPDATE

Ms. Amy Sawyer, Homeless Coordinator, updated City Council on the implementation of the 10-year Plan to End Homelessness.

In November 2007, the City of Asheville, in partnership with Buncombe County, became the lead agency for the implementation of the 10-Year Plan to End Homelessness. The Plan is in its 3rd year of implementation through the efforts of the Homeless Initiative project, which supports

the City's goal of providing sufficient, safe, and affordable housing opportunities for all citizens. The Homeless Initiative Coordinator manages and tracks the progress of the initiative and is a member of the Planning and Development Department.

The Homeless Initiative also develops resources, promulgates policy, manages initiatives, and works with community agencies to develop and sustain programs that provide shelter, rent assistance, temporary housing, and services targeted to ending homelessness in Asheville and Buncombe County. There are 4 areas of focus for the Homeless Initiative:

Coordination of homeless and mainstream resources:

The Homeless Coalition, a core group of local service providers, along with other key community planning groups, meets regularly to evaluate and address community gaps in the areas of emergency services, housing, health, and substance abuse. The Coalition also collaborates with the Homeless Initiative, offering historical perspective, expertise and the Coalition's strong partnerships.

The Co-chairs of the Homeless Coalition are also members of the Homeless Initiative Advisory group, a group of volunteers from the non-profit, faith, and business sectors. The Advisory Group oversees the implementation of the 10-Year Plan by sharing, applying, and tracking groundbreaking strategies that make a permanent and measurable difference in the effects of homelessness on our community.

As a result of the extensive community networking among all partners, the third annual Project Connect, for anyone in the City or County experiencing homelessness, in tandem with the VA Stand Down for veterans experiencing homelessness, took place on September 12, 2008.

In summary, the coordination of resources include (1) Homeless Coalition (experienced service providers collaborate and act on solutions); (2) Homeless Advisory Group (volunteer leadership group oversees 10 Year Plan process); (3) other community groups (open communication and shared interests); and (4) Project Connect and VA Stand Down (exemplifies community commitment and partnerships).

Data Collection

The community needs the ability to collect homeless data to understand what has occurred in the past, what the current gaps and strengths of the homeless system are, and to document whether interventions are successful. The need for valid data has led to increased focus on cross systems data collection.

Data collection techniques include:

The Point in Time count, initiated by the Homeless Coalition, which continues to provide our community with a "snapshot" of how many people are homeless on the night of the count. The most recent count was on August 27th, 2008. 592 people experiencing homelessness were documented, which is a 17% increase from the January, 2008 count. Of that group, 148 were experiencing chronic homelessness, an 8% reduction from January's count.

Homeless Information Management System (HMIS), will provide our community with a more dynamic and valid way to evaluate the needs and services provided to people experiencing homelessness. While the number of agencies using the system is growing, there is not yet enough data to draw conclusive results on successes and gaps in our service system from HMIS alone. The ultimate goal is to have all homeless service providers participate in the consolidation of data through the HMIS system.

Review of existing data from the jail system, the mental health system, veterans' services system, and the health system.

Housing First outcomes are currently being evaluated by the University of North Carolina, Chapel Hill Jordan Institute. Housing First allows tenants to access affordable housing and the supportive services necessary to maintain that housing.

In summary, data collection techniques include (1) point in time count (a) "snapshot" of homeless population; (2) review of existing data sets; (3) HMIS (a) can provide up-to-date detailed, consistent information; (b) will produce reports for federal, state and local funders; and (c) HMIS used at Project Connect; and (4) Housing First Research at UNC-Chapel Hill (a) reviewed history of service use two years prior to entering supportive, permanent housing and two years afterwards; and (b) research completed, evaluation underway.

Funds Management & Development

Homeless funding from federal, state, and local governments support projects that provide outcomes based on 10-Year Plans. Working with these funders allows the Homeless Initiative to develop and support local programs that meet community needs and the needs of people experiencing homelessness. Examples of such funding are: Continuum of Care funding, State Housing Support Trust funding, VA Grant and Per Diem for Homeless Veterans, Homeless Veterans Reintegration Program, Veterans Workforce Investment Program, CDBG funded homeless programs, and HOME funded rent assistance housing programs.

The Homeless Initiative works with other local funding sources building awareness of homeless issues. For example, the Asheville Downtown Association's Foundation (Spare Change for Real Change), the Community Foundation of Western North Carolina, and the United Way have worked with the Homeless Initiative.

In summary, regarding funds management and development (1) federal (a) continuum of care; (b) Community Development Block Grant homeless services; (c) HOME rental assistance; and (d) Veterans funds; (2) State (a) Housing Support Team grant; and (b) 10-Year Plan Technical Assistance grant; (3) Local – City and County; and (4) foundation funding and local donations.

Increasing Housing and Services Resources to Move People out of Homelessness

Buncombe County continues to work on a crisis-response plan, including a crisis assessment center. The Neil Dobbins center is now open for mental health and substance abuse crisis intervention services, and there are two wet shelter beds each for men and women. The City provided $86,000 in 2006 CDBG funds to support the County's renovation of the facility. Law Enforcement officers in Asheville and Buncombe County have been trained in how to use these resources through Crisis Intervention Training (CIT). Buncombe County has contracted to provide "wet shelter beds" with ABCCM's Women and Children's Shelter (2) and the Western Carolina Rescue Mission (4).

The Western Highlands LME has hired a housing specialist to coordinate housing resources within their eight county catchment area for mental heath, developmentally disabled, and substance abuse populations.

The Housing Authority of the City of Asheville has changed priorities for public housing to focus on just two categories: people experiencing chronic homelessness who are also receiving case management services, and domestic violence survivors living in a shelter, allowing people who are identified as the most vulnerable in the 10-Year Plan to obtain housing.

Western North Carolina Community Health Services received 16 Section 8 housing choice vouchers to provide supportive housing services through the Housing Opportunities For persons With HIV/AIDS (HOPWA) program.

The VA received 35 Section 8 housing choice vouchers and funding for one staff position that provides supportive housing services through the Veterans Administration Supportive Housing (VASH) program.

As part of the Department of Housing and Urban Development Continuum of Care funding, Homeward Bound received $44,768 in bonus funding for the community to be used for tenant based rental assistance over two years.

ABCCM received a national grant from the VA and Federal Home Loan Bank. A motel facility was obtained in 2007. In May 2008 the 200-bed facility opened and includes emergency beds, 100 transitional beds, and 40 permanent supportive housing SRO rooms. Veterans Based on successful performance, the ABCCM Veteran's Restoration Quarters (VRQ) was named "Best Practice of the Year" on August 5, 2008 by Department of Labor and VA Homeless Providers. The American Legion Post 526 meets at the VRQ, and is run by formerly homeless veterans for our homeless vets.

The SSI/SSDI Outreach Access and Recovery (SOAR) Project, received seed money from Buncombe County. This project will build community capacity to complete successful applications in a coordinated fashion through caseworker and clinician training, building relationships with records departments, and communicating with the Social Security Administration offices in order to help people access social security benefits in a reasonable amount of time.

In summary, (1) collaborative problem solving is needed to ensure success of the 10-Year plan; (2) data about interventions and programs is vital to understand where and how to invest energy and resources; and (3) investment is needed to further 10-Year Plan goals. The Homeless Initiative Advisory group will identify which priorities to focus on for the coming year.

The Homeless Initiative implements the City's 2008-09 Strategic Plan goal of affordability by supporting initiatives that will end homelessness, the Continuum of Care Plan and the 10-year Plan.

City staff recommends that City Council accept this annual update report on progress to date on the implementation of the 10-year Plan to End Homelessness.

Mayor Bellamy was pleased to report that as of the publication of this report, there are currently a total of 197 emergency shelter beds, 344 transitional beds, and 214 people in permanent, supportive housing. Eighty-five percent (85%) of the people who experienced chronic homelessness that moved into the City's initial 33 Housing First units built in Asheville have remained housed, which serves as a model for housing people who have experienced chronic homelessness and is further being evaluated by the UNC School of Social Work.

Vice-Mayor Davis explained that the City Attorney is working on a formal City-County Homeless Initiative Advisory Committee.

At the request of Vice-Mayor Davis, Ms. Sawyer explained how the HMIS will provide our community with a more dynamic and valid way to evaluate the needs and services provided to people experiencing homelessness. As agencies sign new contracts, those agencies are using the HMIS and we are developing a consolidation of data to provide Council.

Mayor Bellamy reiterated that the most recent count on August 27, 2008, was 592 people experiencing homelessness, which is a 17% increase from the January, 2008 count. Of that

group, 148 were experiencing chronic homelessness, an 8% reduction from January's count. She noted that we are on target to end chronic homelessness with the 10-Year Plan. She asked if there was any way we can document where those 17% of homeless people are coming from, e.g., people who are not from Asheville, people who have no families ties, or people who are choosing to be homeless in Asheville. In response, Ms. Sawyer said that HMIS documents the last address of people, but in talking with service providers, she has also heard that family homelessness is increasing dramatically and people who have housing are needing transportation to work or food.

When Mayor Bellamy asked how we can focus on making sure we can address the populations where families are having hard times, etc., but still identify ones that are coming here by choice to be homeless. Ms. Sawyer said there are different ways of supporting people, depending on their characteristics. We know certain housing interventions for veterans that may not be as successful for families. What we are doing is looking at the population and providing supports that directly meet their needs based on best practices.

When Mayor Bellamy offered the City's support in helping Ms. Sawyer get the agencies to enter data for the HMIS, Ms. Sawyer said that she is educating agencies on how to run the system and how the system will be a benefit for everyone.

On behalf of City Council, Mayor Bellamy thanked Ms. Sawyer for her efforts. She then said that Ms. Sawyer will be reporting back to Council again in six months. She noted the Homeless Initiative Advisory Committee will have appointments from the City and County. She also said that the recently formed Task Force, looking at some of those issues identified by the Buncombe County Tourism Development Authority, will probably have some good ideas as well that could be used going forward.

E. URTV PRESENTATION

Ms. Pat Garlinghouse, Executive Director of URTV Inc. provided Council with the URTV's Q1'09 Operations Report for the months of July, August and September 2008. She explained what public access does, how it is really committed to media, and how in some places it's the area's only media center. She explained that URTV is unique in WNC! In two short years we've achieved proven success. Webcasting and Video-On-Demand (VOD) are up and running. The website has a new look and we welcome any and all suggestions. For those who would rather watch programming on their own schedules, VOD is your choice. Otherwise, you may watch real-time URTV on your computers.

Since the name Public Access, the 'P' in PEG, has long since been abandoned, URTV can now begin its campaign as a community Media Center, which it is. For the most part, public access throughout the country stopped using the old name as far back as the early 90s. Because in the 90s public access became community media by offering services as assistance with information technology needs, everything from consulting to web design; radio and television announcements and interviews, depending on the technology available; television production classes, everything from digital camera and editing to studio and radio production; training for NPO staff in computerized technology; involvement of youth and seniors, who may not be as familiar with digital technology as the mainstream, in beginning production or TV spots; and of course, media literacy classes in the schools, that replaces some of the skill sets that schools find themselves unable to offer. Using television, Internet and radio, community media centers are able to craft a customized fit for all NPO's media service needs. How URTV fits into this design will be discussed and demonstrated over the ensuing months.

Operation and membership (users) of URTV remains stable. The population of Asheville and Buncombe County can sustain an average of 300+ participating members. In the first quarter of 2009 earned income totals = $7,000. Money Market total is $101,294. ($50,000 will need to be withdrawn for Fiscal Year 2009 and again $50,000 for Fiscal Year 2010.) The annual budget for

Fiscal Year 2009 is $248,391. (This includes $45,000/yr. rent and $136,273 personnel services for 3.5 full-time employees).

There are 300+ members; $5:$1 (For every $1 invested, $5 actually received); and 1 commercial violation suspension on air.

In response to Mayor Bellamy's request, City Attorney Oast said that he would provide Council with information on (1) when our contract expires with Charter Communications; (2) when we can begin re-negotiating; and (3) how can we entertain other contracts and how that will impact the funding for URTV.

On behalf of City Council, Mayor Bellamy thanked Ms. Garlinghouse for her informative presentation.

F. DOWNTOWN MASTER PLANNING PROCESS UPDATE

Ms. Sasha Vrtunski, Project Manager, said that the Downtown Master Plan process has been lengthened to work on specific issues and look for areas of compromise, so that the overall process is successful. Staff expects the master plan to come to City Council in early 2009.

The Asheville City Council approved funding for the Downtown Master Plan in 2007. The Selection process began in late summer 2007 and Goody Clancy was selected as the consultant team in February. The consultant team began work in late March and their first visit in April, 2008. There have been a series of public meetings beginning in May, with the last one in September. The citizen participation and interest in this process has been very high.

As a part of this process, there is an Advisory Committee made up of 30 citizens representing a wide variety of interests in the downtown. This committee is a sounding board for the consultants to make sure all the voices are heard in the process and that the public process is a quality one. The Advisory Committee met on September 8 and reviewed a very early draft of the plan, and unanimously felt that a public meeting to review it would be premature, and could undermine the success of the plan's adoption and implementation. They decided that they would like to spend some time to see if gaps can be closed

Currently, we have a sub-group of the Advisory Committee that is meeting with a local mediator/facilitator. The group is working on finding the "middle way" for certain development issues that takes into account the needs of developers and the community. So far, the group has had productive meetings. This smaller group will report back to the Advisory Committee, and the consultants. Ultimately, the recommendations will go to the consultant team, who will decide on the content of the draft plan. The goal is to finish this process by mid-November, and begin the process of reviewing it with the public and involved city boards.

Because of the Thanksgiving holiday, and the need to publicize the next public meeting, it will not be until early December or January that a public meeting could be held to review the draft plan. Clearly, this is not as fast a process as Council and the larger community expected, but perhaps staff and the consultant team were too ambitious in terms of finishing a plan that will address several contentious and complicated issues. After the public meeting and a comment period, the final draft would come before City Council for consideration.

On behalf of City Council, Mayor Bellamy thanked Ms. Vrtunski for her update.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM

HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant's request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant's request in that it became necessary, due to the recent economic conditions, for the ownership group to try to secure financing and/or additional partners to help with the project economics.

Urban Planner Julia Cogburn said that this is consideration of a request for a twelve (12) month additional continuance of the public hearing on the rezoning petition for the Horizons Urban Village Project.

On October 15, 2008, a letter was received from Mary Kocot from LandDesign which reads "The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed "Horizons" Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City. The continued economic slowdown is hampering their efforts on securing financing and investors for the project. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for approval."

In November of 2007, the Asheville Planning and Zoning Commission reviewed a rezoning petition for the Horizons Urban Village project located on an 8.54 acre site on Merrimon Avenue. The Commission voted to recommend the rezoning (7-0) and the conceptual site plan (5-2) presented by the developers/property owners of the project, and the matter was scheduled to be heard by Asheville City Council in January of this year. At that time, the developers requested a six (6) month continuance in order to review the site design particularly as it related to the height of some of the buildings. Building height was a major issue for the adjoining neighbors of this project. In June of this year, the property owners requested an additional three (3) month continuance primarily due to economic conditions.

The property owners are now requesting an additional twelve (12) month continuance due to the continuing economic slowdown. The ownership group is exploring financing, partnerships, and investors with hopes of proceeding with an urban village project. Some of the original development partners are no longer with the project.

Pro:

- Allows the property owners additional time to work on the details of an urban village project for this property.

Con:

- Gives extensive continuation to a project that was first submitted to the City of Asheville in June of 2007.

Although the extent of this continuance is contrary to past practice, staff is supportive of the request to continue the public hearing until October 27, 2009. We recognize that current economic conditions are impacting development here in Asheville as in other parts of the country. The Asheville City Development Plan 2025 promotes this area as an urban village and staff would like to see such a project on this site which is currently zoned Highway Business. The property is in an important gateway to the Central Business District and its development will be significant to the Merrimon Corridor as well.

In response to Councilman Mumpower, City Attorney Oast said that Council does not have a formal policy regarding continuances.

With the understanding that continuance requests will be determined on a case by case basis, Councilman Mumpower moved to continue this public hearing until October 27, 2009. This motion was seconded by Councilman Russell.

Ms. Cogburn responded to various questions/comments from Council, some being, but are not limited to: since there is a "for sale" sign on the property, how will that affect this project; how will new regulations be addressed between the time the application was applied for and the ultimate public hearing; why don't the applicants withdraw the application and re-submit when the economic condition improves; and if the property is sold, what uses will be permitted.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried on a 6-1 vote, with Councilwoman Jones voting "no."

B. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE LEGAL BUILDING, LOCATED AT 10-14 SOUTH PACK SQUARE, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy said that on October 10, 2008, Stacy Merten, Director of the Historic Resources Commission, received the following letter from Gerald Green, Principal of GreenPlan: "I am providing this letter as a follow up to our telephone conversation this morning in which we discussed the request for historic property designation for the Jackson, Westall, and Commerce Buildings. This request is scheduled to be heard by the Asheville City Council at their October 28, 2008, meeting. The Historic Resources Commission provided a unanimous recommendation for approval of the requested designation. Upon consideration of the current economic condition we have decided that this is not the appropriate time to pursue this designation. With the designation comes a 50% reduction in the property taxes for the buildings. While we agree with the Historic Resources Commission that the buildings are worthy of the designation, we want to contribute fully to the City of Asheville's revenues during this difficult time. Therefore, we are withdrawing the request. We likely will pursue the designation when the economy improves, hopefully in the near future. My understanding based on our conversation this morning is that another review of the request by the Historic Resources Commission will not be required provided we pursue the designation within a year or so. Please let me know if this is incorrect."

C. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE JACKSON-WESTALL BUILDING, LOCATED AT 20-22 SOUTH PACK SQUARE, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy said that on October 10, 2008, Stacy Merten, Director of the Historic Resources Commission, received the following letter from Gerald Green, Principal of GreenPlan: "I am providing this letter as a follow up to our telephone conversation this morning in which we discussed the request for historic property designation for the Jackson, Westall, and Commerce Buildings. This request is scheduled to be heard by the Asheville City Council at their October 28, 2008, meeting. The Historic Resources Commission provided a unanimous recommendation for approval of the requested designation. Upon consideration of the current economic condition we have decided that this is not the appropriate time to pursue this designation. With the designation comes a 50% reduction in the property taxes for the buildings. While we agree with the Historic Resources Commission that the buildings are worthy of the designation, we want to contribute fully to the City of Asheville's revenues during this difficult time. Therefore, we are withdrawing the request. We likely will pursue the designation when the economy improves, hopefully in the near future. My understanding based on our conversation this morning is that another review of the request by the Historic Resources Commission will not be required provided we pursue the designation within a year or so. Please let me know if this is incorrect."

D. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF TWO LOTS LOCATED ON CROWELL ROAD AND FARM STREET

ORDINANCE NO. 3669 – ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE TWO LOTS LOCATED ON CROWELL ROAD AND FARM STREET

Mayor Bellamy opened the public hearing at 8:13 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance for the voluntary annexation of two lots located on Crowell Road and Farm Street. This public hearing was advertised on October 17, 2008.

Crowell Park Apartments, LLC has petitioned the City for the annexation of two parcels located at Crowell Road and Farm Street (PINs 9617.08-79-9568 and 9617.08-89-2443) containing approximately 3.53 acres.

The property is located approximately a quarter of a mile (driving distance) from Smoky Park Highway. The property is contiguous at one point (63 feet in width) to the City of Asheville's primary corporate limits and is, therefore, subject to the standards for annexation of contiguous areas contained in N. C. Gen. Stat. sec. 160A-31. The parcel and the petition meet all applicable requirements of the State of North Carolina.

The property contains the Crowell Park Apartments, comprised of 63 affordable dwelling units. A tax valuation has not yet been placed on this development as it has only recently been completed. Before development, the land had a tax appraisal of $372,900.00.

Pursuant to N. C. Gen. Stat. sec. 160A-31 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on December 31, 2008.

This action complies with the Strategic Operating Plan in that it complies with the Council goal of working to enable voluntary annexation to support healthy growth of the City.

Pro:

- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal increase in service costs.

The fiscal impact of this annexation cannot be accurately assessed as the County Tax Office has yet to place a value on the newly developed land.

Information from the Fire Department indicates costs would include a $100.00 debt service payment to the Enka Fire Department and emergency responses. The Department indicates that these expenses would be negligible.

The Police Department indicates that this annexation should not have a significant impact on the operation.

City staff recommends City Council adopt the ordinance annexing the property set forth in the petition.

Ms. Cindy Weeks, representing Mountain Housing Opportunities (MHO) (developer of Crowell Park Apartments), said that this apartment complex was developed with housing tax credits. The reason they are voluntarily annexing is because of the cooperation they have received from the City with loans and pass-through home funds for this project. MHO pays full property taxes. They believe this project will be appraised for $4.4 Million and based on past assessments received from the County would increase their taxes by $18,522, but they will be getting police and fire protection.

Mayor Bellamy closed the public hearing at 8:15 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3669. This motion was seconded by Councilman Mumpower and carried unanimously.

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V. UNFINISHED BUSINESS:

Minority Business Coordinator Brenda Mills said that City Council requested living wage policy recommendations from staff in consideration of adoption for contracting with the City of Asheville

Analysis of research on the living wage includes the following information:

1. Contracting statutes for the State of North Carolina as it pertains to award of contracts.

Review of Statutes: Statutory bidding requirements apply to the following types of contracts: (1) contracts for the purchase of apparatus, supplies, materials, or equipment and (2) contracts for construction or repair work. These genera1l statutes provide instructions on the award of these particular contracts (GS 143-128 and GS 143-129 and GS 143-131) which specifically states that "contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract." These areas of contracting are not subject to the living wage as part of the basis for award as they have defined award criteria.

Contracting for professional services has general statutes which govern the award of these contracts such as architectural and engineering services. Because the living wage is targeted to jobs that are low skill and non-trade which tend to be paid below living wage rates (current rates are explained in #3), professional service contracting does not necessitate and cannot be subject to a living wage.

The other area of contacting is for general services which includes but is not limited to grounds maintenance, commercial cleaning services, trash collection, catering, etc. While service contacting is discussed in the general statutes, there are no specific criteria for award only that price is not the only consideration. Service contracts take into account ability to perform based on the specific qualification and experience criteria for the services needed. This type of contracting has been the area where the living wage has been systematically applied keeping in mind that public bidding has to be fair, the unit of government has to be willing to the increase in expenditures on this contracts in order to keep the bidding process fair to all interested vendors.

2. Living wage policies of other municipalities and counties and details of those

policies.

Review of Other Polices: Currently, the City of Durham (2006) and Durham County (2004) have living wage policies which they apply to general service contracting. They have one wage rate which is reviewed by the respective governing bodies every two years for inflation and cost of living increases.

Durham County is the only entity that monitors contracts for the living wage through their purchasing division staff. The City of Durham does not directly monitor their contracts. Both agree that the change significantly increased their expenditures for general service contracting.

3. Current City contracts that would be subject to a living wage policy and the status of the hourly wage paid on these contracts.

Analysis of Current Service Contracting: City staff looked at the current service contracting in the following areas: mail management, janitorial services, waste services, cemetery services and mowing services. For mail management, waste services and cemetery services, there is a living wage ($10.86 per hour with benefits or $11.35 without benefits) being paid on the contracts for the City of Asheville. The remaining contracts for janitorial and mowing do not pay the current living wage rate. The mowing service contract does pay in the range of $9.00 to $10.00 an hour and with janitorial, the rate is $7.00 to $8.00 an hour. For janitorial contracts in particular, these jobs are contracted labor. The majority of these employees work full-time jobs.

4. Implementation of a living wage policy to the City's contracting process.

Program Considerations: The implementation of a proposed living wage policy on general service contracting would increase the cost of contracting expenditures for the City. The City would agree to pay the additional cost of vendors who pay a living wage (see #3 for living wage explanation) when contracting. The approval of a policy would include the following:

A. Consider the living wage provisions for general service contracts above a certain threshold. Currently, the State of North Carolina requires bidding requirements at $30,000 and above for contracting.

B. Appointment of staff for monitoring of general service contracts with living wage provisions for compliance. It would be feasible for the first year to consider monitoring all of them. There would need to be requirements by contractors to provide documentation duly notarized to City staff during specified intervals for the duration of the contacts.

C. City Council would consider cost of living and inflation for review of a living wage rate annually or more as council deems necessary. Setting one rate has been the norm for other local units of governments. City Council would be provided annual update information on general service contracting by staff.

D. All vendors would be advised about the living wage provision through marketing efforts. These would include the city's access channel, website, contracting documents with special emphasis to notify interested bidders on new provisions with an affidavit of the successful contractor to provide payroll and other required paperwork to the City for review as set out in the documents, modification of the current vendor application to include the living wage provision and contact current general service contract owners of the change and the expectation for future contracting with the city.

E. In order to keep general service contracting fair, the City of Asheville would have to bear the increase cost of the living wage provision. This would keep contracting with the City fair to all businesses in the bidding process and award

would not be determined beyond other requirements, on the ability to pay a living wage to employees.

F. Exceptions to the proposed living wage policy would be sole source contracts, emergencies, projects that run over budgeted costs, energy savings, information technology, contracting with other governmental agencies and contracting with non-profit agencies.

Pros:

- Steps toward increasing pay to lower wage or non-trade employees in the general service contracting area for the City of Asheville.
- Encouragement on the business community to work towards paying a living wage.

Cons:

- Limitations by North Carolina bidding laws to the general services area of contracting
- Increase to service contracting dollars to be absorbed by the City of Asheville
- Living wage is not a permanent wage change for employees of businesses who work under contracts that expire.

The exact increase in dollars is not known at this time. It would be necessary to review current contracts to look at the impact of a living wage if applied to what the City is currently expending for general service contracts.

City staff is prepared to follow City Council's policy direction on this matter as outlined above.

After a brief discussion, it was the consensus of the majority of Council to refer this matter to the Finance Committee in order to (1) look more into the estimated fiscal impact to the City; (2) the best estimates for the different policies and how they would look financially; (3) the administrative cost to the City in terms of staffing to monitor a policy; and (4) what the administrative costs would be to the contractors. Councilman Mumpower suggested stakeholder input be sought with perhaps an economist from UNC-Asheville.

Mayor Bellamy said that there would be no public comment at this time as it has been referred to the City Council's Finance Committee. Public comment will be allowed at that meeting which is on November 11 at 3:00 p.m. in Room 209 of the City Hall Building. At such time when the matter is before City Council for a formal vote, public comment will be taken then.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-213 - RESOLUTION AUTHORIZING EXECUTION OF DOWNTOWN DEVELOPMENT AGREEMENT

RESOLUTION BOOK NO. 08-214 - RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE ITSELF FROM THE PROCEEDS FOR CERTAIN OBLIGATIONS TO BE EXECUTED AND DELIVERED IN THE YEAR 2008 FOR CAPITAL EXPENSES INCURRED

RESOLUTION NO. 08-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH KIMLEY-HORN TO SERVE AS THE OWNER'S REPRSENTATIVE IN THE DESIGN AND CONSTRUCTION OF A PARKING GARAGE LOCATED AT 51 BILTMORE AVENUE

Director of Transportation and Engineering Cathy Ball gave a broad overview of the following items in order to move forward with a public private partnership to construct a parking garage on 51 Biltmore Avenue. Staff is requesting the following actions:

- Adoption of a resolution authorizing the City to enter into the Downtown Development Agreement;
- Adoption of a reimbursement resolution to allow certain expenses to be paid from proceeds of financing; and
- Adoption of a resolution authorizing an amendment to the City's contract with Kimley-Horn engineers to act as the City's representative during design and construction.

The City of Asheville currently provides public parking in Downtown Asheville as an economic development incentive for businesses, and as a public convenience for citizens and visitors. The City currently operates a parking system that consists of three parking garages, several surface parking lots and on-street parking. A parking study prepared by Kimley-Horn and Associates this year evaluated the demand for parking versus the supply in the Central Business District. The study determined that the south Biltmore Avenue area had a current peak deficit of parking in the amount of 622 and a normal deficit of 476 parking spaces. It was the only area of downtown shown by the study to have both current day and evening/weekend deficits and projected future day and evening/weekend deficits. The proposed location of the garage is a private surface parking lot with approximately one hundred parking spaces.

Project Description - The project is a mixed-use building that includes: a Starwood Aloft Hotel; sub-leased retail spaces along Biltmore Avenue; a City owned parking garage (431 spaces); and potential second phase along Biltmore Avenue and Lexington Avenue to include workforce housing units. The second phase portion of the project will come back through the review process including the Downtown Commission. Creating a public/private partnership to develop a parking garage in this location was one of the specific goals in the City's 2006 Downtown Parking Action Plan. This site is also identified in the City Development Plan 2025 and Center City Plan as both a potential parking garage site and as a possible location for a catalytic development because of its important location and size. Catalytic developments are projects that because of their size, location or programming have the potential to stimulate additional investment or provide missing uses that are critical to maximizing downtown vitality.

The initial concept for the building was nine levels above grade on the Biltmore Avenue site and four levels under ground. The Downtown Commission was concerned about the height of the building, parking spaces fronting on Biltmore Avenue and the lack of retail space on Biltmore Avenue. The design team addressed Downtown Commission concerns and moved the lobby to the second level and created a balcony and expanded the footprint of the building to the Hot Dog King site. The Downtown Commission has approved the project.

The current proposed parking garage will have 431 spaces. The garage has access points from three streets: one-way in from Biltmore Avenue and Aston Street, and two-way movement at Lexington Avenue. Several garage levels are below grade with the design taking advantage of the natural terrain across the site to eventually meet Aston Street and Biltmore Avenue at grade. The retail spaces and hotel line and top the garage along Biltmore Avenue and the hotel tops the garage along Aston Street. Along Aston Street the garage fronts directly at the street and provides a driveway into the garage. Public restrooms are provided in the garage with direct access from Aston. Because of the presence of the garage on the sidewalk edge, a space for public art will be provided to soften the façade and create pedestrian interest.

The building is seven stories along Biltmore Avenue and measures about 95 feet to the top of the roof structure. Ground level retail space along Biltmore Avenue will total about 4,800 square feet which will likely be subdivided and leased depending on demand. The hotel use occupies the second floor and above as measured from Biltmore Avenue and has 145 guest rooms. A balcony space for the hotel is located on the second level of the building and will, along with the retail below, serve to activate the street. A hotel amenity deck is provided at the top of the garage level.

Phase Two areas of this project are made up of a long narrow area lining the garage along Lexington Avenue and a smaller area south of and adjacent to the retail spaces on Biltmore Avenue. Public Interest Projects (PIP) will hold these properties and develop plans for them at a later date.

Project Cost - The cost associated with building a parking garage includes property acquisition, design and hard construction.

When PIP, the owner of the property at 51 Biltmore Avenue, approached the City with a public/private partnership, they did not want to sell the property but rather proposed to lease it to the City. Following the financial analysis, the City determined that it saved the City approximately $1 million dollars over the projected life of the deck to purchase the property rather than lease, and PIP agreed to sell the property. The price agreed upon for the garage site was $3,110,000.

During the course of the last year, staff determined that the addition of the Hot Dog King property adjacent to 51 Biltmore Avenue, might save the City significant construction costs. Our parking consultant, Kimley Horn Associates, evaluated the potential to expand the footprint of the garage to the Hot Dog King property. Preliminary cost estimates indicate that the City would save $5,200 per parking space or $2,272,400 by utilizing the Hot Dog King property. In light of the potential savings to the City, PIP sought and obtained a contract for the Hot Dog King property in the amount of $1,450,000. Although this is higher than the appraised value, the net construction cost savings after purchasing the Hot Dog King property is approximately $800,000.

Kimley-Horn has developed an opinion of probable cost for the parking garage on the expanded footprint of $1,800 for design and $26,200 for hard construction. The total estimated cost for design and hard construction of the 431 car parking garage is estimated at $12,236,000.

PIP has agreed to sell a portion of the property at 51 Biltmore Avenue and the Hot Dog King Property for $4.56 million dollars. This sale would include all cross easements and air-rights necessary to build the project as currently designed. Additionally, the City would have staging rights for the project on PIP's remaining property along Lexington, as well as the "right of first offer" for the property owned by PIP at 85 South Lexington Avenue, adjacent to the site, to allow for possible efficient expansion of the garage.

Easements and Air-rights - In efforts to facilitate a good urban design of the project to include mixed-uses, there are a number of easements and air-rights required for the project. The project fits together like a three dimensional puzzle. The lowest level of the parking garage fronts under the hotel on Biltmore Avenue, requiring subjacent rights. Some of the hotel will be constructed over the parking garage along Aston Street, requiring air-rights. PIP will retain air-rights over the parking garage on the Hot Dog King property for a future residential development. Discussions among legal counsel for the parties have indicated that a condominium form of ownership, together with condominium agreements, may be the best legal structure for this Project. The legal effect of the condominium would be the same as the other more conventional instruments that are described in the Agreement, but would be easier to administer. The Downtown Development Agreement allows for this form of ownership as well.

Project Terms - As part of the Project, MHG and PIP will receive certain considerations for parking in the form of reserved spaces or reduced rates. The term of the parking arrangement is proposed for sixty years. McKibbon Hotel Group, MHG, has requested a maximum of 35 monthly 24/7 reserved parking spaces on the Biltmore Avenue level. They have requested an additional 115 evening/weekend parking spaces.

Because the number of spaces anticipated to be used by PIP and MHG will require that a proportionate amount of the financing for the deck to be provided at a taxable rate, the costs associated with those spaces are higher. Accordingly, the rate that the City will charge for those

spaces will be higher than for restricted spaces. In order to cover this additional expense, the City will charge about $39 per month more for each "taxable" space.

MHG and PIP have requested that this taxable monthly space premium be waived if private sector involvement in the construction phase of the Project generates further savings for the City. Staff would agree with this provided that hard construction cost t is reduced by at least $1,000 per space. MHG may be able to reduce the construction cost through economies of scale by building the hotel and parking garage at the same time. With this in mind, the City and MHG propose to enter into an agreement whereby MHG will manage the design and construction of the hotel and the deck. The Downtown Development Agreement statute specifically contemplates such an arrangement, and further provides that projects constructed in this way are not subject to public bidding or contracting procedures.

PIP has requested that the City adopt a rate structure that provides favorable rates for downtown workforce housing in return for PIP giving up their dedicated or taxable spaces. PIP included a stipulation in the parking agreement with the City and PIP that would allow them to get 50 spaces if the City did not allow a special rate intended for workforce housing. The Agreement requires PIP and the City to commit to a definite number of spaces prior to the City seeking approval of its financing, so that the taxable impact of those spaces will be known in advance.

Public Input and Approvals - This project is consistent with the current draft recommendations of the Downtown Master Plan, City Council's Downtown Parking Plan, Council's Strategic Goals and the 2025 Plan.

The Downtown Commission approved the design of the project on September 12, 2008. The Technical Review Committee of the City of Asheville approved the project with conditions at its September 15, 2008 meeting. Planning and Zoning Commission unanimously recommended approval of the conditional zoning for the project on October 1, 2008. The City Council adopted the conditional zoning on October 14, 2008.

A community meeting was held on August 19, 2008. Approximately 40 people attended the meeting.

City Attorney Oast broadly reviewed the following agreements with Council:

Downtown Development Agreement - The approval of the Downtown Development Agreement is the first action that staff is requesting on this project. This allows the City to move forward in finalizing the other documents. The significant financial commitment at this stage of the agreement is to spend approximately $500,000 on preliminary and final design costs that can be reimbursed if we move forward by issuing Certificates of Participation (COPs) to build the parking garage. The MHG will own the fee interest in the property that fronts on Biltmore Avenue and the City will own the fee interest in the property that is right behind that. PIP will continue to own the strip along Lexington Avenue. This approval will encompass approval of the Construction Management Agreement. Both the City and MHG retain the right to terminate, prior to property acquisition, if, among other things, either actual construction costs or financing terms are not satisfactory. In recognition of the unsettled current financial markets and to protect the investment in design costs, PIP has agreed to allow the option of two (2) six month contract extensions, if needed.

Reimbursement Resolution - The second item staff is requesting approval for is a reimbursement resolution that would allow proceeds from the sale of COPs to be used to reimburse the parking enterprise fund for expenses incurred within 60 days preceding the date of this resolution.

We anticipate issuing COPs in six to eight months. This resolution would allow money for final design drawings as well as owner's representative expenses to be reimbursed from money we receive from COPs proceeds.

Contract with Kimley-Horn for Owner's Representative during Design and Construction - The third item for Council's consideration is a resolution authorizing the City Manager to amend the contract with Kimley-Horn in an amount of $215,000 to serve as the owner's representative for the design and construction of a parking garage at 51 Biltmore Avenue. Additionally, staff requests authorization for the City Manager to execute amendments to this contract up to 10% of the total contract amount.

On July 3, 2008, the City entered into a contract with Kimley-Horn to provide cost estimates and design criteria for a proposed parking garage located at 51 Biltmore Avenue. The amount of this contract was $42,000. The original scope of work consisted of the following: (1) providing probable cost estimates for the proposed garage; (2) developing design criteria; and (3) serving as owner's representative during the design and construction of the project.

At that time, we elected to move forward on the first and second phase of the scope, pending the feasibility of next phase. We are requesting approval to move forward with the third and fourth phase of the work. The amount of this change is $215,000 for a total contract amount of $257,000.

Next Steps - Following approval of the Downtown Development Agreement, reimbursement resolution, and contract amendment with Kimley-Horn, the project team will move forward with final design and construction drawings. We anticipate this process will take four to six months. Following completion of the final drawings, the project will be bid. If the bids are within the project budget, we will move forward in the acquisition of the property and construction of the parking garage.

The construction is estimated to take twelve to fifteen months. The garage should be completed by January 2011.

Pros:

- Generates 431 public parking spaces, shown by the City's Parking Study to be needed in this area of downtown, while at the same time increasing the tax base significantly over existing uses, and generating additional hotel tax revenue. The Project is anticipated to create over 400 jobs during the construction phase, and over 100 permanent jobs.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking, which in turn supports lower priced housing units.
- Capitalizes on the opportunity to work with a mixed use developer willing to partner with the City and make private property available for public use.
- Provides a catalyst for additional private sector investment, tax base increase, and job creation in the surrounding area, in the same manner as the existing Haywood/Wall Street area garages have encouraged development in that area.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.
- Project's positive economic impact.
- Facilitates density and sustainable development in downtown area.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.

- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

Approval of the requests above will cost approximately $700,000. This total includes $500,000 for preliminary and final design plans and $200,000 for owner's representative services. If the City issues bonds for the project, this money will be reimbursed to the parking enterprise fund.

The pro forma for this project indicates that the annual operating deficit for the first year to be approximately $650,000. This amount will be reduced every year until the debt service (loan) is paid. After the debt service is paid, the revenues for the parking garage will exceed the expenditures. All of the operating deficit will be paid from the parking enterprise fund.

Staff recommends that City Council approve the following items in order to move forward with a public private partnership to construct a parking garage on 51 Biltmore Avenue:

- Downtown Development Agreement;
- Reimbursement Resolution; and
- Amendment to contract with Kimley-Horn for owner's representative during design and construction.

Mr. Stephen Schemmel, Managing Director, Municipal Products Groups for Wachovia Securities, spoke to Council about the issuance of Certificates of Participation as a method of financing and what that might mean to the City in terms of this particular project.

Ms. Ball said that public parking as a utility (1) encourages economic development (a) retail, (b) office; and (c) entertainment; (2) increases density; and (3) supports less expensive housing.

The current parking proposal for the public includes (1) 431 parking spaces; (2) public restrooms; (3) City owns and operates parking garage; and (4) bike lockers. For the private section (no public funds will be spent on private development), (1) 145 hotel room; (2) ground floor retail on Biltmore Avenue; and (3) future workforce housing linear on Lexington Avenue.

She showed an approved design. Then she explained the action to date from the different commission and committee reviews.

She explained the probable costs include (1) design (soft) ($1,800 per space for 431 spaces) = $775,800; (2) hard construction ($26,200 per space for 431 per parking space) = $11,292,200; (3) land/air rights/subjacent easements - $4,560,000; and (4) bond issuance = $300,000. Total is $16,928,000. In this year's budget this project is budgeted at $18.5 Million.

Economic Development Director Sam Powers said that the City is approaching this from a public parking standpoint, not an economic development project standpoint. There are, however, economic development benefits as a result of this project: (1) construction phase (a) 405 jobs; (b) $15.3 Million of income; and (c) $4.3 Million additional tax revenue - $2.9 Million Federal collections and $1.4 Million State/Local collections; and (2) on-going operations (a) 118 jobs; (b) $3.2 Million of income; and (c) $1.6 Million additional tax revenue - $795,000 Federal collections; and $860,000 State/Local collections.

Fiscal benefits include (1) property taxes (a) City - $94,500; (b) School - $33,750; and (c) County - $118,125; (2) sales taxes to State - $368,736 (distribution to Asheville is $13,500); and (3) hotel occupancy tax - $200,250.

Mr. Matt Taylor, with Real Estate Research Consultants, reviewed the pro forma assumptions which they performed two scenarios each with (a) 431 spaces; (b) 25 year term; (c) 5% tax exempt rate for 281 spaces; and (d) 7% taxable rate for 150 spaces. Scenario A Current City Estimate for construction is $28,000 and contingency of $3,800 per space – estimate of $31,800 per space. Scenario B of MHG construction savings for construction is $26,000 and contingency of $1,000 – estimate of $27,000 per space.

He then reviewed the rate structure for MHG (1) 35 guaranteed 24/7 spaces - $140 per month; (2) 35 evening and weekend rate (4:30 p.m. to 10:00 a.m.) - $96 per month*; and (3) 80 evening and weekend rate (7:00 p.m. to 10:00 a.m.) - $86 per month*. *Increases – every year but not to exceed 10% over 3 years; (2) incentive for reduction in construction costs; and (3) PIP waives taxable parking spaces provided the City adopts parking rate structure incentivizing workforce housing.

The rate structure for the proposed public rates include (1) monthly guarantee 24/7 spaces - $120 per month; (2) monthly daytime guaranteed 6 a.m. to 6 p.m. - $100 per month; (3) monthly non-guaranteed 24/7 (residential only - $80 per month). These are to be approved as part of the budget process.

He then reviewed in detail the pro forma output for the two scenarios. Under Scenario A Current City Estimate – Year 1 Debt Service is $1,366,800; Year 1 Cash Flow is ($767,000); and total positive cash flow over 50 years is $23,179,100. There will be a positive cash flow in Year 26. Under Scenario B MHG construction savings – Year 1 debt service is $1,209,300; Year 1 cash flow ($644,500); and total positive cash flow over 50 years is $24,432,300. There will be a positive cash flow in Year 26. Therefore, Scenario B delivers 1.25 Million additional cash flow to the City.

Ms. Ball said that regarding approval of the Downtown Development Agreement (1) City commits to preliminary/final design cost; (2) establishes contractual relationship between City/MHG/PIP to include: (a) real estate purchase; (b) easements/air rights/subjacent rights; and (c) construction management terms; and (3) City/MHG can terminate Downtown Development Agreement prior to issuing bonds or closing on property.

With approval of reimbursement resolution, the City can reimburse costs from the sale of bonds for costs incurred within past 60 days.

With approval of owner's representative contract, (1) there is an owner's representative for the design and construction of parking garage; and (2) a termination clause.

Next steps – (1) due diligence; (2) final design documents; (3) bid project; (4) issue bonds (requires Council action); (5) close on real estate; and (6) construction.

Value engineering (1) $1 Million savings to City (land purchase vs. land lease); and (2) $943,000 savings (purchase HDK vs. excavation).

A cost comparison for 51 Biltmore Avenue property is (1) nine levels above grade; (2) four levels below grade; (3) construction cost (a) hard construction $31,400; (b) design $2,120; (c) total of $33,520; and (d) 431 spaces; and (2) land is $3.11 Million. Total is $17.56 Million.

Cost comparison for 51 Biltmore Avenue + Hot Dog King property (1) seven levels above grade; (2) two levels below grade; (3) construction cost (a) hard construction $26,200; (b) design

$1,800; (c) total of $28,000; and (d) 431 spaces; and (2) land is $3.56 Million (additional $1.45 Million). Total is $16.63 Million. The total project savings is over $943,000.

Mr. W. Louis Bissette, Jr., attorney representing MHG, said this does meet a number of downtown needs. He spoke about the economic impact of providing jobs. He hoped City Council would approve the agreements and continue this process. He understood that financing is an issue for the City and it is for MHG as well. There are a lot of uncertainties; however, the documents will allow this design process to go forward while giving all the participants a further opportunity next spring to review the economic and credit climates before giving final approval to this project. He recalled when the Wall Street and Rankin Avenue Parking Decks were built and he hoped Council would continue this development process as it will reap many benefits for the City over the next 20 years.

Mr. Wes Townson, representing MHG, felt this was an excellent public/private partnership in which many compromises were made to get to this point. He felt this project will be considered one of those projects around the south as a model for public/private cooperation and MHG is proud to be a part of it. He felt this is the time to be under construction because when this project opens in the later part of 2010 the economy will be on an upswing.

Mr. Pat Whalen, President of PIP, said that the City hasn't built a parking garage downtown in the past 20 years. He acknowledged the serious shortage of parking in this area and noted that PIP has been filling some of that gap for the last 10 years. They wanted this to be a public/private use than a private use alone and he urged Council to approve these documents.

Mr. Tom Tveidt, at the Asheville Metro Business Research Center, gave a brief analysis Asheville's economy.

Throughout discussion, Ms. Ball, Mr. Tveidt, Mr. Schemmel, City Attorney Oast and Parking Services Manager Harry Brown responded to various questions/comments from Council, some being, but are not limited to: how is the outlook for construction jobs in Asheville in the next 18-24 months; if COPs are issued, how is it viewed in the market place of being paid back; what is the projected revenue source to repay the debt; would our overall debt capacity be impacted if we repay the debt back from the Enterprise Fund; is there some financial product available, like a performance bond, to require the hotel component part of the project to be completed if MHG walks off the job; why was the Local Government Commission established; how will we ensure that we don't have a lot of cost over-runs if we contract with an owner's representative; limiting construction traffic on Biltmore Avenue; how much have we set aside for this type of initiative in the Parking Enterprise Fund; update on the revenue from the Parking Enterprise Fund; and of the two scenarios presented, which would staff support.

Councilman Mumpower supported parking as a City responsibility, especially in places where users pay most of their costs through an Enterprise Fund. However, his concern is that we are going to obligate the City approximately $17 Million, and until the economy clears he felt it would be a mistake on Council's part. He also voiced concern that the number of jobs anticipated for this project will not be for American or citizens.

Councilwoman Cape felt that one of the worst things that can happen is people get so fearful that they quit participating in creating a future. The City will be using the proceeds from our parking decks that we paid off to re-invest in another sound investment that has proven to help downtown. We are not borrowing money at this time, but moving forward to see if this is a viable project. This is just the next step, with time to watch the market and recovery.

Upon inquiry of Mayor Bellamy, Mr. Schemmel said that the Local Government Commission is a state mandated financial advisor to local governments and they are very conservation. Any bond issuance has to be approved by them. They would not approve moving forward if they didn't believe it was appropriate.

Mayor Bellamy confirmed that with the issuance of COPs, the security on the debt is the land and the facility for which the money is being borrowed.

Upon inquiry of Mayor Bellamy, City Manager Jackson said that staff will provide Council with more detail on how the owner's representative will perform their duties.

When Mayor Bellamy asked that a commitment be placed in the Downtown Development Agreement to hire locally, City Attorney Oast said that in the Downtown Development Agreement there is a commitment to work with the City's Minority Business Program Coordinator for minority and local vendors.

In response to Mayor Bellamy, Ms. Ball said that one of the recommendations from the draft Downtown Master Plan is to begin enforcement of parking until 10:00 p.m. – Monday through Saturday and enforce parking on Sundays. She said that staff would need City Council approval prior to making that change.

Mr. John Mark Stroud, property owner on Biltmore Avenue, presented City Council with a petition of support from 21 business owners on Biltmore Avenue, who support the new public parking deck on Biltmore Avenue.

The following individuals spoke in support of the parking deck on Biltmore Avenue and requested Council consider a policy prohibiting chain stores in downtown in order to keep the uniqueness of that area:

Ms. Raya June, Executive Director of Asheville Independent Restaurants Association (AI)
Joint President of AIR
Co-Owner of Fiore's
Mr. Kevin Schwartz, Board member of the AIR

In response to Councilwoman Cape regarding prohibiting chain stores out of downtown, City Attorney Oast said that there is a formula ordinance that some cities have adopted, but they have been challenged. He will continue to keep abreast of that issue and let Council know of any changes.

City Attorney Oast noted that with regard to this project, a statement was made at the conditional zoning of this project that the size of the retail units in this structure are such that they would not encourage chain stores, because it does not meet their size requirements.

Mayor Bellamy said that the AIR will be meeting with local developers, builders and owners to educated them on AIR; how AIR contributes to our community, and the impact of chains in the downtown area.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-213. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION NO. 08-213 - RESOLUTION BOOK NO. 31 – PAGE 345

Councilman Newman moved for the adoption of Resolution No. 08-214. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION NO. 08-214- RESOLUTION BOOK NO. 31 – PAGE 346

Vice-Mayor Davis moved for the adoption of Resolution No. 08-215. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION NO. 08-215 - RESOLUTION BOOK NO. 31 – PAGE 348

B. RESOLUTION NO. 08-216 – RESOLUTION SUPPORTING THE PROPOSED IMPROVEMENTS TO VICTORIA ROAD IN THE IMMEDIATE AREA OF MISSION HEALTH SYSTEM AS A PART OF THE HOSPITAL'S OVERALL MASTER PLAN

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration to approve a resolution supporting the proposed improvements to Victoria Road in the immediate area of Mission Health System as a part of the hospital's overall master plan.

Mission Health System is actively pursuing their overall master plan and it includes certain street improvements to Victoria Road in the immediate area of the main campus area. The existing section of Victoria Road that connects with SR 3214 (Biltmore Avenue) will be widened to a multi-lane facility and a new multi-lane connection to US 25 (McDowell Street) will be constructed. Victoria Road will be relocated to create a new cross type intersection that will be signalized. This section of Victoria Road will also be a multi-lane facility transitioning back to a two-lane road at the existing tunnel over US 25 (McDowell Street). A traffic signal will also be installed at the new intersection with US 25 (McDowell Street). The proposed roundabout will be part of the hospital's new main entrance and it will be privately-maintained.

It should be noted that when the subject improvements are completed, a new name should be given to the section of street between SR 3214 (Biltmore Avenue) and US 25 (McDowell Street). Victoria Road would then begin at the newly created intersection.

Mission Health System contacted the North Carolina Department of Transportation (NCDOT) to see if they would provide part of the needed funding for the proposed street improvements. Since the completion of the hospital's overall master plan will probably create new job opportunities, the NCDOT is considering approving up to $500,000 towards the proposed street improvements. This funding does ***not*** impact funding in the current Transportation Improvement Program (TIP).

Buncombe County will consider a similar resolution at their November 4, 2008, Board of Commissioners meeting.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by improving existing and creating new street infra-structure in order to enhance traffic flow and safety.

Pros:

- Traffic flow and safety in the immediate surrounding area of the hospital including A-B Tech should be enhanced.
- Once completed, the new street connection will become a city-maintained street that will increase the overall total of city-maintained streets, which should result in an increase of Powell Bill Funds.

Con:

- Powell Bill Funds will ***not*** cover 100% of the cost to maintain the new street connection.

There is no initial anticipated financial impact to the City of Asheville. The City of Asheville will be responsible to maintain the street infra-structure including the new street connection and the new traffic signal at the intersection with Victoria Road.

Staff recommends that City Council approve a resolution supporting the proposed improvements to Victoria Road as a part of Mission Health System's overall master plan.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman asked what NCDOT pool of funds this would be coming from if it is not affecting the current TIP. Mr. Putnam said that this is the money that the local NCDOT board member controls. These funds will be coming from the NCDOT's Public Access Road infrastructure money and Economic Development funds where a project will generate new jobs.

When Councilman Newman asked how much money does the local NCDOT board member have at their sole discretion, Mr. Putnam said that when he worked for NCDOT, the member used to control about $1 Million a year. For this project, the total amount is $500,000.

Councilman Newman was concerned that there are a lot of different small transportation projects that our community needs and our area of the state gets a certain amount of transportation funds. We work very hard to get NCDOT support. He felt that funding could go to a variety of different projects, not just in Asheville, but our part of the state. He wondered if the funding controlled by the local board member can go to a variety of different kind of transportation projects in the City, then he would like to have the ability to see how that project stacks up against other types of project that could be funded with those same dollars. We have been working on a Priority Needs List with the Metropolitan Planning Organization and felt we should not be looking at the projects on an individual basis because we have limited dollars. If the funding is unique enough to be only used for this project and no other in Asheville, then that's not a problem. This feels like an isolated decision for him and he wanted us to review this in a more systematic way in the future.

Mayor Bellamy said that she and Vice-Mayor Davis met with the Chair of the Buncombe County Commissioners and a member of the Commissioners about land use planning and transportation needs. Outside of the I-26 Connector and the TIP our region isn't asking for any other long-range transportation planning funding. Whereas, other cities have already put in place what they want their transportation system to look like for 20 years. We need to plan. We need to work with the County to actively collaborate on our future transportation needs. In addition to this funding, Representative Goforth is going to the Speaker for $250,000 for this initiative. There are pools of money that we didn't know existed. We need to identify those pools and see how they can benefit the greater community. She was glad about this new connector street; however, we do have other transportation needs that she would like to be able to tap into for the greater community. She asked City Clerk Burleson to place this as a tickler item on the Council's calendar.

In response to Councilman Newman, Mr. Putnam said that projects like this do not presently go before the Metropolitan Planning Organization body.

At the request of Councilman Newman, Mr. Putnam said that he would be happy to look at other funding opportunities available to the City.

Councilman Russell spoke in support of this project in that Mission Hospitals is the number one employer in Asheville and this new connector will be a critical part of our community and it will serve our area.

Councilman Mumpower felt we are basically approving a resolution saying it's okay to sidestep the planning process and he could not support the action.

A representative from Mission Hospitals clarified the planning process. They have been working with the City's Planning & Engineering Departments and have gone through the City's Technical Review Committee. The total project budget is $10.3 Million. Mission Hospitals is willing to invest in infrastructure and donate its property to widen the road. Mission Hospitals have been transparent through the entire process.

Councilwoman Jones moved for the adoption of Resolution No. 08-216. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 31 – PAGE 349

C. RESOLUTION NO. 08-217 – RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Vice-Mayor Davis said that the term of Davidson Jones (east representative) expired on June 30, 2008.

At the September 16, 2008, worksession, it was the consensus of Council to interview Kyle Ann Ross, Brock Moore and Ronald Maynard. Due to the fuel conservation measures, Mr. Maynard was unable to attend the interview date and another date was set up for the interview.

After Council spoke highly of the candidates, Kyle Ross received no votes, Brock Moore received one vote and Ronald Maynard received 5 votes. Therefore, Ronald Maynard was appointed as the east representative on the Citizens-Police Advisory Committee to serve a three year term, term to expire June 30, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 351

D. RESOLUTION NO. 08-218 – RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Davis said Tebbe Davis has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2009.

At the October 21, 2008, worksession, it was the consensus of Council to interview Jodi Shell, Arthur Allen and Brian Woods. Mr. Allen was unable to attend the interview.

After Council spoke highly of the candidates, Jodi Shell received no votes, Arthur Allen received no votes and Brian Woods received six votes. Therefore, Brian Woods was appointed as a member of the Civic Center Commission to fill the unexpired term of Mr. Davis, term to expire June 30, 2009, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 352

E. RESOLUTION NO. 08-219 – RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Vice-Mayor Davis said Christopher Gilbert has resigned from the Greenway Commission, thus leaving an unexpired term until December 31, 2010.

At the October 21, 2008, worksession, it was the consensus of Council to interview Susan Barlow, Russell Pierce, Stephanie Pankiewicz, Justin Fletcher, Ellen Bailey, Brian

Etheridge and David Borcherding. Ms. Bailey and Mr. Etheridge are not interested in the vacancy at this time.

After Council spoke highly of the candidates, Susan Barlow received 4 votes, Russell Pierce received 7 votes, Stephanie Pankiewicz received 7 votes, Justin Fletcher received no votes and David Borcherding received 3 votes. Therefore, Russell Pierce was appointed as a member of the Greenway Commission to fill the unexpired term of Mr. Gilbert, term to expire December 31, 2010, or until his successor has been appointed.

In addition, due to the terms of David Tuch and Linda Giltz expiring on December 31, 2008, it was the consensus of Council to appoint Susan Barlow and Stephanie Pankiewicz to each serve a three-year term respectively, terms beginning January 1, 2009, and expiring on December 31, 2001, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE 353

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Asheville Police Department Dignitary Protection

Councilman Mumpower requested a brief report from Police Chief Hogan regarding the Gov. Sarah Palin event at the Asheville Civic Center on October 26, 2008.

Mayor Bellamy said that regarding all rallies, staff has looked at what best practices they can use in the future and what requirements need to be put in place prior to the event.

City Manager Jackson said there were six presidential campaign events that the City was directly involved; and two non-public presidential campaign visits. Chief Hogan will go over how the City was called into these events and how the Gov. Palin event on Sunday relates to prior requests.

Police Chief Hogan explained that the Asheville Police Department (APD) provides mutual aid to Secret Service agendas for dignitary protection.

Statistics regarding the Sarah Palin event include (1) Asheville Civic Center – Saturday, October 26, 2008; (2) met with US Secret Service on Friday, October 24, 2008; (3) 34 officers assigned to event venue (5 from Buncombe County Sheriff's Office); (4) 21 officers assigned to motorcade: (5) 28 officers held over from regular day shift as safeguard for potential problems; (6) roll call at 3 p.m.; (7) on-site at 3:30 p.m. – 10:00 p.m.; (8) primary responsibility is mutual aid to U.S. Secret Service for dignitary protection; (9) 7 officers assigned to foot patrol outside of venue; (10) additional officers that moved between inside and outside as needed; (11) projected crowd of 8,000; (12) actual crowd of 10,000 plus; (13) large protest crowed in close proximity, due to venue; and (14) no fights; two cases of exhaustion; safe event for protectee.

Statistics regarding the Barack Obama event include (1) Asheville High School football field – October 5, 2008; (2) met with U.S. Secret Service on Tuesday, September 23, 2008; (3) 43 officers assigned to event venue (17 from Buncombe County Sheriff's Office); (4) 10 officers assigned to motorcade; (5) roll call at 9:15 a.m.; (6) on-site at 10:00 a.m. – 4:30 p.m.; (7) primary responsibility is mutual aid to U.S. Secret Service for dignitary protection; (8) 5 officers assigned to patrol outside of venue; (9) projected crowd of 15,000; (10) actual crowd of 22,000 plus inside – 6,000 outside; (11) small protect crowd in front of school; (12) no fights; (13) 4 attendees suffered from heat exhaustion; and (14) safe event for protectee.

Statistics regarding the Michelle Obama event include (1) UNC-Asheville – May 2, 2008; met with U.S. Secret Service on Thursday, April 24, 2008; (3) 13 officers assigned to event venue (2 from Buncombe County Sheriff's Office, UNC-Asheville Police Department assisted also); (4) no officers assigned to motorcade – Highway Patrol provided motorcade; (5) roll call at 3:30 p.m.; (6) on-site at 4:00 p.m. – 9:30 p.m.; (7) primary responsibility is mutual aid to U.S. Secret Service for dignitary protection; and (8) safe event for protectee.

Statistics regarding Hillary Clinton event include (1) Thomas Wolfe Auditorium – April 24, 2008; (2) met with U.S. Secret Service one week prior; (3) 35 officers assigned to event venue; (4) 6 officers assigned to motorcade (in conjunction with the Highway Patrol); (5) roll call at 3:00 p.m.; (6) on-site at 3:30 p.m. – 11:30 p.m.; (7) primary responsibility is mutual aid to U.S. Secret Service for dignitary protection; (8) 2 officers assigned to patrol outside of venue; additional officers used during motorcade arrival; (9) projected crowd of 4,000; (10) actual crowd of 4,000 plus inside – 2,000 outside; (11) small protest crowd in front of venue; (12) crowd control issues related to candidate greeting crowd out front; and (13) no fights; no injuries; safe event for protectee.

Statistics regarding the Bill Clinton event include (1) Asheville High School Gymnasium – March 28, 2008; met with U.S. Secret Service one week prior; (3) 14 officers assigned to event venue; (4) 1 officer assigned to motorcade; (5) roll call at 5:30 p.m.; (6) on-site at 6:00 p.m. – 11:30 p.m.; (7) primary responsibility is mutual aid to U.S. Secret Service for dignitary protection; and (8) safe event for protectee.

Major preliminary conclusions for Gov. Palin visit includes (1) attendance exceeded capacity; (2) inadequate volunteers for crowd support; (3) limited security scanners at entrance due to underestimated crowd size; (4) confrontational personalities with conflicting values in close proximity; (5) Zombie Walk happening at the same time; (6) no fights; no physical confrontations; no injuries; no arrests; (7) additional evaluation needed and further planning for future events; and (8) Secret Service comments from agents throughout the U.S.

Mayor Bellamy apologized to the individuals who had a negative experience in our downtown; however, there were some things that were out of our control, e.g., like the protestors, security scanners at the entrance.

Councilman Mumpower felt this was a learning process for us and perhaps in the future we might be in a position to warn organizers about what they might expect and what they need to provide for to make sure all bases are covered.

In response to Councilman Mumpower, City Manager Jackson said that the Civic Center staff, with the assistance of the Police Department staff and the Fire Marshal, was between the National Republican Party organizers and U.S. Secret Service in terms of staging the event. Their primary concern was inside the Civic Center and that the event was properly managed.

Police Chief Hogan said that as far as the external part of the building, we normally have a large core of volunteers that organize and support the waiting crowd. At this event, all the volunteers were on the inside. The police officers were not capable of answering questions about who would get in. We were watching the crowd very closely. Some people took offense to things said and signs made, but it was all constitutional.

In response to Councilman Mumpower, City Manager Jackson said he didn't believe there was chaos on the inside of the Civic Center. In terms of the dignitary, the U.S. Secret Service had the ability to limit the number of people allowed in. It did not detract from our ability to manage the number in the building.

Councilwoman Cape said that some people were offended by the police officers talking to

Rev. Chiaronmonte but part of community policing is knowing who the community is and who's a problem and who isn't. The Zombie Walk had been planned for a long time. She felt the APD did a good job. Hopefully in the future we can recommend no political rallies in downtown Asheville. She also noted that Gov. Palin arriving 1.5 hours late didn't help the frustration of the crowd as well.

Chief Hogan thanked Capt. Sarah Benson for her excellent work with the U.S. Secret Service and her organization of these events.

Living Wage

When Mr. Steve Agan, representing the Living Wage Committee, asked to speak, Mayor Bellamy said that the Council has sent that issue to the Finance Committee. No public comment was allowed because there was no motion on the floor.

Councilman Newman asked for clarification of the policy in that because there was no public comment allowed during the meeting, shouldn't the public be allowed to comment on it under Informal Discussion and Public Comment. He asked that the policy be clarified that people should be allowed to speak under "Informal Discussion and Public Comment" unless there has been a public comment period earlier in the meeting on that specific issue.

City Attorney Oast said that City Council Rule Section 7 (d) reads "At each 'regular' meeting of the Council, under the 'Informal Discussion and Public Comment' section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so."

When Mayor Bellamy said that she would entertain a motion to waive the rules, Councilman Newman moved to waive the rules and allow Mr. Agan to speak. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mr. Agan spoke to Council about the legal issue of what Council has the power to do in terms of regulating contracts.

Copwatch Program

Mr. David Ireland, from the Asheville Copwatch Program, spoke to Council about complaints from citizens alleging harassment and brutality from Asheville police officers. Police Chief Hogan, who was present in the room, said that he would be happy to meet with Mr. Ireland and discuss his concerns.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:04 p.m.

Magdalen Bowdoin
CITY CLERK

Jerry W. Bellamy
MAYOR

Tuesday – November 11, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Question Why Youth Leaders led City Council in the Pledge of Allegiance and explained the purpose of their state-wide program, which is to empower youth as advocates in the community.

INVOCATION

Councilwoman Cape gave the invocation, along with a brief history of Veterans Day.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 12, 2008, AS "PREMATURITY AWARENESS DAY"

Mayor Bellamy read the proclamation proclaiming November 12, 2008, as "Prematurity Awareness Day" in the City of Asheville. She presented the proclamation to Ms. Debra Couch, Division Director for the Pisgah Division of March of Dimes, who briefed City Council on some activities taking place during the day. She was also pleased to recognize Ms. Tess McCutcheon, a 6 years old girl who was four months premature, and her sister Kate.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B" and "C" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 28, 2008

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE DEPARTMENT OF JUSTICE OFFICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, FOR THE EDWARD BYRNE MEMORIAL DISCRETIONARY GRANT FOR THE POLICE DEPARTMENT'S APPROPRIATE AND EFFECTIVE FORCE OPTIONS INITIATIVE

BUDGET AMENDMENT FROM THE EDWARD BYRNE MEMORIAL DISCRETIONARY GRANT FOR THE POLICE DEPARTMENT'S APPROPRIATE AND EFFECTIVE FORCE OPTIONS INITIATIVE

These items were removed from the Consent Agenda for discussion and/or individual votes.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE A GASID RESPONDER RCI SPECTROMETER FOR THE IDENTIFICATION OF

UNKNOWN CHEMICAL GAS, SOLID AND/OR LIQUID FOR HAZARDOUS MATERIAL RESPONSE FROM A "SOLE SOURCE" UTILIZING STATE HOMELAND SECURITY GRANT MONIES

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 08-222 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH THE WACKENHUT CORPORATION TO PROVIDE SECURITY SERVICES IN THE THREE MUNICIPALLY OWNED PARKING GARAGES

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with The Wackenhut Corporation to provide security services in the three municipally owned parking garages.

The City of Asheville owns and operates three municipal parking garages: Civic Center, Rankin Avenue, and Wall Street. These facilities operate around the clock and are utilized by approximately 580,000 parking customers annually. The security and safety of these patrons and City employees are the top priority of the City. Protection of City owned property and privately owned vehicles are also very important.

Security staff consisting of city staff and contract security officers, currently provided by The Wackenhut Corporation, provides unarmed security services in the garages and the small parking facility known as Handy Park on a 24 hour a day basis every day of the year. City employed security guards work primarily during normal business days from 7:00 a.m. to 11:00 p.m. Contract security personnel work the 11:00 p.m. to 7:00 a.m. shift and weekends/holidays.

Security is provided by performing random vehicular and walking patrols thru the garages to include stairwells, elevators, and the exterior perimeter to deter theft, loitering and vandalism in and around the facilities. In addition, security staff assists customers to exit the facility if they have difficulty and also provide escorts at night to anyone requesting the service. The City of Asheville provides the vehicle for patrols.

On August 25, 2008, Parking Services requested proposals from qualified vendors to provide unarmed security patrols in the facilities. The contract is to run for three years. Proposals were received from four security firms ranging from local security firms to international firms with local branches. All are qualified firms that meet the requirements set forth.

Requests were made for two proposals in which each firm would provide security personnel without a vehicle and with a vehicle. This allowed Parking Services to determine which option was most cost effective for the City. It is still more cost effective for Parking Services to provide the patrol vehicle. Proposals ranged from $63,492 to $77,500 per year without vehicle and $74,232 to $91,280 with vehicle. In both scenarios The Wackenhut Corporation submitted the lowest proposal. All proposals, for security services without vehicle, are within the estimated range that is in the Fiscal Year 2008-09 budget.

This action complies with the City Council Strategic Operating Plan in that it improves safety and security of parking patrons in the parking facilities. In addition, having personnel on at all times provides better customer service for the public.

This action complies with the recently adopted Parking Study in that security in the facilities, especially Civic Center Garage, was identified as a concern.

Pros:

- Twenty-four hour security provides a safer environment for staff and patrons,

- Customer service is enhanced by having security available all the time,
- Selecting The Wackenhut Corporation will eliminate any inconvenience to the public as they are already trained and familiar with garage operations.

Con:

- The contract amount is approximately 7% higher than the existing contract signed five years ago.

There is no adverse fiscal impact due to this project. Funds for security services were authorized in the Fiscal Year 2008-09 Operating Budget for Parking Services and are still available.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with The Wackenhut Corporation to provide unarmed security services in the three municipally owned parking garages.

RESOLUTION BOOK NO. 31 – PAGE 360

E. RESOLUTION NO. 08-223 - RESOLUTION OF INTENT TO CLOSE A PORTION OF FERNWOOD AVENUE AND SETTING A PUBLIC HEARING ON DECEMBER 9, 2008

Summary: The consideration of a resolution of intent to close an unopened portion of Fernwood Avenue and request a public hearing for December 9, 2008, regarding this issue.

N.C. Gen. Stat. sec. 160A -299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, property owners; Myra Hirschberg and Thomas Caldwell, Adam S. Pittman Guy K. Penland, Anita F. Hatcher, Lisa R. Mathis, Kay Susan Bennett, and Robert J and Phyllis Roberson have requested the City of Asheville to permanently close an unopened portion of Fernwood Avenue.

The Greenway Commission is scheduled to review the closure of the unopened portion of Fernwood Avenue at their meeting on November 13, 2008.

This action complies with the Strategic Operating Plan in that the closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for December 9, 2008, to close an unopened portion of Fernwood Avenue.

RESOLUTION BOOK NO. 31 – PAGE 361

F. RESOLUTION NO. 08-224 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE OPTION TO PURCHASE A PORTION OF PROPERTY LOCATED AT 217 PEACOCK LANE FOR THE CONSTRUCTION OF A NEW WATER PUMPING STATION AS PART OF THE WESTON ROAD REVENUE BOND PROJECT

Summary: The consideration of a resolution authorizing the Mayor and City Council to approve the City Manager to, on behalf of the City of Asheville, execute the option to purchase from Dunbar Apartments, LLC and purchase the parcel in question for $60,000, for an 0.85 acre parcel of property required for the construction of a new water pumping station as part of the Weston Road Revenue Bond Project.

In 2007, the City of Asheville received $40 million in revenue bond funds for water system improvements. As part of the 11 revenue bond projects, there are miscellaneous expenses that could not be planned for until the projects were underway. In addition, the N.C. Dept. of Transportation has not approved work in state right-of-way, which means easements or parcels of property must be purchased from homeowners to complete work on these projects in a timely manner. The land purchase needed for the Weston Road Revenue Bond Project is $60,000 and needs to be approved separately by City Council. There may be additional land purchases in order to complete these projects on schedule and on budget.

A formal appraisal of this property was not performed. Based on the appraised tax value of Dunbar's land, this 0.85 acre is valued at $80,000. We proceeded with pursuing the purchase under the premise that if the property could be obtained for appraised tax value, or less, a formal appraisal would not be required.

This action complies with the Strategic Operating Plan regarding Infrastructure improvements.

Pros:

- This land purchase will expedite the Weston Road Revenue Bond Project, which will help to enhance customer service, water service reliability and fire flow to commercial and residential customers.
- This action has already been budgeted and does not require reallocation of funds from another capital project.

Con:

- Without this land purchase, the Weston Road Revenue Bond Project will not be completed on schedule or on budget.

This land purchase for $60,000 has been budgeted in the existing Weston Road Project and does not need to be reallocated from other capital projects.

City staff recommends the City Manager execute on behalf of the City of Asheville the option to purchase from Dunbar Apartments, LLC for $60,000 for an 0.85 acre parcel of property required for the construction of a new water pumping station as part of the Weston Road Revenue Bond Project.

RESOLUTION BOOK NO. 31 – PAGE 362

G. RESOLUTION NO. 08-225 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER INCREASING HICKORY CONSTRUCTION COMPANY'S CONTRACT FOR IMPROVEMENTS AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS AND TO APPROVE THE PURCHASE OF MATERIALS NEEDED TO COMPLETE THIS PROJECT

ORDINANCE NO. 3671 - BUDGET AMENDMENT REALLOCATING EXISTING FUNDING FROM THE WATER DISTRIBUTION CAPITAL PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a change order increasing Hickory Construction Company's contract amount of $6,432,361.43 for the improvements at the North Fork and William DeBruhl (Bee Tree) Water Treatment Plants to $6,869,861.43 and to approve the purchase of materials needed to complete this project at an estimated cost of $172,000; and the associated budget amendment.

The City of Asheville Water Resources Department has an existing contract with Hickory Construction Company to make improvements to the North Fork and William DeBruhl water plants at a cost of $6,432,361.43. This work is necessary to remedy serious defects in the chemical feed systems at both water plants that were discovered during the construction process. These defects were not apparent during the design process for the project and would have been included in the work by the consulting engineering firm. This work is consistent with the other chemical feed improvements that Hickory Construction has performed on the project. During construction, it was discovered that the chemical feed system at North Fork has aged to the point of failure and several dangerous leaks have occurred recently. This system is the primary disinfectant system for the majority of the treated water delivered to the water system customers. If this system fails, it will prevent the North Fork from treating water and the City would have to declare a state of emergency due to the inability to supply treated water to its customers. The department's goal is to install a replacement system as quickly and efficiently as possible via change order to the existing construction contract with Hickory Construction Company. Additional and similar work at William DeBruhl will also be included in the change order. By using the existing contractor on site, Hickory Construction, the City will save approximately $272,500. This additional work will cost approximately $437,500, thereby increasing Hickory Construction Company's contract amount from $6,432,361.43 to $6,869,861.43.

The materials needed to complete this project will be bid out separately by the City's Purchasing Division. Brown and Caldwell Consulting Engineers have estimated the cost of materials to be $172,000. With the $437,500 construction change order and the $172,000 material cost, the estimated cost for the Chemical Feed Replacement is $609,500.

This action applies with the Strategic Operating Plan regarding the improvement of City infrastructure.

Pros:

- This project will ensure North Fork can continue to supply treated water to system customers, provide better safety for employees working around water treatment chemicals, and ensure all federal and state mandated clean water drinking act regulations are met.
- The $172,000 cost of materials is budgeted in the existing North Fork Upgrade Continuation Project and will not need be reallocated from another capital project.

Con:

- Funding for the construction change order increase requires $437,500 to be reallocated from another capital project.

Hickory Construction's contract amount of $6,432,361.43 will increase by $437,500 to $6,869,861.43. These funds are not available within the project budget and will be reallocated from another capital project. The additional materials are an unexpected expense and will cost approximately $172,000. These funds are available in the existing North Fork Upgrade Continuation Project budget and will not be reallocated from another capital project.

City staff recommends City Council (1) authorize the City Manager to sign a change order increasing Hickory Construction Company's contract amount of $6,432,361.43 for the improvements at the North Fork and William DeBruhl (Bee Tree) Water Treatment Plants to $6,869,861.43 and to approve the purchase of materials needed to complete this project at an estimated cost of $172,000; and (2) adopt the associated budget amendment, in the amount of $437,500.

RESOLUTION BOOK NO. 31 – PAGE 363
ORDINANCE BOOK NO. 25 – PAGE 79

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION AND/OR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-220 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE DEPARTMENT OF JUSTICE OFFICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, FOR THE EDWARD BYRNE MEMORIAL DISCRETIONARY GRANT FOR THE POLICE DEPARTMENT'S APPROPRIATE AND EFFECTIVE FORCE OPTIONS INITIATIVE

ORDINANCE NO. 3670 - BUDGET AMENDMENT FROM THE EDWARD BYRNE MEMORIAL DISCRETIONARY GRANT FOR THE POLICE DEPARTMENT'S APPROPRIATE AND EFFECTIVE FORCE OPTIONS INITIATIVE

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under Department of Justice Office, Office of the Justice Programs, Bureau of Justice Assistance for the Edward Byrne Memorial Discretionary Grant for Asheville Police Department's Appropriate and Effective Force Options Initiative (AEFOI); and the associated budget amendment, in the amount of $201,228.

The City of Asheville has been awarded a grant from Department of Justice Office, Office of the Justice Programs, Bureau of Justice Assistance for the Edward Byrne Memorial Discretionary Grant for Asheville Police Department's Appropriate and Effective Force Options Initiative in the amount of $201,228 with no local match. The purpose of the grant program is to fund Asheville Police Department's effective use of force initiative. APD needs to tailor our training to make it as realistic as possible without putting our officers in danger. Through AEFOI, APD plans to incorporate specialized training in the areas of weapons use and vehicle operation with interactive driver and use of force training simulators. Officers will be able to ***more*** efficiently evaluate and provide what is needed to diffuse situations properly. This will likely reduce injuries to citizens and officer's, as well as provide for better court testimony and reduce departmental liability.

Below is the description of simulator products.

MILO Range PRO System	$62,765
Advanced Emergency Vehicle Operator System	$138,200

Total of Federal grant funds: $200,965

This action complies with City Council's Strategic Operating Plan in the Focus Area: Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Will contribute to the abilities and articulation of the necessary application of force in various situations and likely reduce officer involved vehicle accidents.
- By reducing injures to law enforcement as well as the public, this will aid in quality of life issues.
- Will enhance the officer safety mindset needed by APD officers, and allow for continual improvements in officer safety through the implementation of AEFOI.

Con:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment, replacing equipment components when needed.

There is no fiscal impact with this grant as there is no match required. The acquisition will enable us to enhance officer training and effectiveness at no additional direct cost.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with Department of Justice Office, Office of the Justice Programs, Bureau of Justice Assistance for the Edward Byrne Memorial Discretionary Grant; and (2) the associated budget amendment, in the amount of $201,228.

Councilman Mumpower spoke against using borrowed money for police functions that we are capable of providing for ourselves.

Councilman Newman moved to approve Resolution No. 08-220. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 354

Councilman Newman moved to approve Ordinance No. 3670. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 77

C. RESOLUTION NO. 08-221 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE A GASID RESPONDER RCI SPECTROMETER FOR THE IDENTIFICATION OF UNKNOWN CHEMICAL GAS, SOLID AND/OR LIQUID FOR HAZARDOUS MATERIAL RESPONSE FROM A "SOLE SOURCE" UTILIZING STATE HOMELAND SECURITY GRANT MONIES

Summary: The consideration of a resolution authorizing the City Manager to accept the purchase of a GASID and RespondeR RCI Spectrometer for the identification of unknown chemical gas, solid and/or liquid for hazardous material response from a "Sole Source" utilizing State Homeland Security Grant Money in the purchase amount of $99,455.00.

This grant is from the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management for the procurement of equipment to be used by Hazardous Materials Regional Response Team 6 – Asheville.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: Fiscal Year (FY) 2007-GE-T7-0048-1016 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The equipment is to be used in the field to detect and identify unknown and potentially hazardous chemical gases, solids and/or liquids during a hazardous material response

Each of the other six RRT's has procured these specific pieces of equipment from the Sole Source vendor of Smith Detection. Smith Detection is the sole manufacturer and distributor of the GASID and RespondeR RCI. There are no other comparable pieces of equipment that will be able to identify specific hazardous gases, solids and/or liquids with the accuracy and reliability as the GASID and RespondeR RCI.

The equipment consists of a spectrometer that identifies chemical components that lie within the gas sample while the RespondeR RCI (Raman spectrometer) detects chemicals that are held within a solid and/or liquid. Both pieces of equipment include libraries for Nerve and Blister Agents, Common Chemicals, Explosives, Solvents and Forensics.

This equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

Accepting this grant allows the City to enhance services without an increase in capital expenditures.

City staff recommends that City Council accept the purchase of the GASID and RespondeR RCI from a Sole Source utilizing State Homeland Security Grant funds to protect Asheville and Western North Carolina.

Councilman Mumpower moved for the adoption of Resolution No. 08-221. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 355

III. PRESENTATIONS & REPORTS:

A. FUEL UPDATE

City Manager Gary Jackson said that we continue to work on a higher level of preparedness for fuel supply for our region from an intergovernmental relations perspective.

Assistant City Attorney Jeff Richardson and Fire Chief Greg Grayson are meeting next week with Mr. Joe C. McKinney, Executive Director of the Land-of-Sky Regional Council of Governments, to discuss a regional approach of strategies to address the fuel supply issue for our region.

In addition, city government staff and Buncombe County emergency services staff continue to discuss multiple operational strategies to better copy for city government operations as we work towards the Fiscal Year 2009-10 budget process.

Mayor Bellamy noted that a report would be forthcoming regarding the outcome of the meeting with the Land-of-Sky Regional Council of Governments.

B. TRANSIT COMMISSION REPORT

Ms. Hanna Raskin, Co-Chair of the Asheville Transit Commission, said that Asheville established its board and commission system so "citizens can provide input on the policies that shape their government and their city." But, there is currently no board or commission charged with providing advice pertaining to parking, a major subset of the City's budget. The members of the Transit Commission asked Council to consider rectifying this oversight by placing parking within their Commission's purview.

The nearly three dozen citizen Boards and Commissions advise the City on such diverse matters as housing, crime and public art, issues united by the role they play in citizens' daily lives. Yet surely there is no issue residents and tourists confront as frequently as parking. According to a recent study, more than 12,000 drivers seek a downtown parking spot every weekday. The availability of parking is central to Asheville's growth and economic development.

The link between parking and transit is a natural one, particularly as the City considers programs such as Park-and-Ride. As the City's Transportation and Engineering Department seeks increasingly multimodal solutions to our citizens' transit needs, it makes sense for the City's Board and Commission structure to embrace the same organic approach.

The Transit Commission is already involved with facilitating travel, easing congestion and building a thriving downtown. Rather than invent a new commission -- which would require additional staff hours, member recruitment and training – they propose their purview be expanded to include parking, thereby creating another level of oversight without creating another layer of bureaucracy.

The Transit Commission has voted unanimously in support of this plan, and they hoped the Council sees fit to adopt it.

Vice-Mayor Davis said that when this issue was initially proposed, the Boards & Commissions Committee discussed it and asked for the Director of Transportation and Engineer's thoughts. At that time, the Director did not feel the need to expand the duties of the Transit Commission. As he personally has some difficult in expanding the duties to such an extreme degree without a detailed staff report from the affected Departments. He suggested the matter be referred to the Boards & Commissions Committee for discussion and recommendation.

Councilman Newman, liaison to the Transit Commission, agreed for the need of staff's prospective (transit, parking and other areas) on this proposal. He supported the Boards &

Commissions review of the proposal after staff input. He wondered if the proposal outlined might not go far enough in terms of broadening the scope of the Transit Commission. He thought the Commission was thinking of a Transit Demand Management Commission to look at all the different types of opportunities we have in Asheville to address traffic and transportation related issues.

Mr. Ryan Pickens, Co-Chair of the Transit Commission, said the Commission did discuss the broader scope of the Commission. However, since there is not an oversight board for parking, that was their initial first step. He felt the Commission would support the broader responsibilities described by Councilman Newman, however, if the Commission did expand, they would request the number of seats on the Commission expand as well.

Councilman Mumpower believed in advisory boards and hoped that City Council would solicit the Transit Commission's recommendations in issues regarding the Transit System.

Vice-Mayor Davis agreed with Councilman Newman that staff input consist of not only the transit and parking staff, but the Office of Economic Development, Planning staff and staff that are directly impacted by parking. He also wondered if we could include not only downtown parking, but Biltmore Village parking into this discussion as well.

In response to Councilwoman Jones, Councilman Newman wondered if we have the resources to study this matter now or if we should wait until the Transit Master Plan, which is well underway, is complete. He felt staff's feedback on the merits and timing of this would be helpful.

It was the consensus of Council to refer this matter to the Boards & Commissions Committee with input for appropriate City staff. She noted that when this matter is scheduled before the Boards & Commissions Committee that the co-chairs are made aware of the date and time.

IV. PUBLIC HEARINGS:

A. WITHDRAWAL OF REQUEST FOR A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS HAYWOOD PARK MIXED-USE REDEVELOPMENT PROJECT

Mayor Bellamy said that this public hearing was held on September 23, 2008, and continued to this date.

Mr. W. Louis Bissette Jr., attorney representing the developer (Mr. Tony Fraga), said that after long and careful consideration his client has asked him to relay to Council his reconsideration of his request for a continuance. He decided it would not be in his best interest, or the best interest of the City's and its downtown to pursue the continuance. His client has asked him to advise Council that he is withdrawing his conditional use application. The reasons are as follows: 1) the project cannot be realistically revised to meet the Council's objections as to harmony and scale; (2) 500 underground parking spaces, $3 Million in public benefits, LEED certification and other amenities require substantial density in order to pay for them and especially in downtown situations where that required density also requires height; (3) FIRC cannot substantially reduce the height of either of the two towers thereby reducing the number of units and still be able to deliver a project similar to the one described in their conditional use application to the City; (4) the City's application process has cost them significant time, money and energy. The delay in getting through the process has left them in a very difficult time economically. It appears to them that it could now be at least several years before the economic climate will be right for the development of such a significant project; (5) in order to protect the property they own downtown and the businesses that surround it, they believe that their best course of action is to begin a program to re-lease their existing property and revitalize the existing Haywood Park Hotel. In order to do that, they will have to enter into leases that will preclude the

significant redevelopment of their property for some time in the future; (6) finally, they are working very hard to keep their Enka and Westgate projects moving during this difficult time. The stalemate over the I-26 route is creating serious problems for them at Westgate. The uncertainty over the route selection is making it very difficult for them to market that project; (7) FIRC has a very large investment in the Asheville community and they will continue to work to protect that investment by concentrating their efforts on Westgate, Enka and re-leasing Haywood Park; and (8) with all due respect, the City of Asheville does not give much assistance to developers who are attempting to substantially invest in our City. It is possible that the present economic conditions may soon require the City to review its existing processes to be sure that the playing field is leveled for those who are willing to risk their time, money and energy in downtown Asheville.

Mayor Bellamy said that she had an opportunity to speak with Mr. Fraga about his desire to withdraw his application. She believed Mr. Fraga is a man of integrity, that he would not bribe Council and that he believed the project he proposed would benefit the community as a whole. She hoped that in the future Mr. Fraga would look at re-investing in downtown Asheville.

Councilman Mumpower felt that one of the things the developer was frustrated with was his accusation that he felt the developer was offering the City a $3 Million bribe or the City was extorting the developer for $3 Million. People don't give the City $3 Million for no reason. He spoke with some of the developer's staff and it was their indication that the City's staff and the downtown planning staff both laid a pretty heavy hand on the developer pushing for a contribution of that dramatic nature. The procedures and ordinances adopted by Council has hampered the developer's ability to create a project with a clear sense of what is needed and what will produce a probable outcome. He felt that further deliberation on this issue is needed to look at our procedures and policies regarding unnecessary hurdles for our developers and how the process can be improved.

Mayor Bellamy didn't recall, prior to last week's discussion about a policy to allow a developer to pay into a fund designated for affordable housing, that there was any directive to staff to talk to developers about paying into a fund for a downtown development project. When The Ellington project was brought forward, that was the first time that a developer at that level volunteered to provide money for affordable housing. There have been others before Council who have been asked about providing affordable housing in their projects, but there is no written policy in place requiring developers provide affordable housing or contribute to a fund or entity for affordable housing. She felt it was wrong to state that Mr. Fraga bribed City officials as that speaks to his integrity. When terms like bribery or extortion are used without evidence, it's slander. Mr. Fraga has come to Council twice in the last year with projects good for the community and he has been willing to work with the City on voluntary annexations into the City.

Councilwoman Cape felt that the Downtown Master Plan will provide clarify on what we want in the downtown area.

In response to Councilman Mumpower, City Manager Jackson said that on conditional use permits/zoning staff would, as a general rule, convey to the developer the strategic goals of Council, such as affordable housing, safe community, environmental sustainability, etc. If there are conditional use permits in the last two years that have been adopted by Council and a developer approaches the City with an application and asks how they can get a more probable outcome, staff will point them to prior approved conditional use permits and allow them to draw their own conclusions about how they interpret those decisions.

When Councilman Mumpower said that he was told that the staff's guidance was much more direct, City Manager Jackson said that if Mr. Fraga and Mr. Bissette would make that information available to him, he would be happy to follow-up, as he can deal with the facts if he knows them. Without knowing the specific dialogue, he cannot draw any judgments. As ethical behavior is a core value in his organization, he invited anyone to report to him any breach of

integrity or unethical behavior as there will be an investigation and accountability for that. In addition, Council has already asked that the conditional use permit process be reviewed. That review is in progress and will be routed through the Planning & Zoning Commission and then onto Council in early 2009.

Councilwoman Jones appreciated Mayor Bellamy's comments regarding the integrity of Mr. Fraga. She felt compelled to state that the City's staff are honest, trustworthy and professionals in their jobs.

Mayor Bellamy also noted that the policy discussion of last week regarding a fund for affordable housing if developers wish to contribute has been referred to the Housing & Community Development Committee.

Mr. Bissette said that his client has the highest respect for City staff as they have gone above the line of duty to help get this project completed. There is no question in their minds of any impropriety by City staff members. As he does a lot of these type projects in the City, it is known in the development community that one of Council's goals is affordable housing and there should be a component in the project or a contribution to affordable housing. It is not in the ordinance, but it has grown into the process. In fact, he had one project that the reason why it was voted against was because it did not have an affordable housing component.

B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING A PORTION OF SUMMIT AVENUE

RESOLUTION NO. 08-226 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF SUMMIT AVENUE

Mayor Bellamy opened the public hearing at 5:40 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close a portion of Summit Avenue. This public hearing was advertised on October 17, 24, 31 and November 7, 2008.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners; Victor C. Farmer, Theresa W. Hyler. Leonard C. and Nancy G. Hudgins, and Andrew J. and Kimberly L. Douglas have requested the City of Asheville to permanently close excess right-of-way on Summit Avenue.

The Greenway Commission reviewed the closure of the excess right-of-way on Summit Avenue at its meeting on October 9, 2008, and supports the closure of the excess right-of-way on Summit Avenue.

The closing will be submitted to the retention of two easements (1) Metropolitan Sewage District of Buncombe County, its successors and assigns, of a 20 feet wide permanent easement, for the operation and maintenance of a public sewer line, lying 10 feet on each side of said sewer line located and existing within the portion of Summit Street proposed to be permanently closed; and (2) PSNC Energy of Buncombe County, its successors and assigns, of a 10 feet wide permanent easement for the operation and maintenance of an existing 2-inch steel gas main pipeline, lying 5 feet on each side of said gas line located and existing within the portion of Summit Street that is proposed to be permanently closed.

This action complies with the Strategic Operating Plan in that this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.
- The closing on both sides of Summit Avenue will not affect possible future roadway improvements.

Con:

- In consideration of the location of the excess right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends the adoption of the resolution to permanently close excess right of way on Summit Avenue.

Mayor Bellamy closed the public hearing at 5:42 p.m.

When Councilwoman Cape asked that the Bike Plan be looked at as well with closures, Mr. Grant said that happens in the Greenway Commission's review.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-226. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 364

C. PUBLIC HEARING TO CONSIDER REZONING 235 AMBOY ROAD FROM RIVER DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT

ORDINANCE NO. 3672 - ORDINANCE REZONING 235 AMBOY ROAD FROM RIVER DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT

Mayor Bellamy opened the public hearing at 5:59 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 235 Amboy Road from River District and RS-8 Residential Single-Family High Density District to River District. This public hearing was advertised on October 31 and November 7, 2008.

The applicant is requesting the rezoning of a parcel (currently split-zoned RS-8 and River) to designate it entirely River District. The area of the entire parcel is 0.67 acres, but the area to be rezoned is 0.38 acres. Much of the parcel is constrained, owing to its narrow shape, stream presence, flood hazard areas, setbacks, and buffer requirements. West of the stream, called Moore Branch, the south side of the parcel is dominated by a derelict building, and the northern portion is mostly vacant, with some outdoor storage.

The owner purchased the property in 2002 with hopes of an adaptive reuse of the building, but the floods of 2004 damaged the building to such an extent that renovation became prohibitively expensive. Potential redevelopment of a new business in the area currently zoned River is limited by the residentially-zoned portion of the property, owing to the River District's

requirement of a 30-foot separation of non-residential uses from residential uses, the prohibition of outdoor storage of materials within 50 feet of a residential district, and the landscape ordinance's standard of a 30-foot buffer against RS-8 zoning.

Though the subject site only has direct frontage on State Street, the stream prevents access from that side of the property. The address of the existing building is an Amboy Road address, and a deteriorating paved driveway crossing the Progress Energy property to the south exists providing a connection to Amboy Road. A plat from 1946 identifies this access as a road called Flat Street, but the current tax maps no longer indicate a separate right-of-way extending all the way to the publicly maintained street. At the time of this writing, however, the agent for the property owner was still looking into the status of the access and through what process improvements on the driveway could be pursued.

The applicant is considering a variety of uses for the property in the short term, but has mentioned interest in a mixed use or loft project when the real estate market emerges from its downturn. Wishing to avoid the delay and expense of developing concept plans that might later change, the applicant elected to pursue a standard rezoning instead of conditional zoning. At the time of the application, staff felt the standard rezoning was fully supportable given the extent of area occupied by the required aquatic buffer for the stream, but subsequent to the application, a draft stormwater/erosion/sedimentation control ordinance was released which might reduce the buffer width for this site (this change will be discussed further below).

Almost the entire parcel is in the current 100-year floodplain, and the proposed new Special Flood Hazard Areas to be adopted next year would place *all* of its area in this classification. Such a designation requires that any development meet special building standards to protect against flood damage. Further, properties zoned River are subject to the design review process by the River District Design Review Committee (RDDRC) outlined in the Unified Development Ordinance (UDO). Accordingly, development of this property in a substandard manner under the proposed rezoning would be difficult if not impossible.

The current stormwater and erosion control ordinance mandates a 30-foot buffer from the top of bank of a named, jurisdictional stream such as Moore Branch. However, the draft ordinance mentioned above proposes a variable buffer width depending on the extent of disturbance and the slope of the land. On this relatively flat parcel, a project with less than 10,000 square feet of disturbance would only require a 15-foot buffer, and 10,000 to 21,999 square feet would require a 20-foot buffer. (More than 22,000 square feet of disturbance would not be (legally) feasible on this site.) This draft ordinance was considered by the Planning and Zoning Commission on October 23, 2008, but no action was taken. The Commission is expected to consider the matter again in December or January, and it could come before City Council in early 2009.

The existing 30-foot buffer requirement leaves a narrow strip along the west side of the area proposed for rezoning which would theoretically be developable, but which would be so thin as to make construction impracticable. With the potential reduction of the buffer, however, that area remains narrow—maybe 50 feet at its widest point—but wide enough to possibly erect structures upon. If a rezoning is approved under this second scenario, non-residential construction might occur across from the RS8 zoning, but it would be separated from the State Street frontage by the stream and two (minimum) 15-foot aquatic buffers flanking the stream. Further, no bridging of the stream or culverting, even for a pedestrian bridge, could occur without significant regulation, including oversight by the Army Corps of Engineers.

If the RS-8 zoning originally applied to this portion of land was intended to encourage single-family development paralleling the homes on the east side of the street, it appears that the presence of the stream may have been neglected, and the current challenges with developing near streams certainly unanticipated. Indeed, given the access issues, and applying the side and rear setbacks for RS-8 (the River district in this case would require no such setbacks), it would

pose a challenge to site even one house on the three-eighths of an acre. Though the River zoning district does not require rear setbacks, it is worth noting that if the access on the west side of the property is determined to be a bona fide street, as is shown in the 1946 plat, the lot could be considered a through lot, and the front setback standard (15 feet) would be applied to the west side as well.

Another relevant development constraint which depends on future decisions is the landscape buffer at the northern boundary of this property. If the Carrier Point conditional zoning application mentioned above is approved, the buffer would only need to be 20 feet instead of 30. The River District standards would still require a 30 foot setback from the residential zoning, but fewer plantings would be required in the event of a multi-family zoning to the north. Though the future aquatic buffer, landscape buffer, and setbacks for this lot can not yet be precisely established, staff feels that the restrictions will be significant enough under any scenario to mitigate potential for incompatible development.

The RS-8 district was created to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. Among other aims, the River district was established to protect the water resources and to promote economic revitalization throughout the river valleys while providing for an opportunity for enjoyment of the river by a maximum number of citizens, neighbors, and guests.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- Proposed zoning district is highly compatible with areas to west and south.
- Would remove presence of split zoning.
- Environmental and zoning constraints limit development options in subject area.
- Minimal potential for residential infill development under current single-family zoning.
- Would encourage development of a derelict site.
- Future development would be subject to River District design review and stringent floodplain standards.

Cons

- Uncertainty about extent of stream buffer protections and how much development might be permitted.
- Would result in a small loss of residentially zoned land.

The proposed rezoning could potentially provide some relief to the property owner for an unusually difficult piece of land with restrictive zoning, and the limited size of the resulting developable area would temper the prospective impact of a more permissive zoning district.

Mr. Dean Pistor, representing the developer, spoke in support of the rezoning and explained why the developer was not seeking conditional zoning. He urged Council to approve the rezoning to in order to avoid additional hardship for his client.

Mayor Bellamy closed the public hearing at 6:07 p.m.

Mr. Esselstyn responded to Vice-Mayor Davis regarding road. He said that there is some potential for housing, but there would be restrictions because pretty much of the property is in the floodplain.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3672. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 81

V. UNFINISHED BUSINESS:

A. SECOND AND FINAL READING OF ORDINANCE NO. 3660 – ORDINANCE AMENDING CHAPTER 9 OF THE CITY OF ASHEVILLE CODE OF ORDINANCES TO LEVY A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

RESOLUTION NO. 08-206 – RESOLUTION IMPOSING A TAX ON GROSS RECEIPTS FROM THE RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

City Attorney Oast said that Ordinance No. 3660 was adopted on its first reading on October 28, 2008. Because of the 4-3 vote for approval, the ordinance must be brought back for a second and final reading. In addition, another vote is necessary to adopt Resolution No. 08-206 as well.

Councilman Russell researched this issue and briefly explained that this bill was proposed by the heavy equipment rental industry. They felt this was fair, revenue neutral and simply a better way to track the taxes. If not adopted, it would create one group of businesses that lease equipment that do not have to pay taxes. It would create a tax loophole for just heavy equipment.

In response to Councilman Russell, this would go into effect April 1, 2008.

Councilwoman Jones moved for the adoption of Ordinance No. 3660 on its second and final reading. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 55

Councilwoman Cape moved for the adoption of Resolution No. 08-206. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 333

B. RESOLUTION NO. 08-227 - RESOLUTION ESTABLISHING A CITY AND COUNTY HOMELESS INITIATIVE ADVISORY COMMITTEE

Community Development Director Vann McNeill said that this is the consideration of a resolution to authorize the creation of a joint city of Asheville and Buncombe County Homeless Initiative Advisory Committee (HIAC) to provide oversight and guidance for the implementation of the 10-year Plan to End Homelessness.

The 10-year Plan to End Homelessness (the Plan) was adopted by the City Council and the County Commission in January 2005. To further the Plan recommendations, in July of 2006, decision makers from the public, private, and non-profit sector began to meet as an informal advisory working group to increase collaboration among the many agencies working on

homelessness issues. In November of 2007, the City of Asheville assumed the role of Lead Agency for Plan implementation and selected a Homeless Initiative Coordinator, Amy Sawyer, to track progress, give regular updates on achieving the Plan's goals and facilitate broad community support for the Plan.

To further emphasize the City's commitment to the Plan, the City's Committee on Board's and Commissions met on October 21, 2008, and recommended the creation of an HIAC to further support the goals of the Plan. This HIAC must be created by resolution with a purpose of providing thoughtful and reasoned guidance to City Council and the County Commission on policy issues, programs and funding strategies designed to end homelessness. To support the initiative, the Board of County Commissioners unanimously approved the joint City/County Housing Initiative Advisory Committee at their November 4, 2008, regular meeting.

This request supports and implements the City's 2008-09 Strategic Plan goal of affordability by supporting initiatives to end homelessness, the 2005-10 Consolidated Strategic Plan for HUD funds, and the Continuum of Care Plan and 10-year Plan to End Homelessness.

Pros:

- Represents an important endorsement and evolution in the City's and County's commitment to the 10-year Plan to End Homelessness by creating an advisory committee to focus on the issues of homelessness.
- Carries over and formalizes the existing advisory group, which allows for an uninterrupted continuation of the work on homeless issues by those agencies already collaborating on homeless issues.
- Consistent with the goals identified in the City's 5-year Consolidated Strategic Plan for the expenditure of its federal CDBG and HOME Program funds (over $1.2m committed to projects and services targeted to the homeless over last 2 years).
- Strengthens the partnership between the City, County and the homeless service providers in their commitment to ending homelessness.

Con:

- Creating a joint, formal advisory committee, as an intermediate body, may slow down or delay action. The HIAC will now be required to work through the HCD Committee review process to present policies for consideration by City Council. Reviews and approvals by the County Commissioners may also be required.

The fiscal impact will be incidental expenses associated with administrative work.

City staff recommends City Council approve a resolution authorizing the creation of a joint City of Asheville and Buncombe County Homeless Initiative Advisory Committee to provide oversight, guidance and recommendations for the implementation of the 10-year Plan to End Homelessness.

Mr. Lance Edwards, Chair of the Homeless Initiative Advisory Committee, explained how the group went through a strategic planning progress and they identified the following four key focus areas (1) improve collection, coordination and dissemination of data; (2) homeless and formerly homeless individuals will have greater access to permanent supportive housing, employment, education, health care benefits and support of services; (3) will inform and advise public and private funders to ensure that resources are utilized effectively; and (4) will achieve permanent, supportive housing for all chronically homeless individuals. Regarding focus one, they believe that data is key to this process. He highlighted the Homeless Management Information System (HMIS). HMIS will provide them with the ability to link resources, evaluate trends and measure results of programming throughout the homeless service system. Our community is minimally meeting federal standards for reporting information associated with people using shelter beds. We are not meeting federal standards for reporting data associated

with people using transitional beds. Our community is meeting standards for reporting data for people assessing permanent, supportive housing. While Asheville is currently in compliance with minimal federal standards, an increase of active HMIS is needed in order to meet federal standards that will be more stringent in the future. Complete up-to-date information is needed in order for Asheville and Buncombe County to be able to use HMIS data to evaluate programs and a larger community response. HMIS reports will be available from Ms. Amy Sawyer beginning in December, 2008. He then gave a brief current agency use of the HMIS in our community as follows: (1) we currently have 4 organizations actively using HMIS; (2) we have 4 organizations that have signed on to using HMIS but are not currently active; (3) we have 2 organizations that are in the process of signing a contract to agree to HMIS usage; and (4) we have 8 organizations that are not using HMIS, but in their opinion, should be.. United Way's 211 of WNC is in partnership with HMIS and will share all of their information referral data into the HMIS. We do need agencies to increase their participation because the system is largely voluntary. He asked City Council (and the Buncombe County Commissioners) require agencies that serve the homeless and that receive City (or County) funds be required to actively use HMIS.

Councilman Mumpower explained his concerns of why the 10-Year Plan to End Homelessness lacks in realism in the current economic climate. He felt we need to build in accountability for the person who is receiving the services. He supported the idea of an advisory board, but was concerned with the scope of that board in that it seems to assume a policy role. He did not support the Homeless Initiative Advisory Committee asking Council not support other non-profits unless they participate in HMIS in that he felt it represents a very heavy hand by the Committee.

Mayor Bellamy said that members of Council have been previously furnished with a copy of this resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-227. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

After a brief discussion of HMIS, Councilwoman Jones moved to require any agencies that serve the homeless and receive City funds (Community Development Block Grant, Outside Agency, HOME, etc.) be required to participate in the HMIS database. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Bellamy noted that we are being successful in decreasing the number of chronic homeless. Participation in the HMIS is a way to help individuals and non-profits be more accountable. She noted that Buncombe County is in the process of doing a study of the population of the jail and an issue discussed was how can HMIS assist in providing information to magistrates to decrease the population in the jails by holding people accountable. There is a direct correlation between HMIS and the magistrates.

RESOLUTION BOOK NO. 31 – PAGE 369

C. E-VERIFY ANALYSIS

City Attorney Bob Oast explained the following information on requiring the use of E-Verify by contractors with the City of Asheville.

E-Verify is a federal program that allows employers to check on the work-eligibility status of employees or prospective employees. E-Verify is available to businesses and governmental agencies. Users must register in order to use the system, but it is free.

In order to use the system, the employer must provide certain information about the employee; including the employee's name and social security number. This information is contained on the I-9 "Employment Eligibility" form that each prospective employee fills out. The I-9 form contains an "employer review and verification" that requires an employer (or agent) to examine at least two forms of identification, one of which is required to be a social security card or other government–issued document (some with a requirement for a seal). This form contains much of the same information that is available through E-verify. If an employer uses E-Verify, it must be used for all employees, and it must be used after the offer of employment has been made, and not later than 3 days after the new employee's start date. Other rules and regulations also govern the use of E-Verify. The system could not be used for employees who were not new.

The federal government currently requires all contractors to use E-Verify, and some states (Minnesota, Colorado, Arizona) do as well. Gwinnett County in Georgia is one local government that requires use of E-Verify by its contractors. Our review has disclosed no North Carolina local government whose contracts contain such a requirement. However, most local governments in North Carolina have language in their contracts that requires compliance with all applicable federal, state, and local laws. Asheville's standard contract language contains a specific reference to immigration laws.

There appears to be no legal impediment to requiring the use of E-Verify by businesses that contract with the City. As with any other contractual provision, the City could terminate a contract for failure to comply with such a requirement. However, due to the pre-emptive effect of federal law in the field of immigration, the City could not use E-Verify to investigate the employment eligibility status of a contractor's employees (non-City employees), or direct a contractor not to hire certain employees. Moreover, the City could not impose civil or criminal penalties on employers who hire persons who are not eligible to work in the United States.

He provided Council with a summary of the E-Verify system from the federal government website.

Pros:

- Appears to be easy to use
- Low/no cost for employers to use system

Cons:

- Duplicates information already available from other readily-available sources.
- Extra administrative burden on contractors to use system (I-9 already required).
- Added administrative costs to City to audit compliance.
- E-Verify does not confirm/verify a new hire's identity, E-Verify only confirms that the documents/SSN presented by a new hire to the employer are valid.

This report is for Council's information, and follow-up from a previous discussion. Staff recommends consulting with the business community before implementing this policy.

When Councilman Mumpower questioned if a potential City employee fills out an application and he/she provides false information on a degree, or on his/her criminal background or on his/her experience, does the City have the ability to do a background check. City Attorney Oast said that the City does perform background checks on potential employees. For instance, if he/she states on their resume or application that they have a law degree and is applying for an attorney position, that would be a permissible field of injury.

Councilman Mumpower then questioned if someone was dishonest about their citizenship why couldn't that be checked in some fashion. City Attorney Oast responded that his report to Council was about requiring contractors to use E-verify. In terms of what the Human Resources Department does, they require the completion and submission of an I-9 form and that

requires the production of two forms of identification, one of which is a social security number, but he is not sure of the details of that.

Councilman Mumpower felt the City should be a role model of the reasonable expectation that employers play by the law. This is one small step that we can do to send the message to ask our contractors to use E-verify so we can make sure that people who work for us are legal citizens.

The motion made by Councilman Mumpower requiring the use of E-Verify by contractors with the City of Asheville died for a lack of a second.

When Councilman Mumpower questioned why there was an I-9 system and an E-verify system, City Attorney Oast understood the E-verify system is a quick way of verifying the information on the I-9 form, as it's similar information on file in the federal government database. It doesn't guarantee that the information on file in the database is accurate and that is where some of the problems come in. One of the things it does do for an employer is if you use E-verify, it creates a rebuttable presumption that you're in compliance with the Immigration and Naturalization Laws. He has seen nothing to show that E-verify is more accurate than the use of the I-9 forms.

The motion made by Councilman Mumpower to instruct City staff to further research the differences between the use of an I-9 form and the E-verify system, (including what the City is able to do, what we can do, and why we should do it) died for lack of a second.

Councilwoman Cape explained her reasons for not supporting the E-verify system in that we have the I-9 form, language in our contracts that the City and contractors have to support applicable federal, state and local laws, with specific reference to the immigration laws.

Councilwoman Jones moved that this issue be tabled for six months. This motion was seconded by Vice-Mayor Davis and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

D. CITY COUNCIL VACANCY

On behalf of City Council, Mayor Bellamy congratulated Councilwoman Jones on winning a seat on the Buncombe County Board of Commissioners. City Council has officially received Councilwoman Jones' resignation from the Asheville City Council effective December 1, 2008. She reiterated the process below, which was approved by City Council on October 14, 2008:

Wednesday, 11-5	-	Any interested person will be given an application form, with a request for a resume to be attached, along with the 5 essay questions - ½ page response each. Deadline for all applications is Wednesday, November 26 at Noon
Wednesday, 11-26	-	Deadline for applications - Noon
Wednesday, 11-26	-	Clerk to verify all candidates of (1) City of Asheville residency; and (2) that they are registered to vote in Buncombe County
Wednesday 11-26	-	Clerk to send to City Council all eligible candidates applications, along with resume and completed essay questions. In addition, a letter will sent to all candidates notifying them that if they are chosen the City Council orientation will be held one day during the week of December 15
Tuesday, 12-2	-	City Council determine (1) how many to interview; (2) who to

FORMAL MTG		interview; (3) length of interviews; (4) date of interviews – December 9 before formal meeting; and (5) time interviews are to begin
Wednesday, 12-3	-	Clerk to contact candidates to arrange Interviews on December 9
Tuesday, 12- 9 FORMAL MTG	-	Interviews in Council Chamber – Interviews to be held prior to meeting **AND** listing on the formal 12-9 agenda – Appointment of new Council member
Friday, 12-12	-	New Council member sworn in with brief reception
One day during week of 12-15	-	New Council member orientation

At the November 25, 2008, meeting, the 2008 City Council Meeting schedule will be amended to include December 2 as a formal meeting; and December 12 as a special meeting to swear in the new Council member.

When Mayor Bellamy asked for any public comment, no one spoke.

In response to Councilman Mumpower, Mayor Bellamy said that the applications, and supporting material, will be posted to the City's website on the afternoon on November 26, 2008, as they will be part of the City Council package of December 2, 2008.

Councilman Mumpower felt the Council has made a strong effort to come up with a fair, transparent and open process to fill the vacancy on Council. This is the first time anyone has developed a process on paper. He felt that after the process is over, it can be reviewed and made a part of Council's rules.

Vice-Mayor Davis said adoption of this process was a unanimous decision of Council and supported this clear and open process.

When Councilwoman Cape asked about formalizing the process, Vice-Mayor Davis said that after the process is complete, it will be critiqued and recommended for adoption as a Council rule.

VI. NEW BUSINESS:

A. REVIEW OF POTENTIAL BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY PRODUCT DEVELOPMENT FUND GRANT APPLICATIONS

Economic Development Director Sam Powers said that this is a review of potential projects for application for funds from the Tourism Product Development Fund.

The Buncombe County Tourism Development Authority's (TDA) Tourism Product Development Fund (TPDF) was created in 2001. It makes funding possible for tourism projects that will increase the number of overnight stays by visitors in Buncombe County lodging properties. The City has no previous direct funding from the TPDF; however, the WNC Soccer Foundation received $400,000 of funding for the City's John B. Lewis Soccer complex in both 2002 and 2004 and completed a pass through to the City. Additionally, the current Partnership on Wayfinding, in which the City participates, received TPDF funding approval in 2008.

He provided Council with a "Frequently Asked Questions" information sheet which outlines the criteria and funding process for the TPDF. The sheet answers many of the questions about the guidelines and eligibility for funding of projects.

In an effort to leverage resources and build on priorities in the City's Strategic Operating Plan, develop partnerships with the TDA, and also meet core funding criteria of the TPDF, staff has developed a summary of possible projects for Council review. In developing the list of potential projects, staff tried to balance developing a list of projects that was too extensive versus missing an opportunity to submit on a worthy project.

He then briefly reviewed the summary of each of the projects, with preliminary information that is available at this time. More detailed preliminary work will be done prior to any projects being selected for an application to the TPDF. In some projects, local funding has been identified; however, some projects do not have sources of funds identified.

Short-term Projects	**Cost**
Civic Center Banquet Hall	$1,500,000
Downtown Improvements	$3,270,000
• Graffiti	$120,000
• Lighting Plan & Improvements	$1,500,000
• Cleanliness/Trash	$250,000
• Phase II Wayfinding Kiosks	$250,000
• Public Safety Enhancements	$400,000
• Downtown Shuttle	$750,000
Outdoor Recreation/Adventure Center	$3,000,000
Overlook Park/View Shed Parks	$3,500,000

Other Suggestions for long term applications (no proposal is defined currently)
- Dykeman Plan Improvements
- Aquatics Center
- Ice Skating
- Sculpture Park

City staff recommends City Council review the project summaries and take the list under advisement prior to the upcoming meeting between City Council and the TDA.

Below are details of the potential projects:

Banquet Hall Renovation

Background:

The Civic Center banquet hall opened nearly thirty-five years ago. Other than new blinds and carpet in the early 1990s, it has essentially remained unchanged. The banquet hall has mechanical, cosmetic, and accessibility problems. It can and should be a showcase facility in downtown Asheville. However, in its current state, it is underutilized, and in fact often loses business due to its condition. It rents for $500/day, which doesn't cover utilities during months it has to be cooled, and in its current condition raising the rental rate cannot be justified. With these renovations, rentals would be more frequent, revenues would increase and expenses would decrease.

Proposal:

The following items would be addressed in a banquet hall complete renovation:

- New HVAC System. Under the current system, the facility's main chiller or boiler must be operating in order to cool/heat the banquet hall. When other areas of the facility are rented, this is not an issue. However, many times the Banquet Hall is rented on its own. In these instances, expenses to cool the room exceed rental revenues.
- New energy efficient windows and blinds. This will result in utility savings as well as address cosmetic and operational problems with the blinds.
- New carpet, portable dance floor, and ceiling. These address cosmetic and safety issues.
- New lighting and sound systems. Dimmable lighting system and permanent sound system to improve appearance and quality.
- Renovation of men's and women's bathrooms. This will address cosmetic and energy efficiency issues.
- Update catering kitchen. Currently a storage area, will update to functional warming kitchen, which allows larger catered functions and meetings.
- Install wireless internet access points and permanent phone lines.
- Purchase new banquet tables, chairs, skirts and other related equipment.
- Update Banquet Hall entry with new windows, blinds, carpet and ceiling.
- Add elevator/escalators to make room to address ADA.

Costs:

Current estimates are placed at $1.5 million. Detailed estimates would be obtained prior to end of year in order to complete proposal for the TDA. This is all capital investment. Operations costs would actually be lower, due to lower utilities costs and additional rent revenues. No operations costs are associated with this project; in fact, savings are expected due to decreased utilities costs and increase rental revenues. No additional personnel are required.

The Civic Center is prepared to cover 10% of total expenses, up to $200,000. The City of Asheville would commit a portion of CIP funds to this project.

For: Graffiti Removal on Private Property

Background:

In March 2007 the Asheville Police Department formed a Graffiti Task Force to combat graffiti with the following actions: 200 inventories of graffiti; 10 search warrants, 50+ surveillance operations and 20 persons charged. In May 2007 the Public Works department formed a crew for the purpose of quickly removing graffiti on public property. Currently, there is no formal program to remove graffiti from private property. Additionally, currently there are no requirements for private property owners to remove graffiti (as quickly as possible) from their properties.

While it is within the City's purview to use public resources for public infrastructure, the City must first pass an ordinance which will: 1) require timely removal of graffiti on private property; and, 2) authorize the use of public resources on private property (specifically for the removal of graffiti). Secondly, knowledgeable, experienced staff will be necessary to work professionally with property owners regarding ordinance enforcement, liability releases; and scheduling/performing work. Lastly, any program must be diligent and consistent to be successful for the long term. The message to 'taggers' must be clear: "Graffiti will not be tolerated in this community".

Proposal:

The Asheville Department of Public Works will put into operation two full-time staff to remove all graffiti from the Central Business District and work with police to identify 'taggers'. This program

is contingent upon adoption of appropriate ordinance(s) which authorizes stuff to remove graffiti from private property.

Costs:

The City currently has the enforcement, equipment and designated staff to remove graffiti on public infrastructure. Additional resources will be necessary if the CBD desires a program addressing graffiti on private property.

Following are estimated costs to remove graffiti from both public and private property (CBD only):

1. Staff: Code Enforcement Officer (salary/fringe benefits) $45,159
   Laborer I (salary/fringe benefits) $30,655
2. Equipment/Supplies:
   - 1 each ½ ton pick-up truck $20,000
   - Trailer/hitch for equipment $ 3,000
   - Removal materials ('tagonator') $15,000
   - Pressure washer/maintenance & repair $ 5,000

   Total Program Start-up costs: **$118,814**
3. Annual Costs: $98,814 (minus equipment costs)

Two new staff is necessary for this program designated for removal from private property.

For: Central Business District (CBD) Master Lighting Plan

Background:

The concept of a comprehensive master plan for purposes of lighting streets, sidewalks, alleyways and properties for the conveyance of vehicular and pedestrian traffic, safety and aesthetics requires a complex, time-consuming study by lighting professionals who will consider some of the following challenges:

- Overall desired result in consideration of safety and aesthetics.
- What type of aesthetic look is desired? HPS (high pressure sodium, yellow glow), MH (metal halide, white glow), lumens on the street, on sidewalks, in alleyways, on private property. Example of HPS is Grove Arcade, MH is College Street corridor (new section) and Pack Plaza when completed.
- What intensity of lighting is desired (aesthetic question) versus allowed (in accordance with local ordinances and national traffic engineering standards (pertaining to lighting streets).
- Fixtures: Determine whether or not to use existing specialty fixture, eclectic design(s), standard lighting, decorative lighting (all with variable hardware and monthly charges).
- Determine where overhead wires or underground burial is to be used. Underground systems in a CBD environment are very costly to install.
- Determine electrical engineering costs for installation of hardware and electrical service.
- Determine monthly costs for maintenance/electricity.
- Determine who will pay additional costs for hardware, installation and monthly charges.

Proposal:

A plan is necessary for three key reasons: 1) Precisely what do the stakeholders in the CBD want from their lighting system, as described above?;
2) What will it cost to implement the plan?; and, 3) Who will pay the one-time and long term costs?

Costs:

The City proposes a partnership with the TDA. The City will develop a comprehensive master plan for the central business district which will cost approximately $40,000; the TDA will fund the lighting and engineering for fixture installation and electrical service routing and costs for hardware, electrical service and monthly maintenance and electrical fees. Preliminary estimate for capital costs is approximately $1,500,000.

Energy costs TBD but could be offset by higher efficiency.

For: Pedestrian Trash Receptacles in the Central Business District (CBD)

Background:

It has been mentioned by business owners, residents and others that there are locations within the central business district which would benefit from the placement of additional trash receptacles. At this time, there are approximately 200 pedestrian receptacles in the CBD which are serviced 7 days per week. Some also have cigarette receptacles attached. The overall condition of the metal receptacles is 'average' due to 15+ years of heavy use and abuse in a public setting.

Proposal:

The Asheville Department of Public Works will install, maintain and empty receptacles purchased for placement in the CBD.

At this time staff will need to collect information regarding the exact number and desired location(s). Such specific information could be attained by a committee made up of concerned stakeholders, TDA and Sanitation Division staff.

Costs:

The current style receptacle cost is $1,000 each (including shipping, installation, lid and liner). While the cost for such an item seems high, robust construction is tantamount to the longevity of infrastructure which suffers constant abuses from vandals and those who seek to destroy things. For example, when the automated collection system was first implemented, staff purchased two heavy duty PVC receptacles designed for dumping by the automated trucks. Within two weeks one was set on fire and burned to the ground and the other was cast into the street and smashed to atoms by traffic. The ubiquitous "pebble-dash" receptacles are also robust and durable; however, their cost is in the range of the current style.

Trash cans: Cost of cans (250 or more @ $1,000 each = $250,000). Existing staff will collect refuse and maintain them.

For: Digital Wayfinding Kiosk(s)

Background:

Wayfinding in Asheville, and the downtown area in particular, is being addressed by the Regional Wayfinding initiative. A second phase to the new Wayfinding system would be an easily accessible method to access multi-modal (walk, bike, bus, car, etc) routing with up-to-date, and locally specific information.

Deploying a set of kiosks to help downtown visitors determine the best route from one address to another address, or from a hotel to a permanent attraction/location, would constitute the basic set of functionality. The larger vision may include the availability of functionality for routing to/from short-term locations, with integration of user mobile telephones. This functionality may answer common questions such as how best to reach a particular performance stage during Bele Chere,

which theater a particular film is playing during the Film Festival, where live music venues and play locations are, and how to best reach that location.

A variety of potential partners exist within Asheville. The Renaissance Computing Institute (RENCI) engagement site at UNCA and the Applied Visualization Lab come to mind with regard to expertise in visual presentation. Meet the Geeks (an IT professional association) may well be a viable partner in identifying further necessary technical expertise.

The City of Asheville has a proven track record in delivering community mapping solutions via the mapAsheville efforts. This is evidenced by recently received awards: *2007 Marvin Collins Award for Innovations in Planning Services & Public Involvement* presented by the North Carolina Chapter of the American Planning Association and the *2008 Excellence in Economic Development Award for New Media* presented by the International Economic Development Council.

The City of Asheville also has a proven track record in collaborating with other agencies for community mapping and analysis efforts; this in evidenced through the successful implementation of the Slope Calculator tool that was developed in partnership with Buncombe County and UNCA/NEMAC/RENCI.

Proposal:

It is suggested that the city fund an initial assessment study to determine feasibility of implementing a digital wayfinding kiosk(s), and other means of digital wayfinding to include internet mapping availability for mobile computing platforms and availability of text-only inquiry/delivery via cell phone. Upon satisfactory completion of the initial assessment study, it is proposed that TDA funds be made available for implementation of the system.

Costs:

Full, long-term costs have yet to be determined. It is recommended that an initial scoping and planning assessment be completed prior to funding of final effort. A conservative estimate for the initial assessment is $17,500 with utilization of an external consultant. Capital costs may range from $250,000 to $300,000. Operating and maintenance costs may be approximately 20% of total costs ($60,000). No additional personnel are scoped in this proposal.

For: Asheville Police Department Enhancement Initiative (APDEI)

Background:

Dramatic increases in visitation to downtown Asheville benefit from enhancements to existing security available to adequately insure public safety and security.

Proposal:

In an effort to preserve and enhance community safety downtown and to further promote downtown as a destination, the Asheville Police Department submits the following safety enhancement efforts:

Closed Circuit Cameras: Placing closed circuit cameras in predetermined, outdoor locations of the downtown area would allow for monitoring criminal activity. This would lead to more successful investigations and higher numbers of arrests for criminal activity. This would likely reduce crimes in the area due to the constant surveillance of targeted areas. Through an analysis of part one crime data and the propensity for reoccurrence of criminal activity, the following areas are good candidates for the camera system:

Triangle Park, Pritchard Park, Aston Park, Bus Terminal, Haywood St. near the Library, N. Lexington Ave, S. Lexington Ave, Pack Square, Biltmore Ave, Biltmore and Aston, Biltmore and Hilliard, Lee Walker, Coxe Ave, any and all parking decks, Asheland Ave, 79 Asheland Ave, Patton Ave/Coxe, Patton Ave. and Church, Church and Aston, Coxe and Southside, N. French Broad / Grove St, S. French Broad Ave, Bartlett and SFB, Bartlett Arms, Battery Park Area, N. Market St, Walnut St, and Broadway and I-240

The locations above are prime candidates; however, utilizing grant funds to target key locations would lead to a safer and more open community.

GEM Cars, Segways, T3 Transport: The use of GEM cars, Segways and T3 Transports allow our officers to get closer to the public while on patrol. It allows them greater mobility, while creating a more approachable officer than a cruiser. Approachability leads to information sharing and enhanced investigations, as well as superior community relations tool. This in turn would reduce criminal activity and create more positive interactions with the general public. All of these vehicles are electric (zero emissions) and aid in the City's movement toward greener initiatives and reducing our carbon footprint.

Costs:

Capital costs for equipment: approximately $400,000.

Most start up costs are included in this price. The only other expense would be that of IT personnel in the assessment and installation of the "software" to manage the security system. Initially current staff could periodically check the system and would be able to review the files to view criminal acts after the fact to identify suspects. If we were to go to full implementation of this additional personnel may be necessary to monitor the surveillance screens installed at APD. On-going operation and maintenance costs: $1000-2000 annually.

Matching Funds: APD could commit to 10% match from forfeiture funds.

For: Downtown Shuttle System

Background:

The City of Asheville has recently completed studying the supply and demand of parking in the Central Business District (CBD) of Asheville. The results of this study indicate that there is a deficit of approximately 700 parking spaces in the CBD. The City would like to address the shortage in addition to the construction of new parking decks, implementing a shuttle service that travels from lots on the fringe of the downtown area to the central business district at a reasonable frequency of service.

Proposal:

Downtown tourists and workers represent a reasonable target market for shuttle system ridership. Examples of those potential users include tourist wishing to go from one end of downtown to another, employees of larger employers and restaurant staff in the downtown area.

It is realized that for the system to be effective, short headways need to be provided in the peak periods. At present, the Asheville Transit system designates much of the CBD as a "Fare Free Zone". However, the buses run on approximate 60 minute headway in the CBD. Estimates of ridership will be developed on assuming 10, 20 and 30 minute headways.

Costs:

Capital costs: Initial estimate of $750,000 for vans, shelters and improvements.

Operating costs: approximately $600,000 funded through Parking Enterprise Fund. The City would like to operate four routes to cover north, south, east and west areas. While we do not know the cost at this time, Chattanooga, Tennessee, has a similar system that supports downtown.

For: Outdoor Recreation and Adventure Center (River Redevelopment)

Background:

The City seeks to increase capital investment and redevelopment of the River District. A catalyst project is sought to spur this redevelopment. The result will create a destination that will increase overnight lodging room counts.

Proposal:

The funding request would support new construction of an Asheville Area Outdoor Recreation and Adventure Center near the Hominy Creek Greenway adjacent or within the City of Asheville's Carrier Park. Two sites have been identified and investigatory real estate considerations are being made (one site is on public land, one site is on private land). The Center would serve as an entry point for visitors seeking access from a myriad of recreational experiences, and would include: bike rentals, service, and instruction; boat rentals, service and instruction; a rock climbing wall, adventure tour services and sales, concierge/ information services for visitors that will help them access unique experiences (via local entrepreneurs) in our region including peregrine falcon watches; native plant hikes; class A trout fishing, and more.

Key Partners, Internal: Parks and Recreation, General Admin/OED, Planning and Development
Key Partners, External: Riverlink, A-B Convention and Visitors Bureau, ClimbMaxx, Southern Waterways

Costs: $3 million (initial estimate based on city-owned land utilization).

For: Beaucatcher Overlook Park

Background:

Creating an overlook park is an idea that has been talked about for years in the Asheville area. In 1920, the City of Asheville established the first city plan for Asheville. John Nolan, an early city planner, authored the plan, which identified the infrastructure needs for the growing city. The Nolan plan delineated a circle of parks surrounding Asheville, and major city parks in every neighborhood. The key component of the park system was an expansive overlook park along Beaucatcher Mountain, and open space connecting it to downtown Asheville and the surrounding neighborhoods.

Asheville and Buncombe County have come a long way from the 1920's. The county's population has been growing and area is thriving. The availability of the Greenberg tract, 30 acres of woodland covering the slope of Beaucatcher Mountain, is serving as a catalyst to revive the Overlook Park vision. The tract, behind McCormick Field, is a green backdrop to the city. The view of the wooded slope is visible from nearly everywhere in downtown Asheville.

The site is perfectly situated to be the centerpiece of a new vision for the area around McCormick Field and Beaucatcher Mountain. The Greenberg tract is surrounded by another 30 acres of city-owned land, including the baseball field, Memorial Stadium, and about 10 acres of vacant land behind them. A developer has bought McCormick Heights public housing project, and is redeveloping this as affordable housing. The Greenberg tract is right below White Fawn Reservoir, also owned by the City. The Asheville Parks & Recreation Master Plan proposed a

"Sister Cities Park" to be located on the site of the reservoir, and that site can be easily connected to the Greenberg tract. The Asheville Greenways Master Plan shows a connector greenway extending from downtown through the Greenberg tract and up to the Beaucatcher Mountain ridgeline, and extending all the way to the I-240 cut. The draft Downtown Master Plan recommends development of public space that will allow for view shed presentation and create new destinations for visitors.

Proposal:

The purchase of the Greenberg tract will allow the department to establish a natural park, within walking distance of downtown Asheville, the surrounding neighborhoods of the White Fawn, East End, and Kenilworth and Mission Hospital, and on a city bus line. It is easily accessible to the residents of Buncombe County and visitors to Asheville. It will become an oasis of green in Buncombe County, offering opportunities for walking, bicycling, picnicking, and quiet experience of nature. The park will add to the offerings of arts and entertainment, dining, shopping, and the unique Western North Carolina culture that attract people from all over the world.

The establishment of the Park will take place in three phases: acquiring the Greenberg tract; further planning of the park's proposed amenities; and the development of the park and surrounding areas.

Costs:

Beaucatcher Overlook Park is intended for passive recreation with minimal development and preserved predominantly as a natural area. When considering park development, the City follows a process of site analysis, engineering and environmental studies to determine feasibility, and public input prior to park design which leads to cost estimate of development. The following may be considered as minimal development based on preliminary cost projections without a comprehensive site analysis and review of all options. Cost will vary and should not be viewed as final cost estimates.

Capital costs for development may include the following at a minimum cost of $3,500,000 (excludes land acquisition).

- Trails
- Overlook(s)
- Picnic area(s)
- Parking area(s)
- Benches, trash receptacles, signage
- Access road and park entrance improvements
- Environmental and biological assessment

Operation and maintenance costs could be expected to be $100,000 annually. Personnel costs TBD.

Mr. Powers reiterated that this list is for information purposes to assist Council with their upcoming meeting with the TDA.

Council members expressed their opinion about the various potential projects, noting that most will move some of Council's goals forward. Councilman Mumpower suggested we might improve our chances for funding if we limit our proposals to 3 and have them well defined with realistic dollars.

Mayor Bellamy's primary focus would be all the downtown improvements, with inclusion of a pressure washer to clean our streets and more downtown plantings. Since the TDA was before Council recently regarding the health of downtown, she felt the downtown improvements would be a good set of projects.

In response to Councilman Newman, Mayor Bellamy suggested we have a meeting in January to talk about the future of the Civic Center and to work with the Buncombe County Commissioners and our state legislators, who have all vowed to work with the City.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 3 – 30, 2008: Jeannot Gamache (Water), Rebecca Robertson (Water), Remo & Carolyn Termini (Water), Remo & Carolyn Termini (Water), Christine Sass (Transit Services), City of Asheville (Parks & Recreation), City of Asheville (Fire); Jeanette Bryson (Sanitation), Patrick Schuette (Traffic Engineering), Walter Koester (Traffic Engineering), Bill Langdon (Water) and AT&T (Water).

The following claims were received by the City of Asheville during the period of October 21 – November 5, 2008: Sara Gresko (Traffic Engineering), Delyn Shepherd (Traffic Engineering), Joe Webster (Traffic Engineering), Elaine Matheson (Traffic Engineering), Tom Harrison (Traffic Engineering), Ted Bussey (Traffic Engineering), Leisel Sullivan (Traffic Engineering), Carolyn Rose (Traffic Engineering), Fran Konchar (Traffic Engineering), Juluis McDowell (Water), James Bassett (Sanitation), Arron Foulkrod (Streets), Jennifer Broderson (Traffic Engineering), Thomas Bass (Traffic Engineering) and Sarah Kate Chason (Traffic Engineering).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:33 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Meeting with Henderson County Commissioners and Asheville City Council
November 14, 2008 Minutes

These minutes reflect significant positions expressed by elected boards and/or action steps identified and agreed to.

City Council Members Present: Mayor Terry Bellamy, Vice Mayor Jan Davis, Council Members Holly Jones, Brownie Newman, Robin Cape, Carl Mumpower, and Bill Russell.

County Commissioners Present: Chair Bill Moyer, and Commissioners Young, Willams, and McGrady. Absent: Nester

Mayor Bellamy called the meeting to order at 10:03 a.m.

Mayor Bellamy made opening statements and asked City Attorney Bob Oast to provide an overview of the Mills River Water Agreement (1995). Oast described the agreement regarding water distribution and property near Bent Creek (137 acres) belonging to Henderson County.

Chairman Moyer explained the current agreement as a bone of contention. He made points about putting the agreement behind both entities. He suggested resolving the issue by ending the agreement and allowing Henderson County to buy the Mills River Treatment Plant.

Mayor Bellamy expressed a willingness to sell water to Henderson County per the agreement, but not to sell the facility. Vice Mayor Davis agreed. Council member Jones agreed but acknowledged that she was leaving council. Russell passed due to not having a working knowledge of the matter. Cape asked for more information. Newman stated he is open to looking at the proposal.

Council member Mumpower stated that he would be willing to discuss the regional planning issues between the two boards moving forward, but was not willing to consider giving up Asheville's regional water asset.

Moyer expressed the need to identify ways to do regional planning. Bellamy pointed out that Land of Sky Regional Council is doing regional planning for future water needs.

Commissioner Young stated he wants a regional authority, with equal partners. Commissioner McGrady lobbied to abrogate the agreement and selling Henderson County the Mills River Water Plant. He explained that the current agreement has three parts:

1. Henderson County has two water authority seats; (moot point).
2. Henderson County owns 137 acres at Bent Creek. (worthless to them).

3. Asheville agrees to runs water lines in northern Henderson County. (Hendersonville is now doing this).

He expressed that these are now worthless considerations.

Both boards discussed options for moving forward. Both board agreed that each board would do the following:

- City council appointed three members to meet and discuss the current agreement and report back to Henderson County as to their interest in renegotiating the current agreement. Those appointed members are: Mayor Bellamy, Vice Mayor Davis, and Council Member Newman.
- Henderson County Commissioners will appoint two members of the board to meet and discuss what options they see if the current agreement is renegotiated.
- Both the City of Hendersonville and Buncombe County will get a memorandum that outlines the meeting today and the steps that were outlined as result of the meeting.

Commissioner McGrady motioned to adjourn and the Henderson County Board adjourned the meeting at 11:25 a.m.

Magdalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – November 18, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

CITIZENS SURVEY REPORT

Assistant City Manager Jeff Richardson explained that the City of Asheville began conducting a comprehensive citizen survey in April 2008 with assistance from the National Citizen Survey. The National Citizen Survey is a collaborative effort between National Research Center, Inc. (NRC) and the International City/County Management Association (ICMA). The survey and its administration are standardized to assure high quality survey methods and comparable results across jurisdictions from throughout the United States.

The purpose of the citizen survey is to evaluate the community's overall satisfaction with city services and opinions on key issues, and to use the results to set performance standards, measure success and identify opportunities to improve. The information gathered from a citizen survey is particularly useful when citizen perceptions are measured regularly over time, allowing government performance and ongoing progress to be tracked according to the citizen perspective. However, the last citizen survey competed by the City of Asheville was conducted in 1997. As a result, this year's results serve as a baseline for better understanding what citizens think about municipal services and communication efforts. These results will be used as a benchmarking tool for City Council and staff to observe trends over time as well as to compare to results in other communities and in future surveys.

The results of Asheville's 2008 survey reflect the opinions of a representative sample of residents regarding the community's quality of life, municipal service delivery, civic participation and key policy issues. A total of 1,200 surveys were distributed to randomly selected households, and the city received an overall response rate of 35 percent with 402 completed surveys. The results presented in the final report are statistically re-weighted to reflect the proper demographic composition of the entire community. The National Citizen Survey customized for Asheville was developed in close cooperation with city staff and in accordance with the key areas indentified in City Council's Strategic Operating Plan.

The total cost for the survey was $16,150.00. Funding for the survey was allocated from the FY 2007-08 city manager's contingency line item. The survey serves as a meaningful guide for future strategic, budget and capital planning.

Staff recommends City Council receive the survey report and to apply it in strategic, budget and capital planning.

Ms. Paula Noble, National Citizen Survey Analyst with the National Research Center, Inc., presented the results of the completed 2008 City of Asheville Citizen Survey.

Ms. Nobel reviewed the following Executive Summary which provides an abbreviated overview of the survey results.

"This report of the City of Asheville survey provides the opinions of a representative sample of residents about community quality of life, service delivery, civic participation, and unique issues of local interest. A periodic sounding of resident opinion offers staff, elected

officials and other stakeholders an opportunity to identify challenges and to plan for and evaluate improvements and to sustain services and amenities for long-term success.

"Most residents experience a good quality of life in the City of Asheville and believe the City is a good place to live. The overall quality of life in the City of Asheville was rated as "excellent" or "good" by 80% of respondents. Most report they plan on staying in the City of Asheville for the next five years.

"A variety of characteristics of the community were evaluated by those participating in the study. The four receiving the most favorable ratings were opportunities to volunteer, opportunities to participate in religious or spiritual events and activities, opportunities to attend cultural activities, and the overall image or reputation of Asheville. The three characteristics receiving the least positive ratings were availability of affordable quality housing, employment opportunities, and the amount of public parking.

"All of the community characteristics rated were able to be compared to the benchmark database. Of the 27 characteristics for which comparisons were available, 12 were above the benchmark comparison, 2 were similar to the benchmark comparison and 13 were below.

"Residents in the City of Asheville were somewhat civically engaged. While only 30% had attended a meeting of local elected public officials or other local public meeting in the previous 12 months, 96% had provided help to a friend or neighbor. A majority had volunteered their time to some group or activity in the City of Asheville.

"In general, survey respondents demonstrated mild trust in local government. Less than half rated the overall direction being taken by the City of Asheville as "good" or "excellent." This was lower than the benchmark. Those residents who had interacted with an employee of the City of Asheville in the previous 12 months gave high marks to those employees. Nearly all rated their overall impression as "excellent" or "good.

"On average, residents gave somewhat favorable ratings to local government services. Many of the City services rated were able to be compared to the benchmark database. Of the 32 services for which comparisons were available, none were above the benchmark comparison, nine were similar to the benchmark comparison and 23 were below.

"A Key Driver Analysis was conducted for the City of Asheville which examined the relationships between ratings of each service and ratings of the City of Asheville's services overall. Those key driver services that correlated most strongly with residents' perceptions above overall City service quality have been identified. By targeting improvements in key services, the City of Asheville can focus on the services that have the greatest likelihood of influencing residents' opinions about overall service quality. Services found to be influential in ratings of overall service quality from the Key Driver Analysis were: Land use, planning and zoning; City parks; street cleaning; and public schools.

"We recommend that key driver services below benchmark comparisons form the center of your focus for improvement including: land use, planning and zoning; City parks; street cleaning; and public schools."

Ms. Nobel provided Council with the National Citizen Survey's background. The survey results can be used to (1) monitor trends in resident opinion; (2) measure government performance; (3) inform budget, land use, strategic planning decisions; and (4) benchmark service ratings.

She then reviewed the results of the overall quality of community; transportation; street lighting; land use and zoning; economic stability; public safety; recreation and wellness; community and civic engagement; civic activity; and Asheville government.

Upon inquiry of Mayor Bellamy, Ms. Noble responded to the following: the process of the survey; the time period of the survey; regarding cultural opportunities, community inclusiveness and civic engagement, did the survey focus only on the City of Asheville or the entire community; and explanation of survey results regarding opportunities under transportation, parks and recreation, public safety and land use, planning and zoning and whether residents are aware of the activities.

In response to Vice-Mayor Davis, Ms. Noble said that since the survey was being taken at the time of the Coleman project in the City-County Plaza area, it could have influenced the rating in the land use, planning and zoning category. She felt that current events can impact the current ratings.

Councilman Newman wondered if in the 32% of the people who responded to the survey who stated they are not currently employed includes retired people. Ms. Noble felt the best statistic for that would be to go to the census results.

City Manager Jackson explained how this survey influences staff's work.

Mayor Bellamy felt the survey results will be discussed at the Council's retreat as well and dovetail Council's agenda and goals. She noted that even though the City is making investments in core services in the community, the survey doesn't reflect that the community recognizes those improvements. We need to get the information out to our residents.

City Manager Jackson said that the communities that use these survey results best take from the short list and focus on those, making sure that the community is aware of the progress. The benefit is when you do a survey at a later time, you are likely to see results improve not only in the target area, but have some halo effect in the other areas.

PARKS, RECREATION & CULTURAL ARTS MASTER PLAN

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that in late 2007, the City of Asheville contracted with GreenPlay, LLC to lead the master plan process for parks, greenways, recreation and cultural arts. GreenPlay, based out of Broomfield, Colorado, operates as a consortium of experts to provide services for parks, recreation, open space and related agencies.

The key steps of the master plan process as conducted by GreenPlay are described below:

- Needs Assessment and Public Involvement
  GreenPlay facilitated seven focus groups, eight stakeholder meetings and nine public meetings, attendance at boards and commission meetings, and a direct mail survey. In all over 1,000 people took part in the public input process.
- Level of Service Analysis
  GreenPlay analyzed parks, recreation, cultural arts, public art, festivals, greenways, and related services via interviews with staff about programs and insight regarding the current practices and experiences of the City in serving its residents and visitors.
- Inventory and Assessment of Existing Assets and Services
  GreenPlay inventoried indoor and outdoor recreation facilities and greenways using existing mapping, staff interviews, and on-site visits to verify amenities and assess the condition of the facilities and surrounding areas.
- Programs and Services Inventory and SWOT Analysis
  GreenPlay measured the current delivery of service using the GRASP® Level of Service Analysis that allows for a target level of service that is both feasible and aligned with the

expressed desires of citizens. The SWOT analysis measured the strength, weakness, opportunities and threats of the organization.

- Recommendation of Goals, Strategies and Action Steps
  GreenPlay identified recommendations into themes with goals, strategies, and action steps for implementation, followed by an action plan for capital and operating improvements including cost, funding source potentials, and timeframe to support the implementation of the plan.

On November 7, 2008, City Council appointed boards reviewed the report. The Recreation Advisory Board and the Public Art Board voted unanimously to recommend the adoption of the master plan to City Council. The Greenway Commission voted unanimously to abstain for now from voting to support the master plan as drafted for the following reasons: 1) The advancement of the Wilma Dykeman Riverway Plan and it's vision for greenways and parks is vital to the community and the draft plan does not sufficiently prioritize project development in that corridor, 2) The total capital spending of 40 million as contemplated by the plan is only reasonable assuming adoption of an ongoing bonding program. The Greenway Commission recommends that council only adopt this master plan with the commitment of adopting a bonding program, and 3) While the Greenway Commission supports the intention to simplify and streamline communications among Council appointed boards and commissions as well as other committees associated with the Parks, Recreation & Cultural Arts Department, the Commission thinks the structure laid out in the plan is unnecessarily complex and hierarchical.

Pros:

- Help meet the recreational needs of Asheville citizens by positioning Asheville to build on the community's park and recreation assets and identify new opportunities.
- Establish a clear direction to guide staff, advisory boards and commissions and elected officials in efforts to enhance Asheville's parks, recreation and cultural arts programs, services and facilities.

Con:

- None

The contract to produce the report cost $120,000. The value of the report will be in how it is applied as a guide for strategic, budget and capital planning discussions.

This report is for City Council's information as part of its review of the Asheville Parks, Recreation, Cultural Arts and Greenways Master Plan.

Ms. Chris Dropinski, Senior Principal with GreenPlay LLC, reviewed the draft report of the Parks, Recreation, Cultural Arts and Greenways Master Plan

Ms. Dropinski reviewed the process as follows: start-up meeting, community input, citizen survey, demographics, inventory/assessment, recommendations/action plans and report/presentations.

She then reviewed the following goals with strategies and detailed action steps (1) maximize the planning process; (2) improve administration effectiveness and transparency; (3) maximize the Land-of-Sky available to the community by using partnerships to take advantage of existing facilities, share new facilities, and provide additional programming and services to the community; (4) create management resources to increase efficiency, continuity, and sustainability in critical focus areas needed in the Department; (5) increase Parks, Recreation and Cultural Arts Department funding; (6) marketing, communications, and creditability; (7) strategically increase recreational programming level of service; (8) assure administrative policies promote effective provision of community festivals and events; (9) analyze festivals/events based on the mission and values established by Council and the Department; (10) develop a rationale for festivals/events produced by the City; (11) enable sustainable funding for permanent and

temporary public art; (12) enhance public confidence for and appreciation of the arts; (13) develop and expand the public art collection; (14) enhance facilitation and resources among arts interests; (15) build public and organizational capacity for the arts; (16) strengthen the organizational structure of public and cultural arts delivery; (17) ensure a continued high level of service in parks; (18) increase level of service for parks; (19) create greenway priorities and identify development timeline; (20) increase the level of service and access for greenways; (21) increase resources for greenways; (22) increase land acquisition efforts for greenways; (23) expedite greenway development; (24) increase connectivity to parks and greenways; (25) integrate public art into parks and greenways; and (26) increase level of service for indoor facilities.

She then presented Council with (1) the 2009-13 initial connectivity vision, capital cost observations and annual operating cost observations; (2) the 2014-18 neighborhood resources vision, capital cost observations and annual operating cost observations; (3) 2019+ future connectivity and neighborhood visions.

The recommendation cost estimates and timelines for the (1) 2009-13 priorities would be Capital Improvement Projects of $20,000,000 + O&M $1,989,000; and (2) 2014-18 priorities would be Capital Improvement Projects of $20,025,000 + O&M $1,270,000. The total 10-Year plan would be $43,284,000.

In response to Mayor Bellamy, City Manager Jackson said that the next step is allowing Council an opportunity to evaluate the plan and then let Council determine their level of support of the Master Plan at a later meeting.

Councilman Newman asked how much more expensive would this Plan be compared to the history of the parks and recreation capital projects. Mr. Roderick said that this would be increasing their level of funding approximately $1 Million a year compared to what they normally get, based upon the economy at the time. He explained that this is only a guide so when money is available and we do have good economic times, we can start with the priorities in the list and bring those before Council during their Capital Improvement Plan process.

In response to Councilman Mumpower, City Manager Jackson said that this plan lends itself to a retreat discussion.

Councilman Mumpower felt that this is a fantasy plan that sidesteps a lot of community priorities, with public safety being on the top of his list. He looked forward to the opportunity to discuss the realism of this plan and the dangers involved in buying into this process.

STATE OF ASHEVILLE'S ECONOMY

Mr. Robert Sipes, Chairman of the Asheville-Buncombe County Economic Development Coalition, used charts to explain the employment growth. He said that as of September 2008, the Asheville metro area is up 1,000 (up 0.6 %) net jobs over last year. This is the 55 consecutive month with record year/year job growth. At 0.6%, Asheville's employment growth matches Greensboro's pace. Overall, the United States is down 0.4%, while statewide growth is flat, and three of the state's metro are currently loosing jobs. Only 40% of all United States metros are currently adding jobs. At 5.2%, Asheville has the lowest unemployment rate among all metros in the state (even lower than Durham if you calculated the rate out a few more decimal points). Compared to the state's 20 largest cities in North Carolina, the City of Asheville has the 5th lowest unemployment rate.

In response to Mayor Bellamy, Mr. Sipes said that in terms of retaining jobs, we want to cultivate and nurture existing businesses and create an environment that makes it conducive to them to maintain current business health or expand their business. Similarly, we have efforts that are focused on workforce development so that we are providing a skilled workforce as a feeder

pool to these companies because the skilled workforce is the backbone of success of local industry here.

In response to Councilman Mumpower, Mr. Sipes said that regarding skilled workforce, we have some strong partnerships with local colleges and university, together with our businesses. Because of the low unemployment we are blessed with and the nature of our local economy, it creates a situation where labor to move into new or different types of endeavors really has to be either imported in or developed on the fly. That is what we've seen in the past and that is one of the key areas we need to make some improvement in.

Councilman Mumpower said that he will bring up at the Council retreat that there may be some room for the City to take some initiative for what is a fairly persistent problem for employers and look for potential solutions.

Vice-Mayor Davis explained how the Asheville-Buncombe County Economic Development Coalition is working toward improving workforce development.

Mayor Bellamy noted that Asheville-Buncombe Technical College is starting a program of how can they better serve the business community by retraining individuals who want to change careers. They are also partnering with Asheville City Schools and Buncombe County Schools. Buncombe County Schools and Asheville City Schools are doing a lot of good things to make sure that students are successful. She also noted the UNC-Asheville's Math Department tutorial program to help trainers help teach math to students. There are a lot of initiatives happening in our community around workforce development that has not happened in the past.

Mayor Bellamy questioned how we can create one point for people to know what jobs are available locally, beyond those available in the newspapers. Mr. Sipes felt we need to do a better job of promoting the job opportunities that are here. A lot of people would be surprised if they saw how much opportunity is in fact here in various types of work. We need to package that in a way that reaches out and grabs people.

Economic Development Director Sam Powers noted that Economic Development Coalition will be holding a homecoming job fair, which will be held over the Christmas holidays. There will be many employers who have jobs at that job fair looking for employees. He said that he will have information on the City's website about that job fair.

In response to Mayor Bellamy, Mr. Powers explained that the City's incentive program is paid based on the company's performance. The incentive is not given until the company performs the conditions outlined in the contract.

At 5:11 p.m., Mayor Bellamy announced a short recess.

QUARTERLY MANAGEMENT REPORT

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February 2008 strategic planning retreat. He then provided the first quarterly update on the following four focus areas:

1. Affordable
    - Fiscal Year 2007-08 no tax increase
    - Priority Places Interactive GIS Mapping Tool
    - Asheville as Employer of Choice
        - City of Asheville Youth Leadership Academy (EDC/Businesses/City partnership)

- A-B Technical Community College Yes Camp
- 240 Service Hours

- Ratified Economic Development Grant to incent $15 Million expansion: Unison Engine Components
- Ten Year Plan to End Homelessness
  - City/County Homeless Initiative Advisory Committee
  - Non-Profit HMIS Reporting Requirement
- City-owned property Request for Qualifications/Request for Proposals Process: workforce housing

2. Green
- Mobile Clean Air Renewable Energy Award
- Alternative energy exploration: water treatment plants
- Alternative fuel vehicles = 10% city fleet
- Public Works – 4 day work week = 294 ton reduction of carbon emissions
- Asheville Police Department bike patrol unit re-established
- Asheville Police Department usage reduced 20%
- Expanding City education programs:
  - Better Energy Savings Today Program: results include:
    - 10% increase in City departmental recycling
  - Feed Bin and Win Recycling contest
    - 21% increase in community recycling
  - Open Space "Fee in Lieu Program" ($100,000) Future Greenway Acquisition
  - Pilot Study: LED lighting at Civic Center Garage

3. Safe
- City building security enhancements
  - Security cameras at key facilities
  - Generator installation at City Hall and Brown Mountain radio
  - Portable emergency generator for City shelters during emergency weather
  - Civic Center fire alarm system upgrades
- Asheville Police Department Priority One Calls: faster response times
- Implemented "Code Red" Citizen Emergency Notification System
- Implemented Internal Affairs Pro (responsive case analysis)
- Map Asheville Crime Mapper
- Police Officer/Psychiatric Illness Crisis Intervention Training (32 sworn personnel)

4. Sustainability
- Street sweeping
  - Swept 2071 miles of road
  - Collected 209 tons of debris
- Catch basin cleaning
  - 2112 catch basins cleaned
- Stormwater construction
  - 10 projects = $160,736
- Biltmore Village Flood Action Plan Completed
- Brownfield Initiative: $400,000 secured in Brownfield funding ID & mediation
- Bond program feasibility analysis to Council (debt capacity/affordability)
- Wayfinding Program underway
- Tourism Development Authority Project identification

In response to Councilman Mumpower, Mr. Richardson said that he would provide Council with more information on the normal level of catch basin cleaning on a quarterly basis.

In addition, staff provided the following additional information:

A. Economic Development Key Indicator Report

The following charts: (1) employment change by major industry; (2) unemployment rates; (3) monthly home sales – units; (4) monthly home sales – average price; (5) residential building permits – units; (6) residential building permit – value; and (7) City business licenses

B. Police Department Drug & Community Policing Quarterly Report

The first quarter results addressing the drug enforcement statistics and community outreach.

Quarterly Financial Report

Chief Financial Ben Durant reviewed with Council financial information that reflects the City's overall financial position for the fiscal year through September 2008.

Amendments. The General Fund budget presented in this first quarter report reflects the adopted budget of $88,945,552; plus $1,443,395 in prior year encumbrances that rolled over from Fiscal Year (FY) 2007-08; along with three budget amendments approved by Council during the first quarter. The three amendments resulted in an overall increase in the budget of $120,268. The amendments for the energy management plan and the Unison Engine Components economic development grant were funded with an appropriation from fund balance. A summary of the budget amendments is included below.

Adopted Budget		88,945,552
Encumbrances		1,443,395
Amendment	Date Approved	Amount
Bullet-Proof Vest Federal Grant	July 22	23,018
Energy Management Plan*	August 26	50,000
Unison Economic Dev. Incentive*	September 23	47,250
Total Amendments		120,268
9/30/2008 Budget		$90,509,215

* Fund balance appropriations totaling $97,250

Revenues. Through September 30, 2008, the City has collected $9,668,275 in General Fund revenue, which represents approximately 10.9% of the total General Fund revenue budget. Due to the deteriorating economic climate, staff is projecting that both property tax and sales tax revenues will fall short of budget in FY 2008-09. Based on current year-end estimates, staff is estimating that FY 2008-09 revenue will come in under budget by $1,000,000, which equates to 1.1% of the General Fund budget.

Expenditures. General Fund expenditures through September 30, 2008 total $21,146,251 or 23.4% of the budget. Staff has worked during the first quarter to identify

$1,000,000 in budget savings strategies to offset the expected shortfall revenue mentioned above. Staff anticipates that the remaining departmental budgets will be fully spent by year-end.

Fund Balance. Preliminary year-end estimates for FY 2007-08 show an unreserved fund balance of $18,495,003. Based on current year-end revenue and expenditure estimates, which include the $1.0 million in budget savings mentioned above, staff is projecting that unreserved fund balance will decrease by $793,620 in FY 2008-09 to $17,701,383, which will equate to 19.6% of estimated year-end expenditures.

Mr. Durant gave Council the following brief overview (1) first quarter results and current budget trends show a $1.0 million revenue shortfall; (2) short-term "stop-gap" measures have been implemented in the current year to close the gap; (3) the Fiscal Year 2009-10 preliminary budget forecast includes a significant imbalance between revenues and expenditures; and (4) structural budget issues must be addressed.

He then reviewed the current General Fund budget, along with using charts to explain the General Fund revenue highlights, those being (1) economic conditions are impacting major revenues; (2) property tax revenue projected to come in under budget by $500,000; (a) estimating 2.0% tax base growth vs. 10-year average of 3.3%; and (b) official tax base data received in January 2009; (3) sales tax revenue projected to decrease by 1.5% and fall $1.0 million short of budget (a) September sales tax revenue down 19%; (4) Powell Bill revenue is down 9.0% compared to prior year; (5) state utility tax revenue is exceeding budget estimates; (6) licenses and permits; charges for service and investment earnings so far are trending at or slightly above budget; and (7) overall, General Fund revenues are projected to fall short of budget by $1.0 million in the current fiscal year.

He then explained the expenditure reduction strategies: (1) selective hiring program - $250,000 (a) currently holding 17 vacancies including Public Information Officer, Urban Planner I, Fleet Shop Manager, Public Works Analyst, Recreation Leader and Building Safety Secretary Sr.; and (b) no visible service reductions to the public; (2) delay equipment and vehicle purchases until spring - $225,000 (a) approximately $2.0 Million in vehicle and equipment purchases slated for debt financing – police cars, public works equipment and public safety radios; and (b) by delaying purchase until spring 2009, debt service expense is reduced in the current year; (3) divert Civic Center capital project savings - $100,000 (a) $400,000 allocated to the Civic Center in each of the last two fiscal years for capital projects; and (b) the following projects will come in under budget (i) fire alarm upgrade; and (ii) arena seating replacement; and (4) departmental line item reductions - $425,000 (a) reductions in professional services; small equipment; training and travel; and uniforms; (b) continued inflation in the following key areas (i) utilities; (ii) janitorial services; and (iii) construction materials; and (c) operating budgets will likely be fully spent at year end. Total savings would be $1 Million.

Mr. Durant explained the Fiscal Year 2009 current year Fund Balance trends, using charts. We estimate our Fund Balance will decrease from 20.3% to 19.6%.

Mr. Durant answered various questions/comments from Council, some being, but are not limited to: explanation of the $793,620 deletion in Fund Balance; which property were we going to sell to cover payments for the Overlook and Haw Creek Park land purchases; explanation of the contribution and installment payments for Overlook; and how are our funds in the Fund Balance invested and are the proceeds re-invested back in the Fund Balance.

Mr. Durant then reviewed with Council the preliminary Fiscal Year 2009-10 budget forecast. He reviewed the initial General Fund Gap.

The General Fund overlook is (1) economy will continue to slow revenue growth in Fiscal Year 2009-10; (2) property and sales taxes make up 70% of budget (a) property taxes: 2.0% growth; and (b) sales taxes: no growth; and (3) overall revenue growth projection is 1.5%.

The expenditure outlook initial projects include (1) continuation of the current market and merit pay plans; (2) 10% projected increase in the City's health costs; (3) September Consumer Price Index South Region is 5.4%; and (4) no growth in capital expenditures.

Initial budget balancing strategies include (1) suspend market adjustments - $1 Million; (2) reduce merit pay pool - $250,000; (3) evaluate annual subsidy to housing trust fund - $600,000; and (4) re-engineering and restructuring (a) early retirement; and (b) attrition - $500,000.

He reviewed the budget outlook for the revised General Fund gap.

Budget balancing strategies moving forward include (1) the $3.0 Million budget gap reflects a structural imbalance between revenues and expenditures; (2) staff will perform an exhaustive review of the budget (a) challenging every assumption; (b) examining in-depth re-engineering opportunities; and (c) evaluating core vs. strategic service priorities; and (3) will seek additional direction from Council at the January Council retreat regarding service prioritization.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being but are not limited to: drop in sales tax revenues; update on the Overlook Park purchase and financing; and update on the Haw Creek Park transaction.

Councilwoman Jones believes that the citizenry understands the economy and will understand why the City has to scale back. She hoped that in determining how to scale back that we look at across the board cuts. She was distressed to see the evaluation of the Affordable Housing Trust Fund was an initial budget balancing strategy, especially when the citizen survey showed that we ranked the poorest in affordable housing. She wondered if we identify the things that people really want (e.g, the Nature Center), they may be willing to invest a little more in them.

Mayor Bellamy said that over the next few months Council will be reviewing the budget in detail and seriously deliberating about the direction for our City. This Council has invested quite a bit in infrastructure, take home vehicles, police substations, land for park development, etc. and has a good track record over the past three years. It's now a time to tighten our belt due to the economy and she also believes that the community will understand. There may be some areas that need to be reduced that she would not have considered before, but at this point it's not about the things that she likes, it's about how do we get through this tough time and move forward.

City Manager Jackson said that he will be providing monthly updates on the sales tax. In addition, we will also look at all the revenue assumptions of how are we compared to market and what is our cost recovery. This is a comprehensive budget process and we are starting early.

Mayor Bellamy explained that there is an initiative to transfer 5,000 miles of roadway to the larger cities across state without additional revenues to pay for that. There will be a resolution on the November 25, 2008, agenda opposing the forced transfer of additional transportation responsibilities to local government.

Traffic Safety Capital Improvement Budget

Assistant Director of Traffic and Engineering Ken Putnam said that this is the consideration to create an annual Traffic Safety Projects Fund that would be used to design and construct various traffic safety related improvements throughout the City of Asheville, excluding traffic calming projects.

Traffic Safety Projects can be defined as traffic-related projects that when completed would improve public safety and/or efficiency to the various transportation users including vehicles, bicycles, pedestrians, and Transit. Typical projects include new traffic signal

installations including pedestrian signals, upgrades to existing traffic signals including pedestrian signals, emergency vehicle pre-emption, new warning flasher installations, upgrades to existing warning flashers, left and right-turn lanes, radii improvements at intersections, bicycle lanes, and pedestrian crossings, and the potential projects would have a total estimated cost of $75,000. Projects with a total estimated cost of less than $25,000 can be funded through the Transportation & Engineering Department's operating budgets. Currently, these types of projects *(total estimated costs equal to or greater than $25,000)* are funded through the Capital Improvement Program. When these types of projects are identified and determined to be needed as a result of a proposed development, the potential improvements are typically funded by private sources. Traffic calming projects would ***not*** be included since there is a separate policy and an account code already established for traffic calming projects.

These projects are typically identified as Traffic Engineering staff responds to various requests from citizens throughout Asheville. Once identified and reviewed in depth, many of these projects would then move into the design and construction stage if funding was available. According to our records, these types of projects have been approved in the past through the Capital Improvement Program including the widening of Yorkshire Street and emergency vehicle pre-emption at the intersection of College Street and Charlotte Street. Privately funded projects that have been constructed in the past include a double left-turn lane along NC 81 Swannanoa River Road at its intersection with US 74-A (South Tunnel Road) and a new traffic signal at the intersection of River Hills Road and the access for Pier One/Dick's Sporting Goods.

During September 2008 action was taken to approve funds from the General Capital Reserve Fund in the amount of $50,000 to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community. This project is a good example of the type of project that should be funded through a Traffic Safety Projects Fund. When this project was funded, there were other projects pending including the following projects:

1. Burton Street Traffic Calming – Total estimated cost = $40,000 *(This type of project would **not** be funded by the Traffic Safety Projects Fund)*
2. Charlotte Street Signal Upgrade – Total estimated cost = $60,000
3. Pinchot Drive Pedestrian Enhancements – Total estimated cost = $48,000
4. Fairview Road Signal Upgrades – Total estimated cost = $80,000

Since September 2008, the Burton Street Traffic Calming project has been let to contract and depending on weather conditions, all work should be completed by November 18, 2008. The Charlotte Street and Fairview Road signal upgrades would improve overall traffic efficiency in the immediate areas but considering the current economic climate, both of these projects could continue to be delayed. The Pinchot Drive Pedestrian Enhancements would improve pedestrian safety in the immediate area of William W. Estes Elementary School and T.C. Roberson High School by providing missing sidewalk links and pedestrian signals and crosswalks at the intersection of SR 3503 (Overlook Road) and Springside Road/Pinchot Drive. Since the subject intersection is maintained by the North Carolina Department of Transportation, the proposed work must be coordinated and approved by them. This approval and design work is scheduled to be accomplished during the current fiscal year.

This action complies with the City Council 2008-09 Strategic Operating Plan by protecting the traveling public by making traffic safety related improvements to the existing street infra-structure including intersections.

Pro:

- This action would provide a means to address traffic-related safety issues within a timely manner thereby reducing potential risk to the City.

Cons:

- This action would reduce the total amount of Capital Improvement Program Funds available on an annual basis.

- The total estimated annual cost is $50,000.

The total estimated annual cost is $50,000. Funds would only be spent on an as-needed basis as the various needs are identified. In order to appropriate funding in the current fiscal year, a budget amendment would be necessary. Sufficient funds exist in the General Fund fund balance for this budget amendment.

Staff recommends that City Council approve an annual Traffic Safety Projects Fund and schedule consideration of a budget amendment to design and install priority traffic safety related improvements throughout the City of Asheville.

Councilman Russell supported this fund as public and pedestrian safety is a core City responsibility.

Upon inquiry of Councilman Mumpower, Mr. Putnam said that there are funds in the Capital Reserve Fund for this traffic safety projects fund this fiscal year. Staff would still be reporting to Council on the projects they want to bring forward but this would at least give staff the mechanism to move forward with the design and the construction of it if it was identified mid-stream.

Councilman Newman noted that there are a lot of needs out there and had this been appropriated as part of this fiscal year's budget cycle, the $50,000 would have already been spent with the Fairview Road project.

After a brief discussion regarding funding options, it was the consensus of Council to approve the annual Traffic Safety Projects Fund and to fund the Fund via a budget amendment with a transfer of $50,000 from the Capital Reserve Fund and additional funds from completed capital projects.

Stormwater Enterprise Fund

Director of Traffic and Engineering Cathy Ball said that the purpose of this report is to provide an update to City Council on the status of the Stormwater Enterprise Fund including policy issues.

She reviewed the summary of the Stormwater Enterprise Fund including the total revenues, total expenditures, fund balance and unfunded capital projects in addition to the funding priorities. She then provided detailed information on the expenditures of this fund to include capital, maintenance, permitting and administration.

Staff has completed a stormwater analysis for the Dingle Creek and Upper Ross Creek watersheds. The reports for these analysis priorities capital needs for the stormwater fund. She reviewed a list of stormwater capital projects for the current and 5-year planning period. This list includes projects for the watershed above as well as problems indentified by staff.

Two policy issues have come to our attention. The first is the ability to review the stormwater utility fee. The second is the issue of storm drainage problems on private property. Staff has analyzed both of these questions in some detail.

With regard to the issue of the fee, we have provided an analysis impact as a result of decreasing the stormwater utility fee. We would request that we review this fee as part of the Fiscal Year 2009-10 Budget process.

We have also evaluated several private storm drainage problems and provide a sample of locations and costs to repair these problems. These projects include:

Examples	Estimated Costs
South French Broad	$70,000
Harmony Lane	$75,000
Merrimon Avenue	$1 M+
South Griffin Ave.	$200,000
Waynesville Ave.	$600,000
Reed Street	$250,000
Murdock Ave.	$100,000

The Stormwater Utility Fund complies with the City's Strategic Plan by developing a long-term plan to address the City's aging infrastructure.

Pros:

- Report provides data for Council's evaluation.
- Completion of capital projects will improve City's infrastructure.

Cons:

- Reducing the stormwater utility fee will have an adverse impact on the stormwater services.
- Proposed capital projects will reduce the stormwater fund balance.

Next steps regarding fees include (1) evaluate single family residential fee structure as part of 2010 budget process; (a) information available December 2008; (2) create three residential tiers (a) low, medium, high; and (b) examples Raleigh, Greensboro, Charlotte; and (3) options (a) maintain current rate for lowest tier; (b) generate additional revenue in medium and high tier for Capital Improvement Plan projects; and (c) decrease revenue/services.

Options regarding private drainage include (1) try to identify other funding source for private drainage problems (Community Development Block Grant, Mountain Housing Opportunities, Affordable Housing Fund, etc.); and (2) provide a portion of additional revenue from "tiering" to other funding agencies.

The purpose of this report is to provide an update to City Council on the status of the Stormwater Enterprise Fund including policy issues. No action is required.

In response to Councilman Newman, Ms. Ball said that Mountain Housing Opportunities has some grant money (5-year forgivable loans) in order to take care of some structural problems associated with problems.

Councilman Russell felt there are many examples of private storm drainage problems. He felt it would not be in the City's best interest to begin repairing those problems, but did support identifying other funding sources for those homeowners.

Ms. Ball said that with the funding mechanism in place, staff strongly recommends that the City not take on the private drainage problem as we don't have the funding to address the problems we have. We would be stepping into a business we are not able to do or meet the expectations of the community. There have been other communities that have been extremely aggressive in deciding they are going to take on all the stormwater problems in a certain basin and issue bonds to make those huge improvements.

In response to Councilman Russell, City Attorney Oast said that in general developers cannot divert water onto their neighbor's yard in a way that causes a problem for the neighbor.

Ms. Ball responded to Councilman Newman when he questioned what the 28% legislative compliance meant.

Mayor Bellamy explained why she felt Council's policy on the Stormwater Enterprise Fund should be revenue neutral, and the Fund Balance should be what the Local Government Commission recommends.

In response to Mayor Bellamy's request of a revenue neutral budget direction, Ms. Ball said that in the upcoming budget, one of the options they would come back to Council with is having a revenue neutral fund showing the amount of change, the amount of individual fees based on that, the recommended Local Government Commission Fund Balance, and what that would reduce the Fund to.

There was a brief discussion about the Fund Balance and making the stormwater fees as affordable as possible.

Ms. Ball understood Council's discussion to look at what we have, look at what needs to be done and if there is left-over money we shouldn't be keeping it. She didn't want to set up the expectation, though, that we are going to be able to come back and lower the amount and still meet the capital needs we've identified.

Mayor Bellamy supported a 5-year budget plan for capital and budget so we can actually see and project into the future.

LEGISLATIVE PRIORITIES

Federal

Economic Development Director Sam Powers said that the following is City Council's currently adopted federal funding priorities which were adopted on February 12, 2008:,

- REID CENTER - Extensive renovation to or rebuilding of both interior and exterior and utilities of the W.C. Reid Center for Creative Arts, a 37,000-square foot community center to support a full-service, community based recreation program and multi-disciplinary arts program with an emphasis on providing services to at-risk youth and their families. - Amount requested: $4 to $6 million.

- ENERGY CONSERVATION RETROFITS FOR CITY BUILDINGS - The Building Energy Conservation Retrofits appropriations will allow the City of Asheville to install programmable thermostats, light occupancy sensors, high energy efficient lighting in all 51 city owned buildings after which a holistic social marketing campaign will be conducted to encourage employee behavior change. The retrofits will provide significant cost savings through utilities and decrease the carbon footprint of the city organization, while providing a strong foundation for a social marketing program to effectively create sustainability behavior change. - Amount requested: $749,200.

- TRAFFIC SIGNAL PREEMPTION - A Traffic Signal Preemption System is an electrical device(s) that allow a traffic control signal to respond by giving priority to approaching response vehicles that are outfitted with special equipment. Such systems are designed to increase the safety of the public and responders, reduce emergency response times, and enhance public transit operations. - Amount requested: $495,000.

- REGIONAL PUBLIC SAFETY TRAINING FACILITY - The Regional Public Safety Training facility is a partnership between WNC local governments, state government and AB Tech. The facility will include an emergency vehicle driving pad, burn building, and a rescue tower. The project is a modular project and can be done in phases. - Amount requested: $4 million.

- BUS REPLACEMENT - The project entails the purchasing of fifteen (15) 30-foot hybrid buses to replace 75% of the fleet which are reaching their life-cycle, with more than ten (10) years in operations. This is a multi-year project that intents to replace the fleet in a three year period. The City is recommending buying hybrid buses, or buses using other energy efficient technology, instead of diesel. The use of alternative fuels will help the City to achieve the carbon emission reduction goals adopted by City Council. The project will affect positively the Western North Carolina population that lives in Asheville, Weaverville and Black Mountain and depends on transit to perform the daily activities, providing a more reliable and comfortable service. At the same time will bring benefits to the environment, reducing pollution and improving the quality of life. - Amount requested: $7,875,000 over three (3) years ($2,625,000/year).

In addition, the following is the federal legislative priorities adopted April 8, 2008:

- Senate Bill 1738 "Combating Child Exploitation Act of 2007" to improve the Internet Crimes Against Children Task Force to increase resources for regional computer forensic labs, and investigate and prosecute predators. – Signed into law

- HR 1692 "The Fighting Gangs and Empowering Youth Act of 2007" which contains many things that focus on making sure that our youth have alternatives from gangs as well as increase penalties for gang activity.

- Senate Bill 1745 "Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act, 2008" for support of our Weed and Seed program that is funded under this Act.

- "The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" (1) Sec. 9002 – extension of the highway-related taxes and trust fund; (2) Sec. 9003 – extension of tax benefits for alcohol fuels; (3) Sec. 9004 – private activity bonds for surface transportation infrastructure; and (4) Sec. 9005 – all alcohol fuel taxes transferred to highway trust fund.

- PL 110-140 "The Clean Energy Act of 2007" (HR 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy. – Signed into law

- S. 1675 "Local Community Radio Act of 2007" to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service.

- S. 234 "Wireless Innovation Act" to make broadband available to unconnected neighborhoods and communities – especially rural and mountainous areas – by exploiting unused frequencies in the broadcast spectrum known as "white spaces."

- Support to fund the expansion of the ERC broadband and fiber optic network in the region for education, medical and emergency service support.

- Lend support to the Land of Sky Regional Council of Government request for funding for a Comprehensive Economic Development Strategy – Regional Growth Management Planning Initiative for Western North Carolina.

- Support funding for energy efficiency and conservation block grants.

- Continued prioritization of the completion of I-26 components through Asheville.
- Accelerated use of Federal resources in local action on Asheville's drug distribution network.
- Enthusiastic Federal enforcement of existing laws affecting illegal immigration in Asheville.

He felt that information may be useful for Council discussions in updating any federal funding or legislative priorities. The 111th Congress convenes on Jan 8th, 2009. Congressional staff usually wishes to receive any funding requests from municipalities in early January to allow time for research and placement.

Of note of existing priorities, the legislation that has adversely affected Asheville Transit funding has finally been amended in favor of the City and other similarly sized systems. The bill allows transit systems serving urbanized areas whose population went from under 200,000 to over 200,000 in population in the 2000 census to use a portion of their (Fiscal Year) 2008 and 2009 urbanized area formula grants for operating costs. Transit systems in these areas can use an amount equal to 50% of the urbanized area formula grants received in Fiscal Year 2002.

Mayor Bellamy felt this was a good starting point for Council, noting that the next time Council sees this will be the opportunity for additions or deletions. She asked Mr. Powers to contact the Chamber of Commerce to request them to delay their meeting with the legislative committee from December 1 until City Council's Retreat on January 9-10, 2009.

State

City Attorney Oast said that that this is the consideration of Asheville City Council's State Legislative Package for 2009

The 2009 Session of the North Carolina General Assembly convenes on January 28, 2009 (both houses). Our legislative delegation includes Senators Martin Nesbitt and Tom Apodaca, and House members Bruce Goforth, Susan Fisher, and Jane Whilden (who succeeds Charles Thomas). This session is a "long" session, so the substantive limitations on the types of bills that may be introduced are broader than for short sessions. Also, the time period for submission of local bills is longer. Although the deadline has not yet been established (this is usually one of the first actions taken), recent history indicates that the deadline is likely to be some time in mid to late March.

The purpose of this report is to advise Council of progress on our requests from 2007-08, provide additional information as to some matters of Statewide concern (and implications at the local level), and suggest some topics for legislative action.

A. Communication with legislators. While the City Council and members of the delegation do not always agree with each other, members of the delegation that I have spoken with have emphasized the need and desirability for better and more frequent communication. One member of the delegation has suggested that Council schedule a meeting to which the local delegation is invited. The 2009 session begins on January 28, and if such a meeting is to occur it will be easier to schedule before the session begins, when the legislators' duties require their presence in Raleigh. A special meeting for this purpose would be appropriate, if Council desires. However, such a meeting could be scheduled at any time, and visits to Raleigh and communication via other means is invited. Council's retreat is now scheduled for January 9-10, which permits a discussion of legislative proposals prior to the convening of the session, and this may present an opportunity for discussions with members of the delegation.

B. Legislative initiatives by other bodies.

1. Chamber of Commerce. The Governmental Affairs Task Force (GATF) of the Asheville Chamber of Commerce consists of representatives from various segments of the community, including business, non-profit, governmental, and education. Many, if not all, Council members receive notice of and regularly attend these meetings. For the past several years, this group has developed a legislative agenda of interest to the area, and this agenda is submitted to the Chamber's Executive Committee and Board of Directors for approval, which usually occurs after the first of the year. This agenda frequently includes matters of interest to the City, and we track it to see when our interests coincide.

2. League of Municipalities. The League of Municipalities is a statewide organization of cities and towns. The League works with members of the General Assembly on matters of interest to municipalities across the State, and on some local matters. The League's legislative agenda was not available as of the date of this Staff Report, but will be provided to you as soon as available. On particular matters (such as the drought management legislation of 2008), the League requests our comments, and asks that we contact our legislators.

   Of particular concern this year are potential changes to the State's annexation laws. A joint committee has been established to review these laws, and the League has requested our assistance and participation. Last week (November 6), I attended a meeting in Raleigh where the topic of discussion was annexation.

3. Other municipalities. Not infrequently, we will become aware of legislation that has been requested by other local governments (usually cities) that may be of use to us. The ability to offer incentives for sustainable building practices is a recent (2007) example of this. Sometimes, our legislators will contact us if they see a bill that they think we would be interested in. However we become aware of these other bills, we bring the issue to Council, and it is usually a simple process to have Asheville added to the legislation.

C. City's 2008 Legislative Agenda. He reviewed the resolution adopted by Council last year regarding the legislative agenda. Because of restrictions on "short session" legislation, our requests for local legislation were limited; other requests consisted primarily of advocacy, with respect to certain general (statewide) legislation.

1. Asheville / Woodfin boundary adjustment. This request was initially submitted in 2007, and has been discussed since before then. Most of the property involved affects either UNC-A or the State of North Carolina, but some of it is privately owned. In 2008, we contacted all affected property owners. Several owners whose property is currently in Woodfin or unincorporated areas objected to any proposal that would incorporate them into Asheville, and there was reluctance to proceed with the adjustment over these objections. We tried to re-configure the proposed boundary to address these concerns, but found no way to do that and address the municipal service delivery issues that prompted the request in the first place. A bill was introduced, and referred to committee, but no further action was taken.

2. Street Gang Prevention. Two related bills were adopted, one strengthening the criminal laws in this regard, and one focusing on local prevention and interaction. Council supported these bills.

3. Cable TV / PEG. Council supported a bill that would have increased the distribution to local governments of the tax on video programming services. This

bill apparently was not adopted in 2008, but a bill that clarifies that this revenue should be distributed to channels that actually produce programming (as opposed to being merely operational) did pass.

4. Smoking in Public Parks. A bill was introduced that would have allowed local governments to ban smoking within 50 feet of a building entrance. It passed the Senate, but failed to pass the House.

5. Criminal Justice System Funding. The State's budget included funding for 31 new assistant district attorneys, and 3 new district court judges, and authorized additional funds for probation and parole staffing. None of the new district court seats is in Buncombe County; we are checking to see if any new ADA positions for Buncombe were authorized.

6. Mental Health. The State's budget included some moderate increases in funding for mental health and other social service programs at the State level.

7. Sexual Predators / Jessica's law. Jessica's law, which restricts the activities of registered sex offenders in proximity to places where children gather (schools, daycare centers, etc.) was adopted. Another law was adopted to broaden the protection of children from sexual predators, specifically in social networking websites.

The above are matters that Council took a position on in 2008. I could not find where action had been taken on other matters in the City's package, such as salvia divinorum, but will continue to look. Other legislation of interest to municipalities was adopted in 2008, and these will be covered in a later memorandum, and possibly at the retreat.

Suggestions for Legislation. Council should begin thinking now about matters for legislative consideration in 2009, with an eye towards adopting a package in January, following your retreat. Suggestions for consideration include:

a. Legislation allowing for a broader range of implementation of local affordable housing programs.

b. Clarifying authority of City to place conditions on sale of certain property.

c. Repeal of Sullivan Acts.

d. Hotel / meal tax or other dedicated funding source for support of Civic Center.

e. Strengthen local authority regarding illegal immigration.

f. Renew request (last proposed in 2005) to facilitate voluntary annexation of properties near the airport (proximity to Fletcher issue).

g. Authorization and funding for "quality of life" enforcement program, similar to other N.C. cities.

h. Address issue of municipal incorporation of rural areas (this may be done in connection with review of annexation law).

i. Provide / clarify authority to regulate vehicle towing from parking lots.

j. Support creation by N.C. Utilities Commission of an organization to design and implement statewide plan for energy efficiency and conservation (NOTE: legislative action may not be needed).

The foregoing summary constitutes a beginning point for Council discussion and direction. There is no requirement for Council to take action before the General Assembly convenes, but action should be taken soon enough as to allow for timely submission to the local delegation.

This matter is before Council for further discussion and/or direction as appropriate. Once the legislative action items have been settled on, a resolution will be prepared, to be supplemented with supporting materials and transmitted to members of the delegation.

Upon inquiry of Councilman Newman, City Attorney Oast said that he would add language about the issue of voluntary annexation for Asheville in general and our support for Asheville having the full voluntary annexation authorities that are granted to other North Carolina cities.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that he would add the following language "support increased and appropriate funding of the State's criminal justice system, including, without limitation: additions to law enforcement, prosecutorial, and judicial personnel; improved facilities, including courts and detention facilities; improved programs for crime prevention and abatement, and post-conviction monitoring."

Mayor Bellamy asked that the City send a letter of appreciation to our representatives in Washington and Raleigh who helped us accomplish some of our legislative goals. She was proud of the gang legislation that did pass from a lot of collaboration between the Metro-Coalition of Mayors and Metro-Coalition of Police Chiefs, along with a lot of help from Senator Martin. She explained the models, noting that she supported the High Point model. This community initiative will be reviewed by the Planning & Economic Development Committee and brought to Council for endorsement.

In response to Mayor Bellamy regarding towing, City Attorney Oast said that he has received copies of ordinances from other cities that might be beneficial to Asheville. He will be bringing that information to the Public Safety Committee in the near future. He felt that some, if not all, of the items we want accomplished might not require special legislation.

Councilman Mumpower suggested clarification of the language "authorization and funding for "quality of life" enforcement program, similar to other N.C. cities."

In response to Councilman Mumpower, City Attorney Oast said that a lot of what Council is asking for doesn't require money from the State.

Mayor Bellamy initiated discussion regarding appointing a subcommittee to begin conversations with our State legislators and County Commissioners regarding the Sullivan Acts, which received the majority consensus support of Council. Councilman Mumpower supported all meetings be held in public view. Councilwoman Jones felt that talking is more important than mandating at what setting that discussion will take place.

Mayor Bellamy said that she can control meetings that Asheville hosts, but cannot control other bodies asking to meet with individuals. After December 1, 2009, she will extend an invitation to our State legislators and the County Commissioners to talk about this issue and then as a group discuss the next steps.

MILLS RIVER WATER AGREEMENT

Mayor Bellamy said that City Council met with the Henderson County Commissioners on November 14, 2008, to discuss the water issues. In summary, Henderson County suggested terminating the water agreement with the City of Asheville and allowing Henderson County to buy the Mills River Treatment Plant. Because both bodies agreed to subcommittees (the City's consisting of Mayor Bellamy, Vice-Mayor Davis and Councilman Newman), she wanted a clear expectation of what Henderson County wants.

Councilman Newman felt that if Henderson County wants to buy the Mills River Treatment Plant, they need to submit a proposal and provide Council with more specifics in order for Asheville to respond.

Regarding the planning model presented at the November 14 meeting, it was the consensus of Council that a planning model be based on need vs. assets.

Councilman Mumpower supported continuing to clarify publicly Asheville's dedication to honor the water agreement with Henderson County. If Henderson County contends that Asheville has failed to uphold the water agreement, he asked that it be clarified.

Mayor Bellamy asked that clarification of the drought issue this summer. There was a misunderstanding in that they thought Asheville was not willing to sell the City of Hendersonville water and they had to impose water conservation measures. She asked that copies of correspondence be made available to Henderson County to show that Asheville was immediately willing to sell water to the City of Hendersonville. The decision to impose water conservation measures by the City of Hendersonville was made outside of any influence of the City of Asheville.

Councilman Mumpower asked for a concentrated effort to include other water resource entities in future regional need analysis and planning.

Mayor Bellamy said she will also bring to the table information from the Land-of-Sky Regional Council on their water analysis and water study.

Councilman Mumpower suggested a policy decision that this Council that any regional water discussions would include other water producing entities.

Councilman Newman suggested discussion with Henderson County of the Bent Creek property on the French Broad River.

In response to Councilman Newman, Interim Water Resources Director Robert Griffin said that it is his understanding that the City of Hendersonville is doing an upgrade on their water treatment plan and it does not increase their capacity. It's an upgrade similar to what Asheville is doing at their plant to bring operations more into a safer and more efficient environment for their utilities as well as how they produce water. They have been given permission for a temporary intake if we go back into a low water volume on Mills River to the French Broad. That does not increase their capacity beyond what they could produce before they were limited by the Mills River and the muscles found in the Mills River. City Manager Jackson said that he will confirm that understanding with the City Manager from Hendersonville. The City of Hendersonville did make a policy decision to forego or suspend plans to build an initial facility when they entered into the agreement with Asheville.

BOARD/COMMISSION APPOINTMENTS

It was the consensus of Council to (1) reappoint Charles Worley as a member and Chair of the ABC Board and (2) interview Mr. Robert Tuck (if a City resident) and Mr. Jim Ellis for a vacancy on the ABC Board. If, however, Mr. Tuck is not a City resident, then City Clerk Burleson was instructed to prepare a resolution reappointing Mr. Worley and appointing Mr. Ellis.

It was the consensus of Council to appoint Mr. Rod Baird as the member of the RiverLink Board of Directors to the River District Design Review Committee (to replace Mr. Richard Hall who is no longer a member of the RiverLink Board of Directors).

In response to Vice-Mayor Davis, it was the opinion of City Attorney Oast that we are on sound legal basis asking for race, sex and age on our board and commission applications, including the City Council applications. What law is out there supports diversity of the community.

MISCELLANEOUS

Mayor Bellamy explained that the 2010 Census is hiring 1,000 people in our region to carry out the Census Program. She explained the importance of having every resident of Asheville counted in that over $300 Billion per year in federal and state funding is allocated to communities and decisions are made on matters of national and local importance based on census data. Census data will also determine how many seats each state will have in the U.S. House of Representatives as well as redistricting of state legislatures, county and city councils, and voting districts. She urged the community to fill out the 2010 Census.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:50 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – November 25, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower (left meeting at 7:58 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 08-228 – RESOLUTION OF APPRECIATION TO HOLLY JONES

Mayor Bellamy read the resolution thanking Councilwoman Jones for her service to Asheville and presented her with the resolution, a plaque, her name plates and a City pen.

Resolution No. 08-228 was adopted by acclamation.

Councilwoman Jones thanked her family, individual members of Council, Mayor Bellamy, City staff and the citizens of Asheville for allowing her to serve the City of Asheville.

RESOLUTION BOOK NO. 31 - PAGE 373

B. PROCLAMATION PROCLAIMING NOVEMBER, 2008, AT "NATIONAL ADOPTION MONTH"

Mayor Bellamy read the proclamation proclaiming November, 2008, as "National Adoption Month" in the City of Asheville. She presented the proclamation to Ms. Dahlene Morse, Director of Bethany International Adoptions, and Alisha Davis, Community Based Services Supervisor from the Buncombe County Department of Social Services, who briefed City Council on activities that took place and will be taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 11, 2008; THE SPECIAL MEETING HELD ON NOVEMBER 14, 2008; AND THE WORKSESSION HELD ON NOVEMBER 18, 2008

B. RESOLUTION NO. 08-229 – RESOLUTION ADOPTING THE 2009 CITY COUNCIL MEETING SCHEDULE

Upon inquiry of Councilman Newman, City Attorney Oast said that City Council can amend their regular meeting schedule at anytime.

RESOLUTION BOOK NO. 31 – PAGE 374

C. RESOLUTION NO. 08-230 – RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: Mr. Richard Hall no longer serves as a member of the RiverLink Board of Directors, thus creating a vacancy until September 1, 2010.

Mr. Rod Baird, 33 Grovewood Road, Asheville, N.C., be and is hereby appointed to the River District Design Review Committee, as one of the two members from the RiverLink Board of Directors, to serve the unexpired term of Mr. Hall, term to expire September 1, 2010, or until he is no longer a member of the RiverLink Board of Directors or until his successor has been appointed, whichever occurs first.

RESOLUTION BOOK NO. 31 – 375

D. BUDGET AMENDMENT FROM THE ENVIRONMENTAL PROTECTION AGENCY TO RECEIVE AND ADMINISTER FUNDS FOR THE RIVER DISTRICT BROWNFIELDS GRANT AWARDS

This item was removed from the consent agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 08-231 – RESOLUTION AMENDING THE 2008 CITY COUNCIL MEETING SCHEDULE TO (1) ADD A FORMAL MEETING ON DECEMBER 2, 2008; AND (2) ADD A SPECIAL MEETING ON DECEMBER 12, 2008

RESOLUTION BOOK NO. 31 – PAGE 376

F. RESOLUTION NO. 08-232 – RESOLUTION AFFIRMING THE CITY OF ASHEVILLE'S SUPPORT AND PARTNERSHIP WITH THE 2010 CENSUS

RESOLUTION BOOK NO. 31 – PAGE 377

G. ORDINANCE NO. 3674 – BUDGET AMENDMENT FROM LEASE PURCHASE PROCEEDS TO PURCHASE TWO REPLACEMENT FIRE TRUCKS

RESOLUTION NO. 08-233 – RESOLUTION WAIVING THE FORMAL BID REQUIREMENTS AND AWARD THE BID FOR TWO FIRE TRUCKS USING THE "PIGGY BACK" PROVISION FROM THE AWARD OF BID FROM THE TOWN OF KERNERSVILLE, N.C.

Summary: The consideration of a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for two fire trucks in accordance with North Carolina General Statutes using the "piggy back" provision from the award of bid from the Town of Kernersville, N.C., from March 4, 2008, and approving the associated budget amendment in the amount of $192,756.

In order to reduce costs and maintain current emergency response operations, the Asheville Fire and Rescue Department needs to replace two front line fire trucks. In order to make the most efficient purchase possible, staff recommends that City Council waive formal bidding procedures in accordance with North Carolina General Statutes to purchase two fire trucks from a bid awarded by the Town of Kernersville, North Carolina. In addition, appropriate

budget revision is needed to issue the purchase order. This is an improvement business plan decision for AFR and city government.

The Fiscal Year (FY) 2008-09 budget included $1,100,000 for replacement of one fire truck. Another fire truck was projected to be included in the FY 2009-10 budget as a replacement. Currently, two front line trucks in the fire and rescue fleet are in high need of replacement and costing city government more money than necessary to operate. Newer apparatus is costing us an average of $.815 per mile to operate and emitting very low (2007 regulatory standard) emissions. The two fire trucks that we need to replace are costing us an average of $3.91 per mile and are both over 16 years old, not being very environmentally responsible.

Due to the increasing cost of steel, fire apparatus costs have escalated over the past year. Staff has determined that we can most cost effectively meet our need for replacing two fire trucks by using the "piggy back" provisions of the North Carolina General Statutes.

Staff recommends purchasing two (2) fire trucks now and not including a replacement truck in the FY 2009-10 budget, given the economic situation and budget challenges that we are facing. Fulfilling this request now will reduce the requests for the FY 2009-10 Capital Improvement Plan by $800,000.

The Town of Kernersville, North Carolina, bid a truck that will meet our immediate operational needs. Kernersville awarded their purchase order on March 10, 2008. State statutes allow us to "piggy back" that bid. By doing so, we avoid two cost increases that have occurred since that date. On two fire trucks, these cost increases for the same trucks would cost our tax payers an additional $95,399.99. We also could receive the trucks in July, 2009 as opposed to November, 2009 by using the "piggy back" approach.

North Carolina General Statues require that an advertisement be made of Council's intent to utilize the "piggy back" option and waive the formal bidding process. That ad properly posted November 12, 2008, through November 24, 2008.

In order for the purchase to be made, an additional appropriation of $192,756.00 is necessary in the FY 2008-09 budget. This funding will come from lease-purchase proceeds, so the total cost of the fire truck will be spread out over 5 to 7 years. Annual operating savings in per mile costs are projected to exceed $60,000 with the replacement of these two trucks ($.815 per mile versus $3.91).

This request ties in with the City Council Strategic Operating Plan in the following methods: (1) SAFE: It is necessary to have safe, reliable fire trucks to operate in order to provide critical public safety services to our citizens; (2) GREEN: The replacement fire trucks will meet 2007 or greater emissions standards and be much more environmentally responsible; and (3) SUSTAINABLE: City government will save money on purchasing these fire trucks and save money in operating these new units in day to day operations.

Council's Public Safety Committee reviewed this request on November 11, 2008, at their regularly scheduled meeting and voted to recommend approving the request to the full City Council on November 25, 2008.

Pros:

- This action saves our taxpayers money
- We save significant money on the initial purchase of the fire trucks
- We avoid the price increases that have affected the fire apparatus industry over the last year, saving $95,399.99 for the same equipment
- We are able to place these units into service quickly and begin reducing operating costs
- We are able to save money on the per mile cost to operate the fire trucks

- We dramatically reduce the vehicle emissions by replacing 16 year old trucks
- We provide our firefighters safer, more efficient trucks
- Also, we will not slate any fire truck replacement for FY 09-10 in order to help more effectively manage that upcoming budget, reducing CIP requests by $800,000

Cons:

- There will be a slight increase in debt service costs in FY 09-10
- We will delay a ladder truck replacement until FY 2010-11

There will need to be an appropriation of $192,756 in this year in order to make the purchase. Staff anticipates that based on the expected delivery date of the trucks, no debt service payment will be required in the FY 2008-09 budget. If there are any cost of debt issuance costs in FY 2008-09, they will be absorbed within the existing debt service budget. A full debt service payment will be included in the FY 2009-10 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for two fire trucks in accordance with North Carolina General Statutes using the "piggy back" provision from the award of bid from the Town of Kernersville, NC from March 4, 2008 and approving the associated budget amendment in the amount of $192,756.

ORDINANCE BOOK NO. 25 – PAGE 86
RESOLUTION BOOK NO. 31 – PAGE 378

H. RESOLUTION NO. 08-234 – RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Mr. Charles R. Worley, 102 Carter Cove Road, Asheville, N.C., be and he is hereby reappointed as a member of the Alcoholic Beverage Control Board, to serve an additional three-year term, term to expire November 13, 2011, or until his successor has been appointed.

Mr. Charles R. Worley, 102 Carter Cove Road, Asheville, N.C., be and he is hereby appointed as Chairman of the Alcoholic Beverage Control Board until his term expires on November 13, 2011, or until City Council appoints a replacement.

Mr. Jim Ellis, 3 Sunset Lane, Asheville, N.C., be and he is hereby appointed as a member of the Alcoholic Beverage Control Board, to serve a three-year term, term to expire November 13, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 379

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. ORDINANCE NO. 3673 – BUDGET AMENDMENT FROM THE ENVIRONMENTAL PROTECTION AGENCY TO RECEIVE AND ADMINISTER FUNDS FOR THE RIVER DISTRICT BROWNFIELDS GRANT AWARDS

Summary: The consideration of a budget amendment, in the amount of $400,000, from Environmental Protection Agency (EPA), to receive and administer funds for the River District Brownfields grant awards.

On August 14, 2007, Asheville City Council authorized Land of Sky Regional Council (LOSRC) to submit two Brownfields Assessment grant applications to EPA on behalf of the City of Asheville. On April 10, 2008, the City of Asheville was recognized as the recipient of $400,000 in assessment and cleanup funds for hazardous materials sites and petroleum contaminated sites in Asheville's River District. On May 27, 2008, City Council approved a resolution authorizing the City Manager to execute a contract with LOSRC to administer the program funds. Contract runs between July 1st 2008 and ends September 30, 2011. On October 23, 2008, a kick off stakeholder meeting was held at AB-Tech Ferguson Auditorium

The approval of this budget amendment would be in accordance with Council's adopted Fiscal Year 2008-09 Strategic Operating Plan.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.
- No new city staff required to administer this three year grant program.

Con:

- Staff has not identified any cons.

The approval of this budget amendment would not negatively impact the City's budget, as the grant award is to be used for all administration/operational costs as well as Environmental Assessment costs.

Staff recommends Council approve the budget amendment, in the amount of $400,000, from Environmental Protection Agency (EPA), to receive and administer funds for the River District Brownfields grant awards.

Councilman Mumpower expressed concern about the City continuing to receive borrowed money under the current circumstances.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3673. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 84

III. PRESENTATIONS & REPORTS:

A. LISTENING TO OUR TEENS – A PROJECT OF THE ASHEVILLE CITY SCHOOLS FOUNDATION

Ms. Kate Pett, Co-Director of the Asheville City Schools Foundation, and Ms. Jillian Buckley, VISTA volunteer and project coordinator, said that this project is being funded with the generous support of the Community Foundation of Western North Carolina and The Beatty Foundation.

She explained the project as follows: "We will gather in-depth information about how we can engage and support our young teens, ages 11-14 years old, through 150 interviews with

students, families and service providers. We will compile the interview data, and use it to plan for enhanced programs and services that better support the success of our young teens. We will leverage existing resources, and seek new funding sources to implement the plan in the next five years."

These outcomes will be evidence of the success of this project:

- In-depth information collected from a representative sampling (150 individuals) of Asheville teens, families, and service providers
- 5-Year plan for reshaping services and programs in our community for teens
- Improved afterschool and summer programming within two years

Phase I Summary (June, 2008 – October, 2008):

Completed: The formation of a steering committee that is representative of the community and stakeholder groups. The creation of a student interview script by the questions committee. The recruitment of volunteer listeners. A training of over forty volunteers with instruction on how to engage interviewees . Sixty student interviews conducted at Asheville Middle School and Randolph Learning Center.

Phase II (November, 2008 – April, 2009):

- Interviews will be held with families, service providers and student focus groups
- Interviews will be transcribed
- Data will be organized and synthesized

Phase III (May, 2009 –August, 2009):

- Create goals and strategies to reshape programs to respond to collected data
- Prioritize programs and services and develop a five-year plan of implementation
- Advocate for the implementation of the plan by creating new partnerships, seeking additional funding, and leveraging existing resources
- Present findings to community in multiple formats, including presentation of student voices through student-designed presentation

She said why listen? Because (1) increase in crime committed by youth ages 11-14 after school and in the summer; (2) gap in service often identified between the end of school and when parents come home; (3) a need to inform development and enhancement of programs; (4) a previous listening project contributed to the development of academic programs that address the achievement gap; (5) in Winchester, VA, a Listening Project led new youth organizations, nonviolence programs, and effective citizen police programs; and (6) in Pittsburgh, PA, a Listening Project mobilized hundreds of youth and people of color to speak out, register and vote.

She explained the Listening Project process as (1) project development and initial funds secured from the Community Foundation of WNC and the Beatty Foundation; (2) form a steering committee; (3) train listeners; (4) listen to students, families and service providers; (5) create a resource directory of existing after school and summer programs; and (6) plan for change and implement enhanced services over five years.

LTOT organizational goals include (1) learn more about the types of programs, in school and out, that are critical for student success; (2) learn in which ways families want to be engaged to support the success of their students, and barriers to participation; (3) prioritize programs and services and develop a five-year plan of implementing priorities; and (4) work together as a partnership to implement priorities identified by the Listening Project.

Proposed outcomes include (1) in-depth information about the needs, concerns and aspirations impacting youth teens and their families in Asheville today; (2) information about specific factors, programs, experiences in our community that enhance the chances of youth teen success; (3) a document that outlines recommendations for going forward based on real information and proposes community-wide initiatives to serve young people in Asheville; and (4) successful programs and services that respond to the needs of 11-14 year olds in Asheville.

City Council can (1) conduct a family interview; (2) participate in the strategic planning process; and (3) ensure that youth programs funded by the City of Asheville are responsive to the needs of teens and their families.

On behalf of City Council, Mayor Bellamy thanked Ms. Pett and Ms. Buckley for bringing Council's attention to this program.

In response to Mayor Bellamy, Ms. Pett said that if someone would like to participate in this process, they can contact the Asheville City Schools Foundation.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS THE ALTAMONT AT RIVERBEND VILLAGE, LOCATED AT 152 BLEACHERY BOULEVARD, FROM URBAN VILLAGE DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 261 UNIT APARTMENT COMPLEX AND CLUBHOUSE; AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND SETBACK STANDARDS

ORDINANCE NO. 3675 – ORDINANCE CONDITIONALLY ZONING THE PROJECT IDENTIFIED AS THE ALTAMONT AT RIVERBEND VILLAGE, LOCATED AT 152 BLEACHERY BOULEVARD, FROM URBAN VILLAGE DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 261 UNIT APARTMENT COMPLEX AND CLUBHOUSE; AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND SETBACK STANDARDS

Mayor Bellamy opened the public hearing at 5:41 p.m.

Urban Planner Nathan Pennington said that this is the consideration of an ordinance to conditionally zone property identified as The Altamont at Riverbend Village, located at 152 Bleachery Boulevard, Urban Village District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 261 unit apartment complex and clubhouse; and a request for modifications to height and setback standards. This public hearing was advertised on November 14 and 21, 2008.

The applicant seeks the conditional zoning of approximately 15.26 acres currently zoned UV, to RM-16 CZ for a multi-family and townhome residential project with 252 new apartment and 9 existing townhome units. The property is located at 152 Bleachery Boulevard adjacent to the PetSmart store within the City's corporate limits.

If the conditional zoning application is approved, the site would have an overall density of 17.1 dwelling units per acre. The maximum net density in the RM-16 zoning district is one dwelling unit per 2,500 square feet or approximately 17.4 dwelling units per acre. The project is proposed to be built in one phase.

The following list provides a breakdown of the proposed development:

- 9 total buildings (6 apartment buildings, 2 existing buildings containing 9 existing townhome units, an office/clubhouse building and accessory structures including a pool/spa and shade structure)
- 3 – 4 story configurations
- Maximum building height of 43 feet (Modification to 40 foot maximum height being sought for buildings 4 and 5 to allow for floor to floor ceiling heights of 9 feet). All other buildings are proposed to meet maximum height regulation of 40 feet.
- 107 – one bedroom units
- 129 – two bedroom units
- 25 – three bedroom units (inclusive of existing 9 townhome units)

The majority of the site has been previously cleared and graded for an Urban Village development. Nine townhome units were nearly completed along the southern perimeter of the property as a result of the previous development plan approval. In addition, road and other utility infrastructure were completed to varying degrees throughout the project site. The applicant is proposing to utilize and build upon these improvements as part of the submitted design. Over thirty (30) percent of the site has been designated as open space and tree save area and these areas have been evenly interspersed throughout the property.

Two access points to the subject property are provided along River Ridge Connector from Bleachery Boulevard. The access point closest to the Ramada Inn will serve as the primary means of ingress and egress while the Bleachery Boulevard cut will serve as an emergency vehicle access point. In its current configuration, River Ridge Connector curves sharply towards the east in the vicinity of the Ramada Inn hotel. At a future date, the applicant is proposing to re-align this road in lieu of cooperation from the adjacent hotel property owner. This will not only soften a significant curve, but will allow for the re-alignment of buildings 1 and 2 and avoidance of an existing water line and associated easement.

The subject property consists of two lots (main parcel and an adjoining parcel directly behind PetSmart) adjacent to River Ridge Connector and Bleachery Boulevard. If the project is approved a portion of the main parcel will be recombined with the parcel located behind PetSmart and will remain zoned UV. This vacant parcel will be required to be rezoned to CI as a condition of project approval due to the fact that it will be nonconforming the UV lot size requirement.

The applicant is requesting two (2) modifications to the site development standards of the UDO pursuant to Section 7-7-8(c)(6) of the UDO from City Council. The first request is a modification request to the front setback standard. As previously discussed, the applicant is proposing to utilize existing improvements to the site including a portion of the road network, sidewalks and the 9 mostly complete townhome units. While the majority of the site will be developed as multi-family units available for rent, the 9 existing units are proposed to be subdivided and sold as single-family townhome units. The RM-16 zoning district requires a front setback of 15 feet and due to the proximity of the existing road; this will result in a maximum encroachment of up to 6.5 feet by four (4) of the nine (9) units. The second request involves a 3 foot modification to the maximum height of 40 feet to allow for floor to floor ceiling heights of 9 feet. This modification request would accommodate higher interior ceiling heights while having only a minimal impact on the overall height of the structures themselves.

The applicant has agreed to institute the following green building techniques into the construction of the project: "Not only will the project's design and utilized materials reflect the company's commitment to environmentally sensitive methods, but the means by which the project is constructed utilized many environmentally sensitive components. Additionally, the selection of the site itself, an infill site that is a portion of a larger redevelopment of a former industrial site, reflects their commitment to developments that make lesser impacts to the environment, not only in their creation but also in their long-term operation. In the case of this project, future residents will have the benefit of safety and easy pedestrian access to abundant retail amenities as well as immediate access to existing public transit stops. The construction process will include the

"green" practices of job-site recycling (the goal is to recycle 75% of three or more types of material) and labeling of storm inlets. The building envelope will be constructed to maximize insulation opportunities by providing open-framed exterior corners and pre-pouring gypcrete. The contractor will give priority to materials that can be purchased locally. Finger-jointed wood studs and millwork will be utilized where structurally acceptable. The project will pursue certification through the Environmental Protection Agency and Department of Energy's Energy Star program. This program will require the use of low-flow plumbing fixtures, and high efficiency HVAC system components including mastic duct connections, rigid duct trunk lines and programmable thermostats. The concept of the project is to provide high quality, infill housing to working individuals and households that have previously been relegated to more distant suburban locations in Asheville. As such, the proposed rents have been conceived to be affordable to workforce housing (with incomes of between 80% and 120% of the median household income as adjusted for household size bty the U.S. Dept. of Housing and Urban Development. In fact, on that basis, only the partially-complete town homes will have a rent that exceeds that amount which a workforce household can afford. Additionally, the developer will hold out ten one-bedroom units and ten two-bedroom units, collectively 8% of the new units constructed on the site for lease at the maximum rates prescribed by the Housing Trust Fund.

The subject site is surrounded by retail and multi-family uses to the north and east zoned RIVER and RM-16 respectively, by a hotel to the south zoned RB and I-240 and associated ROW to the west which is not zoned.

The RM-16 residential multi-family high density district was created to permit a full range of high density multi-family housing types along with limited institutional public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

At their September 15, 2008 meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the staff report. At their October 1, 2008, meeting the Planning and Zoning Commission approved this project subject to the conditions outlined in both the Planning & Zoning Commission and TRC staff reports.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use is compatible with the surrounding natural features and topography. The project must comply with all City standards in regards to grading and erosion control. Over five acres of the site will be maintained as open space and tree save areas. The proposed project makes use of a site that was previously slated for residential and commercial development but left largely uncompleted.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed density of 261 dwelling units is consistent with the requirements of the RM-16 zoning district. Further, the current proposal only exceeds the density of the previously approved UV project by 21 units and does not include the commercial element that was initially proposed for the site. Given the proximity of the Ramada Inn Hotel, Wal-Mart shopping center, adjacent apartment complex and available infrastructure in the area staff feels that a multi-family/townhome development of this size and density is appropriate for the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of compatible infill growth supports a key goal and objective as described in both ***The Asheville City Development Plan 2025*** *and the* ***City Council Goals and Vision Plan****). The comprehensive plan identifies affordable housing as one of the most pressing problems facing the City of Asheville. However, the developer has made no specific commitment to include designated affordable units into the project as a whole. The goal of sustainability is achieved by high density, infill development and the reuse of existing infrastructure onsite.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project is anticipated to generate 132 vehicles per hour (26 vph ingress and 106 vph egress) during the morning peak hour and 161 vehicles per hour (105 vph ingress and 56 vph egress) during the afternoon peak hour at full build-out conditions (two years). In addition, the proposed project could generate 1,700 vehicles per day during a typical weekday. Since the anticipated traffic for the subject project is less than the previously approved project which was anticipated to generate 206 vehicles per hour (78 vph ingress and 128 vph egress) during the morning peak hour and 513 vehicles per hour (280 vph ingress and 233 vph egress) during the afternoon peak hour, a revised traffic impact study is not required. It is reasonable to conclude that the subject project would have a minimal impact on the surrounding roadway network including the perimeter intersections.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed development will provide an additional 261 rental units strategically located within proximity to transportation lines, employment centers and services.
- Provides an opportunity for adaptive re-use of an abandoned development site.
- Provides another opportunity to further the City's goal of high density infill development.

Con:

- Conditional rezoning will result in the loss of Urban Village zoning and the opportunity for a mixed use development.

Staff recommends approval of the proposed project and Conditional Zoning request subject to the conditions in the TRC staff report, the standard conditions and the following conditions: (1) A deed restriction must be placed on the designated affordable units limiting any rental increase to no more than 4% per year for the first 10 years and that the units are reserved for qualified households in the form approved by the City Attorney; (2) The applicant must make application for both the lot recombination and rezoning of PIN 9658.19.52.8314 from Urban Village District to Commercial Industrial District before zoning permit issuance; and (3) a plat for the existing townhome units must be submitted for review and approval prior to issuance of any Certificates of Occupancy.

Mr. Chris Eller, representing the developer, explained they will be utilizing an existing abandoned site and bring a workforce housing complex to an area within walking distance of two shopping centers. He explained the need for the two requested modifications. The developer has begun conversations with the owner of the Ramada Inn property regarding the realignment of a road, which will allow them to realign two buildings to salvage the existing infrastructure. They have worked to try to salvage as much of the existing project as possible. He briefly explained the stormwater measures being implemented, supplementing it with best management practices. He felt this will meet the City's goal of high density infill development and urged the Council's approval.

Mr. Russ Davis, President of Terwilliger, Davis and Leadbetter, LLC, (developer), briefed the Council on the history of his company, which develops infill urban multi-family projects. Their mission is to provide housing for workforce families. He recognized that affordable housing and building green is very important in this community. Their project includes both elements. They propose to be certified as an Energy Star project. They will also incorporate, in the products they use and the means by which they construct the project, as many green techniques as they can reasonably include, such as recycling studs, where justified. In addition, they purchase as many products and services as they can locally. They have proposed in their mix 20 units (10 one-bedrooms and 10 two-bedrooms) that they will rent at no higher than the maximum allowed by the Housing Trust Fund.

Mr. Fred English urged Council to support this conditional zoning request.

Mayor Bellamy closed the public hearing at 5:52 p.m.

In response to Councilman Mumpower, Mr. Davis said that when you're an outside developer, you recognize the community's commitment to affordable housing. In addition, his partner is Chairman of the Board for International Habitat for Humanity and they believe that it is part of their responsibility to commit to affordable housing, noting that there was some pressure from the City for this aspect of the project.

Councilwoman Cape encouraged the developer to contact Progress Energy as they are offering new construction incentives.

There was considerable discussion regarding sidewalks. Mr. Eller explained that there are a lot of internal sidewalks, but the street in question is a private drive and not a public street, noting that there is only an approximately 30-foot section on their property.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on information provided in the staff report and as stated in the staff recommendation, Councilman Mumpower moved for the adoption of Ordinance No. 3675, with the modification from the 15 feet front setback standard for 4 of the existing 9 units and the modification to the 3-foot modification to the maximum height of 40 feet to allow for floor to floor ceiling heights of 9 feet, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must meet City of Asheville lighting standards and utilize cut-off or full-cutoff fixtures in order to avoid any light trespass and offensive glare; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project shall undergo final review by the TRC prior to issuance of any required permits; (6) A deed restriction must be placed on the designated affordable units limiting any rental increase to no more than 4% per year for the first 10 years and that the units are reserved for qualified households in the form approved by the City Attorney; (7) The applicant must make application for both the lot recombination and rezoning of PIN 9658.19.52.8314 from Urban Village District to Commercial Industrial District before zoning permit issuance; and (8) a plat for the existing townhome units must be submitted for review and approval prior to issuance of any Certificates of Occupancy. This motion was seconded by Councilman Russell and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY STANDARDS FOR OUTDOOR LIGHTING AND RELOCATE FROM THE STANDARDS AND SPECIFICATIONS MANUAL TO THE UNIFIED DEVELOPMENT ORDINANCE

ORDINANCE NO. 3676 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY STANDARDS FOR OUTDOOR LIGHTING AND RELOCATE FROM THE STANDARDS AND SPECIFICATIONS MANUAL TO THE UNIFIED DEVELOPMENT ORDINANCE

Mayor Bellamy opened the public hearing at 6:08 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to modify standards for outdoor lighting and relocate them from the Standards and Specifications Manual to the Unified Development Ordinance. This public hearing was advertised on November 14 and 21, 2008.

In 2007 the City of Asheville was approached by local representatives of the Dark Skies Association interested in examining the city's outdoor lighting standards to reduce light pollution that was becoming increasingly problematic as a result of growth and development. In addition to this concern, staff had also noted that the existing outdoor lighting standards had been problematic and were confusing to apply and difficult to enforce, resulting in a number of complaints of non-compliant or undesirable lighting conditions throughout Asheville. The interest in examining the existing standards grew as awareness of new technology and practices also became apparent. Volunteers from the community were solicited to participate in a focus group that agreed to meet every other week for approximately 3 months examining the standards, section by section, with additional work conducted via e-mail. The members of the focus group included:

Bob Henderson	Progress Energy
Greg Sterken	Progress Energy
Bernie Arghiere	Dark Skies (Citizen, amateur astronomer)
John Chapelle	Dark Skies (Engineer)

Preston Kendall	Ingle's Markets (Real Estate Project Manager)
Rebecca Manning	Lighting Specialist

In addition to these private citizens, the following City staff also participated in the focus group meetings:

Shannon Tuch	Planning & Development
Gary McDaniel	Planning – Code Enforcement
Shannon Morgan	Planning – Code Enforcement
Alan Dunlap	Asheville Police Department
Richard Grant	Public Works
Ronnie Evans	Building Safety

The existing standards were first adopted as part of the *Standards and Specifications Manual* in 1998; a modest update followed in 2002 and has remained unchanged since that time. The standards were organized by category, which is replicated in the proposed draft with some additions including information regarding applicability, prohibitions and new standards for street lighting. The following is a detailed summary of the changes by category:

1. Removed from the *Standards and Specifications Manual* and added to the *Ordinance* where it will be found and referenced easily.
2. (a) Purpose statement – largely unchanged, rephrased slightly and put in a form more consistent with other sections of the Ordinance.
3. (b) Definitions – largely unchanged, minor modifications to reflect common industry definitions with some new definitions added; some illustrations also added.
4. (c) Light Measurement Technique – unchanged except for calibration of light meter is to occur every 2 years (instead of 1 year).
5. (d) Applicability – added new for clarity but does not create new standards; Previously addressed (somewhat) in the separate non-conformities section and in the city's street lighting policy. Adding this section consolidates the information and helps to identify in what circumstance compliance is required; follows the pattern for other site improvements. Staff is also proposing an alternative (Alternative B) that would reduce the instance where these standards are applied.
6. (e) Replacement of existing lighting fixtures – added new and is specific to lighting. This requires the replacement of a singular fixture with one that is compliant, when not part of a larger lighting system.
7. (f) Exemptions – a minor addition to clarify what types of lighting that will not be regulated.
8. (g) Prohibitions – the Ordinance explicitly states that what is not specifically allowed is therefore prohibited so this addition does not result in additional regulation. This section is added to help communicate what to avoid and to assist with enforcement.
9. (h) General Standards – similar to existing but includes the following changes/additions:
    - Added language requiring top shields for flood lights
    - Allows horizontal variance if side shielded.
    - Added Dusk-to-dawn lights to regulation (common source of complaints)
    - Specifies that wall pack lights must be **full**-cutoff (believe this was the original intent)
    - Added section regarding what to do when faced with glare as a result of topography
10. (i) Street Lighting – added new. Previously, street lighting was not included in the standards but was addressed through policy. Found that resulted in a lot of diversity and inconsistency. Appropriate to have public lighting follow same standards as private development. Due to existing diversity of lighting, this section retains the most flexibility for cut-off and semi-cutoff fixtures, provided other standards can be met.
11. (j) Lighting in Parking lots/Outdoor Areas – moderately changed; removed option for semi-cutoff fixtures but clarified when cut-off fixtures could be considered (decorative,

less than 18'); established recommended minimum lighting levels but restricted the maximum.

- Commission to perform duties of the BoA? This has been removed – all variances will be heard by the BoA, not the Planning & Zoning Commission

12. (k) Lighting for vehicular canopies – unchanged except for requiring full cutoff fixtures when simple "cutoff" fixtures were allowed previously.
    - Introduce policy discussion as to whether an amortization period should be considered for canopies. Staff did not recommend amortization and the Commission did not support this idea. This is not included in the proposed draft.
13. (l) Lighting for outdoor display areas – unchanged except for requiring full cutoff fixtures when basic cutoff fixtures were allowed previously.
14. (m) Lighting for Outdoor Sports Fields/Performance Areas – unchanged except added that shall also meet the standards addressing glare as a result of topography (h)7
15. (n) Covered Parking – unchanged.
16. (o) Lighting of Buildings & Landscaping – this section has been expanded to address common inquiries.
    - Removed "to the extent practicable" and added, "director may waive if proven impractical"
    - Limit intensity of lights directed upward
    - Limits intensity of lights used to light façade and landscaping
    - Adds shields for skylights
17. (p) Signs – unchanged except add language to limit brightness if creates a hazard to motorists and remove "to the extent practicable and whenever possible" (lighting fixtures shall be directed downward rather than upward)
18. (q) Permits – unchanged except added comment that Level III, CZ, and CUP project are evaluated on a case by case basis and could be required to comply to a standard that exceeds the minimums set forth in this ordinance.
19. (r) Nonconformities – expanded to explain ballast failure = fixture failure and also added amortization for dusk to dawn lights. Alternative B would amend this section some to be more lenient.

She then explained that the most significant changes are summarized as follows:

1. **Standards are moved from the *Standards and Specifications Manual* to the *Unified Development Ordinance*** – Staff initially resisted the idea of moving these standards to the UDO; however, an informal poll of design professional and developers appeared to indicate that the UDO was the more commonly referenced document and the document used to understand what site features would need to be brought into compliance as the result of new development.
2. **Street lighting is added** – Previously, street lighting was exempted from regulation which resulted in some moderate to significant light trespass when non-cutoff fixtures were used. Because the City typically takes over the maintenance and cost associated with all street lighting, it was felt that it would be best to include standards in the ordinance so that developers would use fixtures that addressed trespass and require less energy and maintenance. Note: there are a number of exceptions included in these standards to help address the wide variety of fixtures that are currently in place.
3. **Full cut-off and cut-off fixtures required for parking lot/outdoor areas** – This issue was the most heavily discussed issue amongst both the focus group and the Planning & Zoning Commission. While requiring full cut-off fixtures is not particularly problematic with new construction, to bring a non-compliant parking lot into compliance could result in replacement of the system or the addition of new fixtures. Compliance of an existing system would only be required in cases where other extensive site improvements are also required (expansion/renovation over 50% tax value, etc.). Ultimately, it was the consensus of the group that the benefits (controlling trespass, improving quality of light, improving safety) outweighed the cons (costs, limiting fixture choices). Staff is also

providing an alternative where compliance, even when in association with extensive site improvements, would not be required.

4. **Add new standards regulating residential lighting** – Of all lighting related complaints, residential lighting generates the greatest number of the complaints received by code enforcement. Standards requiring replacement of unshielded "dusk-to-dawn" lights within 5 years was easy to achieve through existing Progress Energy leases; other standards would be enforced on a complaint basis.

Applicability of the standards include (1) all new construction (including single-family); (2) complete replacement of existing systems; (3) all new street lighting; (4) expansions exceeding 50% of the pre-expansion floor area*; (5) renovations exceeding 50% of the tax value of the building*; and (5) changes of use to a higher impact*. *Indicates applications exempted under Alternative B.

City Council has recently adopted the following four goals: *sustainable, affordable, green* and *safe*, this report's recommendation most appropriately addresses the goal of *sustainability* by creating standards that are both more current and easier to apply and enforce. Additionally, new LED technology is being developed that will be very easily accommodated and encouraged through the proposed standards which will support the goal of encouraging *green* practices. Lastly, the goal of improved *safety* is also addressed through establishing standards that support better quality light with improved coverage and less glare.

The section of the *Asheville City Development Plan 2025* titled "Quality of Life as an Economic Development Incentive" sets forth several goals designed to balance varied interests to maintain a desirable environment to live, work, and play. A few of the strategies listed include:

- Insure that Asheville's urban planning, zoning, and permitting processes, as created and administered by the City, facilitate sustained and positive development.
- The City's future development will balance economic objectives, social goals, and its natural resources to the benefit of present and future generations.
- Continue to use the implementation team process developed by the Sustainable Economic Development Task Force to regularly review and propose changes to key City documents.

The Planning and Zoning Commission received this draft and introduction from staff at their September 3, 2008, meeting. Due to the technical nature of the ordinance, it was recommended that the Commission take the following month to review the information provided in the staff report and draft ordinance and return to the discussion in October. During this intervening month, staff collected a number of photo examples to share with the Commission at the next meeting and also made deliberate efforts to personally reach out to significant stakeholders in the Community and share this information more directly. All feedback and sharing of information was encouraged in the contact; however, only minor clarifying questions were received with no requests for significant changes. Planning staff directly shared the proposed draft and the summary of changes with the following stakeholders:

- Biltmore Farms
- UNCA
- Asheville City Schools
- Buncombe County Schools
- Mission Hospitals
- Crossland Development, Inc.
- McGill Engineering
- Lewis Real Estate

Specific details of a number of standards were discussed at both meetings; however, the items of greatest interest included understanding the pros and cons of requiring full cut-off features (vs. semi-cutoff, cutoff or non-cutoff), and when to require full compliance. The Commission requested one clarification to when full compliance was required but, otherwise supported the staff recommendation to require full cutoff fixtures for parking lots and outdoor display areas in addition to the other standards (vote was 6:0).

In light of some of the discussion from the Commission meetings, in addition to the general economic discussion occurring amongst the development community at large, staff is also proposing an alternative (Alternative B) for the Council's consideration. This alternative would require only new outdoor lighting in association with new construction, along with the complete replacement of any existing systems, to come into compliance. Unlike the proposed draft, it would exempt all existing systems and conditions, even if there is a proposed renovation or expansion that would normally require full site compliance. This alternative has been generated as a result of staff efforts to examine the UDO and existing standards for options that may provide more freedom to existing property owners/developers to pursue improvements to their properties. Additionally, this option would address the challenges that could be experienced when attempting to bring an existing non-conforming system into compliance.

Pros:

- Consolidates information into one document for easy reference.
- Proposed standards reflect current practices and new technologies; encourages new "green" technologies and practices.
- Reduces potential for land use conflict currently being experienced throughout Asheville.
- Improves the night sky environment.

Cons:

- Will create non-conformities in some situations (however, non-conforming sites will be grandfathered).
- May result in the need for additional fixtures.
- Will reduce luminaire options (although a variety of compliant options exist and the number available is increasing as demand increases).

The City will not be exempt from these standards and will need to replace non-compliant fixtures with compliant ones as the older versions reach their life expectancy; however, this is currently the practice of city departments and would not result in any increased costs.

City staff concurs with the Planning and Zoning Commission and recommends the City Council approve the draft ordinance as proposed. Should the Council, as a policy decision, wish to consider an alternative that affords more relief to existing conditions and developed properties, staff would recommend substituting the language outlined in Alternative B.

Mr. Bernie Arghiere, representing Dark Skies, explained their participation in this ordinance and urged Council to approve the proposed ordinance.

Ms. Rebecca Manning, Lighting Specialist, spoke in support of the proposed ordinance. While Progress Energy provides electricity for lighting, they are not in the fixture business. We should explore expanding the inventory of choices to create a better lighting product for the City and the residents.

Mayor Bellamy closed the public hearing at 6:36 p.m.

Vice-Mayor Davis thanked the members of the focus group for their hard work on this fair ordinance.

From the focus group meetings, Councilwoman Cape learned a lot about glare in terms of public safety and how to light smarter and safer.

Ms. Tuch and Mr. Arghiere responded to various questions/comments from Council, some being, but are not limited to: as part of our overall energy efficiency, has the City's facilities and public spaces been reviewed to see if the lighting is serving useful purposes; has the N.C. Dept. of Transportation been involved in this discussion; has the state adopted a model ordinance and if an when that ordinance is adopted, can our ordinance be amended; is the full cut-off the standard in architectural design or are there a wide variety of fixtures; what does the amount of coverage on the ground depend upon; does Alternate B apply to residential as well; what are the costs to the developer or property owner associated with the recommendations; will these recommendations improve the City's enforcement costs; and does this ordinance help the night sky.

In response to Councilman Mumpower, Ms. Tuch explained Alternative B. Staff feels that it may be more challenging to bring a lighting system into compliance when it doesn't presently comply. With Alternative B, we would have more non-compliant systems out there for a longer period of time. We would allow existing non-compliant systems to remain until such time that they are replaced.

Councilman Mumpower was concerned with the heavy handed government reaching into everyone's lives. He felt that having staff work on a lighting ordinance is a distraction about what the City should be doing to achieve their core services.

Councilwoman Cape explained that government is not just regulatory. We are creating a framework by which other people have access to the same information.

Vice-Mayor Davis felt having the City's public safety people as part of the focus group was a great resource as they explained the ineffectiveness of lighting in the wrong places.

Councilman Russell said that with his experience of the auto insurance industry, intersections not properly lit can be very dangerous with glare. Even though he does not support over regulation, this is a case where public safety benefits are important. .

At Mayor Bellamy's request, Ms. Tuch explained the appeal process said that she would be happy to include language in this ordinance regarding that process.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3676 including the language from Alternative B. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At 7:01 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is 1500 Tunnel Road. The statutory authorization is contained in G.S. 143-318.11(a) (5). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 7:15 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADOPT NEW STANDARDS FOR SIGNING TO ALLOW (1) SIGNS ON BUSES; (2) DIGITAL MARQUEES; AND (3) LED SIGNS

ORDINANCE NO. 3677 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADOPT NEW STANDARDS FOR SIGNING TO ALLOW (1) SIGNS ON BUSES; (2) DIGITAL MARQUEES; AND (3) LED SIGNS

Mayor Bellamy opened the public hearing at 7:20 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to adopt new standards for signing to allow (1) signs on buses; (2) digital marquees; and (3) LED signs. This public hearing was advertised on November 14 and 21, 2008.

It is common practice for municipalities to respond to changes in policies, technology, and development practices by creating new development standards to guide appropriate and sustainable development. Recently, the Planning and Development department was contacted by others outside the department interested in developing new standards for new types of signage. The separate requests are summarized as follows:

1. Expand existing standards for marquee signs to allow Light Emitting Diode (LED) (Asheville Civic Center, Diana Wortham Theater, Asheville Art Museum, etc.). Other standards related to marquee signs remain unchanged.
2. Expand existing standards for changeable copy signs to allow Light Emitting Diode (LED) technology (Sign contractors, various property owners, etc.). Other standards related to changeable copy signs remain unchanged.
3. Clarify standards to allow advertisements on city buses. (Asheville Transit)

While all three requests would all involve changes to the current sign code, the nature of the requests is somewhat different and could be separated and considered individually. In the interest of efficiency, they have been bundled together in this report for a single amendment.

Digital Marquee. It is a common industry practice for entertainment venues to utilize a form of changeable copy sign that advertises different acts or events to inform the general public of important dates, shows, times, etc. New digital LED technology has created less labor intensive message changing options that a number of public event facilities have become interested in. At present, Asheville does not have standards regulating digital signs and would have to create such standards in order to allow this new form of signage as well as establish safeguards that would protect the public welfare from hazards or other nuisances. Digital marquee signs located in the Central Business District (CBD) would have to go to the Downtown Commission for review and content would be limited exclusively to advertising current and scheduled events (no advertisements).

Digital Changeable Copy. Similar to marquees, digital changeable copy signs would allow for the same LED technology to be used to change messages electronically. Unlike marquee signs, changeable copy signs are not allowed in the CBD or other "Urban" zoning districts and typically provide non-entertainment related information that may be of interest to the general public.

Advertisements on city buses. Unlike signs on vehicles, advertisements would be designed to inform the general public of a specific product, service or event while signs on vehicles identify a specific business and is used for business purposes. Recently, the Asheville City Council approved a request from the transit manager to allow advertising on city busses as a

supplemental revenue stream. Before transit staff sold any advertisements, it was recommended that an amendment clarifying the difference between signs and advertisements along with any regulating standards that should be considered be adopted. This amendment is designed to support that recent policy change.

The Planning & Zoning Commission reviewed this report and recommendation at their November 5, 2008, meeting where the amendment was supported and recommended for approval. A significant portion of the discussion addressed the recommendation for the static hold time for the image on a marquee sign. In the interest of being conservative, the Commission recommended a 20 second hold time although there was some discussion over whether this was the most appropriate recommendation with at least two members expressing appreciation for the shorter time frame demonstrated by the Pack Square sign.

The portion of this amendment that addresses digital (LED) marquee signs downtown was also shared with the Downtown Commission (DTC) at their November 14, 2008, meeting. The matter of hold time was the primary issue discussed with the DTC as well where some new benchmarking information was shared with the DTC that the Planning & Zoning Commission had been unaware. Ultimately, the DTC disagreed with the Planning & Zoning Commission and recommended a 6 second hold time in order to effectively display multiple messages without inconveniencing passers-by. In light of the new information and discussion by the two Commissions, staff supports the 6 second hold time which is reflected in this draft ordinance.

City Council has recently adopted the following four goals: *sustainable, affordable, green* and *safe*, this report's recommendation most appropriately addresses the goal of *sustainability* by responding to changes in technology and policy.

Pros (LED signs):

- Accommodates new technology and practices and provides new opportunity for a variety of sign users (not limited to commercial property)
- Proposes safeguards to minimize hazards or nuisances

(Advertisements on buses):

- Supports changes in city policy
- Provides revenue to support transit services

Cons (LED signs):

- Introduces a new aesthetic (could also be viewed as a "Pro")
- Has potential for allowing multiple signs along a single view corridor resulting in a cumulative distraction.

(Advertisements on buses):

- Limits opportunity for this form of revenue to the City of Asheville's Transit Department

Regarding fiscal impact, LED signs – none identified. Signs on city buses - will result in additional revenue to the City's transit department to help offset costs for other transit services.

City staff concurs with the Planning & Zoning Commission and the Downtown Commission and recommends approval of the wording amendment as proposed.

Mr. John Ellis, Director of the Diana Wortham Theatre, spoke in support of this ordinance and supported the 6-second hold time.

Mayor Bellamy closed the public hearing at 7:29 p.m.

Due to the complex motion, it was the consensus of Council to divide the motion and vote on each issue separately.

After a brief discussion initiated by Mayor Bellamy regarding signs on buses, Ms. Tuch explained that this change does not affect any changes to the sign ordinance, other than allowing advertising on City buses. A concern surfaces when a large truck (with advertising) is parked off-site for a long time.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards for signs on buses. This motion was seconded by Vice-Mayor Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

In response to Councilman Newman, City Attorney Oast said that he would investigate whether the sign owners would have a vested right to maintain their signs for a certain length of time.

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards regarding digital marquees. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilwoman Jones moved to amend the Unified Development Ordinance to adopt new standards regarding LED signs. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 109

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-235 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE CO-SPONSORED EVENTS FROM JANUARY 1 – JUNE 20, 2009, AND FISCAL YEAR 2009-10

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of a resolution authorizing the City Manager to approve co-sponsor support of various events.

The City of Asheville co-sponsors events that benefit local non-profit organizations and enhance the community with public events, parades, and festivals.

During the recent Request for Proposals process, 32 organizations applied for co-sponsor support for a total of 148 events from January 1, 2009 – June 30, 2010.

Staff has identified six (6) "Anchor Events": Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green. Anchor Events are those events that have a significant economic impact on the City, have become traditions within the community, and/or are unique in the experience they provide. Additionally, staff proposes waiver of fees and permit costs for the 26 non-anchor events.

This does not support a specific goal, objective, or action item with City Council Strategic Operating Plan. This does support the current Parks, Recreation and Cultural Arts 2015 Comprehensive Master Plan by making organizations aware of the value of their support from the City and by providing clear criteria for support.

Pros:

- Generates money for the local economy.
- Provides additional quality cultural programming and diversity.
- Allows fundraising opportunities for charities.
- Expands and enhances special events and festivals in Asheville.

Cons:

- Events put a strain on City resources such as Police, Fire, Sanitation, Park Maintenance, etc.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

Regarding the fiscal impact, $93,518 of in-kind goods and services for the six anchor events between January 1, 2009 and June 30, 2010 which is a cost savings of approximately $217,000 from Fiscal Year 2008/09 plus $28,482 in waived fees and permit costs. Approval of this program also increases the police overtime allocation for targeted enforcement.

Due to the current economic climate throughout the City of Asheville, staff recommends full support of the six (6) anchor events (Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green) for a total of $93,518 between January 1, 2009 and June 30, 2010.

Staff further recommends waiving permit costs and other fees for the remaining 26 events for a total of $28,482.00 of waived fees.

Councilwoman Jones moved for the adoption of Resolution No. 08-235 approving full support for six anchor events (Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green) for a total of $93,518 between January 1, 2009 and June 30, 2010; and approving waiving permit costs and other fees for the remaining 26 events for a total of $28,482.00 of waived fees. This motion was seconded by Vice-Mayor Davis.

Mayor Bellamy asked for a friendly amendment to take $1,000 out of the Mayor's travel allowance and that it be applied to Memorial and Veteran Day events. Councilwoman Jones and Vice-Mayor Davis accepted the friendly amendment.

When Mayor Bellamy asked for public comment, she received none.

In response to Councilwoman Cape, Ms. Ruggiero said that by only waiving the permits for the 26 remaining events, we will be saving almost $50,000 in overtime police support, almost $20,000 in sanitation, streets and water; and almost $6,000 in fire and rescue support.

In response to Councilwoman Cape, Ms. Ruggiero explained the use of police officers in our co-sponsored events, noting that a lot of factors are taken into consideration when the Police Department determines the amount of officers that need to be present.

Councilman Mumpower felt that there is an absence of fairness in this selective process. He pointed out that this action is distracting us from resolving public safety issues in the City and that is something that only the City can do.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-235, with the $1,000 Mayor travel allotment being transferred for Memorial and Veterans Day activities. City Manager Jackson said that a budget amendment may be necessary to achieve this amendment and if so,

he would bring it back to Council. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 380

B. DISCUSSION OF TRANSPORTATION OF NUCLEAR WASTE ON FEDERAL INTERSTATE SYSTEM THROUGH ASHEVILLE

At 7:58 p.m., Councilman Mumpower requested to be issued due to illness, with the understanding that Council will not vote on this issue at this meeting. Councilwoman Jones moved to excuse Councilman Mumpower. This motion was seconded by Councilman Newman and carried unanimously.

Councilwoman Cape said that this item came before the City Council Planning & Economic Development Committee. She felt this issue is one that the community is interested in and asked that it be brought before the full Council. Essentially, Asheville sits at a central point of transportation of nuclear waste from the northeast, Midwest and middle north to one of the major processing places in South Carolina. We deal with the complexity of the traffic issues through downtown Asheville all the time and there have been some good attempts by communities to have a voice in what is being transported through the community. Even though these things are not coming through our community now at the degree they can and will, this is a good time to get ahead of the issue and state where this community stands. One accident can keep a community out of that area forever and if that happens in the heart of our downtown, it doesn't fit sustainability. As Chair of the Planning & Economic Development Committee, she supports this item.

Mr. Robbie Sweetser, with Common Sense Nuclear Crossroads, provided Council with the following presentation of an ordinance to prohibit the transportation of high level nuclear waste within the City limits.

He introduced that (1) Asheville is an important crossroads for military and industrial shipments of radioactive material; (2) the number of these shipments is likely to increase with completion of I-26; and (3) the ordinance they propose will allow Asheville to have a say in how the non-military part of this traffic develops in the future.

On the road now is (1) low-level enriched uranium products; (2) medical radiological supplies; (3) low-level radioactive waste and probably a variety of military cargoes including plutonium, tritium, and other nuclear weapons; and (4) while there are also of concern from a safety point of view, they do not emit large quantities of radiation, and the ordinance does not apply to them.

We want to prohibit another type of shipment, something we're not dealing with today: (1) substances labeled by the government as spent nuclear fuel and high level nuclear waste; (2) these are up to a million times more radioactive than new nuclear fuel rods, pure uranium, plutonium, etc.; (3) unshielded exposure to spent fuel or high level waste can be fatal in as little as a few seconds; and (4) thanks to action by the N.C. representative to the Cross-Country Transportation Working Group, we believe that none of this material travels by road or rail through WNC at present.

We need to act because (1) government and corporate interests are pushing construction of new nuclear reactors; (2) but 60,000 tons of spent fuel are sitting at power plant sites – the number is increasing by 2,000 tons per year; (3) before committing to a new round of nuclear plant construction, the financial and utility sectors want to see existing waste move out whether for long-term geologic storage or reprocessing, possibly in South Carolina; (4) the National Academy of Sciences estimates that about 9600 rail and 1100 highway shipments are needed to move the first 70,000 tons to long term storage (a) 18 times more than all prior shipments

combined; (5) the Department of Energy (DOE), looking ahead 38 years, predicts a total of 108,500 shipments; (6) if spent fuel is "reprocessed" into new fuel rods, shipments may increase still further because the highly radioactive leftovers, high level waste, will also require long term storage.

Shipping looks like (1) all spent fuel is to be moved in a proposed new cask, the Transportation, Aging, and Disposal (TAD) canister. Prototypes for safety testing aren't expected to be available for a few years; (2) TAD canister specs show a shipping weight of 250,000 pounds; (3) this is a normal weight for heavy rail cars; and (4) on the highway it's a different story. Legal gross weight for a tractor trailer rig is 80,000 pounds. With special permits, much heavier weights are allowable. The TAD canister and a tractor rig built to haul would weigh some 300,000 pounds.

Such shipments should not come through Asheville (1) weather and terrain were the stated reasons why the Cross-Country Transportation Working Group rejected shipping fuel from research reactors through WNC in the late 1990s (a) those transport trucks carry payload casks of only about 25,000 pounds; and (b) that's 10% the weight of a TAD canister; (2) although severe accidents involving hazardous materials are thankfully rare, they do occur; (3) proponents of spent fuel shipments are correct in stating that there have been no radiation-related fatalities in the United States due to transportation mishaps. Prior to Three-Mile Island they also derided the possibility of a meltdown at a United States commercial nuclear reactor; (4) each spent fuel TAD canister could contain more radioactive products than were scattered by the atomic bomb dropped on Hiroshima; (5) in 2003, the state of Nevada projected that a catastrophic release from a TAD-sized canister in an urban area would severely contaminate a 32-square mile area, eventually kill 4,000-28,000 people, and carry a cleanup cost of $13 Billion; and (6) a tiny fraction of such damage would be devastating to Asheville.

We need to act now because (1) history shows that state wishes are seriously considered in the selection of highway routes for spent fuel. Influence over rail routes is more difficult; and (2) the time to act is now, proactively, before federal and industry plans are set in stone.

Examples of other resolutions and ordinances include Los Angles, Ventura, Santa Barbara and San Luis Obispo Counties, and the City of Santa Barbara, California; Denver, Colorado; St. Louis and Kirkwood, Missouri; Philadelphia, Bucks County, and Falls Township, Pennsylvania; Mt. Ranier, Takoma Park and Greenbelt, Maryland; Decatur, Georgia; Amherst, Massachusetts; Beacon and East Fishkill, New York; Gary, Indiana; and Anson Counties and the town of Wadesboro, North Carolina.

In summary, pass the ordinance because (1) here's an opportunity to decrease the chance that a new class of dangerous cargo will travel through Asheville; and (2) take a proactive position, inform the state delegation of strong local opposition to these shipments.

Councilwoman Cape moved to adopt an ordinance to prohibit the transportation of high level nuclear waste within the City limit. The core of what economically drives people to Asheville is being clean and green. There has been plenty precedent by the N.C. Dept. of Transportation to listen to what the community wants on their roads. We are saying that through the middle of our downtown is not an appropriate route for taking this kind of waste.

Councilwoman Jones noted that prior to adoption of an ordinance, staff is allowed input.

City Attorney Oast said that if Council is interested in pursuing an ordinance like the one proposed, he asked for the opportunity to do more research on the question. Transportation of nuclear waste is a fairly heavy regulated activity at the federal level. There are at least two acts that apply to it - the Atomic Energy Act and the Hazardous Waste Transportation Act of 1975 which says specifically that it preempts local ordinances if the local ordinance cannot be complied with or if the local ordinance is an obstacle to carrying out the act. There are ways, however, to

get the preemption limited as to a local ordinance and that may be something Council is interested in looking into. Since we are talking about the transportation occurring exclusively on federal or state highways, he felt that the State would have some interest in the City's position on this. The cases that he has reviewed, but not fully analyzed, indicate that when localities have adopted ordinances of this nature, they have been invalidated as preempted. At least one court has said that certain exceptional circumstances may allow the U.S. Dept. of Transportation to limit the preemptive effect of the Hazardous Waste Transportation Act of 1975 on local ordinances. That would probably require some involvement from the State. If it is the desire of Council to express the opposition of transportation of nuclear waste through Asheville, he felt a resolution would be a more appropriate way to express Council's concerns. He can look into these issues if Council desires.

Councilwoman Cape reiterated that since the federal and state governments are interested in what the community wishes, this is a manner for communities to express their wishes. This action raises our voice that we want to take care of our people and stand up for no nuclear waste through the center of our downtown.

The motion made by Councilwoman Cape was seconded by Councilwoman Jones.

Councilman Newman felt that since our country has nuclear energy, we need a plan to determine what is the appropriate way to manage that dangerous waste long-term. When that plan is developed, it needs to be executed. If that plan involves transportation of waste to get it to the safest place to be kept long-term, that is what we need to do. The people who are charged with looking at these matters need to develop the safest transportation routes that are in the best interest of our country as a whole. Even though he doesn't want any of that nuclear waste through Asheville or to endanger anyone, if coming through Asheville is the best way to do it, he thinks that is what should be done.

Councilwoman Cape withdrew her motion to adopt an ordinance to prohibit the transportation of high level nuclear waste within the City limits and instead directed the City Attorney to prepare a resolution expressing Council's opposition of transportation of high level nuclear waste within the City limits and that it be brought back to Council in January of 2009.

City Attorney Oast said that in drafting a resolution there are certain federal laws that he can make reference to that would recognize that as a vehicle for local communities to express concerns about these kinds of things. However, after his further research, he may come back to Council with a report saying this is not something Council can do. But, based on his limited research, a resolution may be the appropriate vehicle to express Council's concerns, and could result in authority to adopt a local ordinance that was not preempted.

Councilman Russell said that no one wants nuclear waste through their community. He agreed with Councilman Newman and hoped for new technology coming out in the next decade that can handle the nuclear waste.

Mayor Bellamy noted that because there is no motion on the floor, no public comment would be taken. At such time as a resolution is brought before Council for action, if the majority of Council directs the City Attorney to prepare that document, public comment will be taken at that time.

When Mayor Bellamy asked if there was a majority of Council's support to direct the City Attorney to prepare a resolution, she did not receive that majority support. Therefore, the action died.

Mayor Bellamy said that she would be happy to meet with Mr. Sweetser and write a letter on his behalf to our state legislators expressing concern of these kind of shipments being

transported through our community, so when route are determined, that our voice is heard in terms of the condition and design of the roadways in the western part of the state.

C. RESOLUTION NO. 08-236 - RESOLUTION STRONGLY OPPOSING THE FORCED TRANSFER OF SECONDARY ROAD PROGRAM FUNDING TO THE PRIMARY ROAD PROGRAM OR ANY OTHER CONSTRUCTION, IMPROVEMENT AND MAINTENANCE TO LOCAL GOVERNMENT

As a member of the 21st Century Transportation Committee, Mayor Bellamy said that they are seeing a lot of different recommendations come forward that would transfer different responsibilities to cities across North Carolina. She felt this issue needed to be brought to Council's attention as soon as possible. It is the possible transfer of 5,000 miles of roadway throughout North Carolina which are currently overseen by the N.C. Dept. of Transportation to municipalities. This will be an additional $600,000 per year cost to the City of Asheville, with no clear indication of additional funds that would go with this transfer. She asked for Council's support opposing this forced transfer.

Mayor Bellamy then read the resolution as follows: "WHEREAS, the NC General Assembly passed Senate Bill 1513 during the 2007 session; and WHEREAS, HB 1513 allows counties to "Voluntarily" participate in the costs of transportation projects; and WHEREAS, the 21st Century Transportation Committee and the Transportation Oversight Committee are considering recommending the diversion of all Secondary Road Program funding to the Primary Road Program; and WHEREAS, diverting Secondary Road Program funding will leave no funding to pave and improve secondary roads; WHEREAS, the City of Asheville has estimated that it will cost an additional $600,000 per year in local money to maintain these roads; WHEREAS, City Council wishes to actively educate the North Carolina General Assembly about the long term fiscal implications to cities associated with transitioning the maintenance responsibility of secondary roads to municipalities without appropriate funding; WHEREAS, City Council wishes to partner with other League of Municipalities to support their opposition to this recommendation. Now therefore, be it resolved by the City Council of the City of Asheville that; It strongly opposes the transfer of Secondary Road Program funding to the Primary Road Program or any other program that will reduce funding for secondary road construction, improvement, and maintenance. Be it further resolved that (1) It strongly opposes any efforts by the General Assembly or NCDOT to shift any transportation costs formerly paid by the State to counties; (2) It strongly opposes any efforts by the General Assembly to appropriate directly or indirectly local revenues whether property tax, sales tax, or any other local revenue for State transportation programs or any other State Programs; (3) It strongly urges all municipalities to be fully aware and concerned that any invitation to participate in discussions of transportation needs may lead to an indirect appropriation of local funds; (4) It strongly urges all municipalities to contact the North Carolina League of Municipalities and direct it to oppose any efforts to transfer the funding of any State transportation program to local governments; and (5) That a copy of this resolution be sent to every municipality in the State. Be it finally resolved that copies of this resolution are sent to Buncombe County's representatives in the North Carolina General Assembly."

When Mayor Bellamy asked for public comment, she received none.

Councilman Newman moved for the adoption of Resolution No. 08-236. This motion was seconded by Councilman Russell and carried unanimously.

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VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of November 6-20, 2008: Monica Nolan (Traffic Engineering), Michael Garcia (Sanitation), John Davis (Transit Services), Donna Roberts (Transit Services), Sharon Jones (Transit Services), Kendryl Rogers (Traffic Engineering), Enterprise (Traffic Engineering) and Tracy Jefferson (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City was served with a Petition on November 12, 2008, which is generally described as follows: Jason Dean Wyatt vs. City of Asheville and Asheville Police Department. This is a special proceedings matter directing the City to release records of a motor vehicle accident on October 27, 2008. The City was not a party in the accident. This matter will be handled in-house.

The City was served with a Complaint on November 13, 2008, which is generally described as follows: City vs. Karl Lynn Halsey Jr. and New Prime, Inc. d/b/a Prime, Inc. This lawsuit involves property damage to the City's digital sign in excess of $10,000. This matter will be handled in-house.

The City was served with a Complaint on October 20, 2008, which is generally described as follows: KRSA, Inc., vs. Board of Adjustment and the City of Asheville. The nature of the proceeding is a Petition for Writ of Certiorari to reverse decision by the Board of Adjustment denying variance for Petitioner to subdivide real property to create an alternative access subdivision, per the City's subdivision standards. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

In response to Councilman Russell, City Manager Jackson said that Police Chief Hogan is in the process of providing a report to Council on graffiti enforcement efforts on Merrimon Avenue. Mayor Bellamy asked for parents to help by looking around the house for a lot of spray cans that may be used for graffiti.

Mr. Phillip Gray asked to speak on the nuclear waste issue. Mayor Bellamy advised Mr. Gary that when no Council action taken on an item on the printed agenda, public comment is not allowed. In addition, it was not fair to allow him to speak when those who were in attendance during that portion of the meeting left with that understanding. Because there was no public comment allowed during that portion of the meeting and Mr. Gray waited until this informal discussion portion, Councilman Newman moved to waive the rules and allow Mr. Gray to speak. This motion was seconded by Councilwoman Cape, but failed on a 2-4 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilwoman Cape and Councilman Russell voting "no." Mayor Bellamy said that she would be happy to meet with Mr. Gray after the meeting.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:53 p.m.

Magdalen Pattison
CITY CLERK

Jerry W. Bellamy
MAYOR

Tuesday – December 2, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.; and Vacant Council Seat

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. OSOGBO SISTER CITY FROM NIGERIA

Mr. Carroll Hughes, Past President of Asheville Sister Cities Inc., briefed the Council on the six Asheville Sister cities.

Councilwoman Cape then explained the Sister City program and gave a brief report on her visit to Osogbo, Nigeria. She, along with Ms. Valerie Watson-Doost, presented City Council with token gifts for Mayor Bellamy and Council members from the government in Osogbo.

Mayor Bellamy thanked Ms. Watson-Doost for bringing this Sister City to Asheville.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "B" was removed from the Consent Agenda for discussion and/or an individual vote.

A. ORDINANCE NO. 3678 - BUDGET AMENDMENT TO ESTABLISH THE TRAFFIC SAFETY PROJECTS FUND

Summary: The consideration of a budget amendment, in the amount of $100,000, to create an annual Traffic Safety Projects Fund that would be used to design and construct various traffic safety related improvements throughout the City of Asheville, excluding traffic calming projects.

Traffic Safety Projects can be defined as traffic-related projects that when completed would improve public safety and/or efficiency to the various transportation users including vehicles, bicycles, pedestrians, and Transit. Typical projects include new traffic signal installations including pedestrian signals, upgrades to existing traffic signals including pedestrian signals, emergency vehicle pre-emption, new warning flasher installations, upgrades to existing warning flashers, left and right-turn lanes, radii improvements at intersections, bicycle lanes, and pedestrian crossings. The potential projects would have a total estimated cost of $75,000. Projects with a total estimated cost of less than $25,000 are generally funded through the Transportation & Engineering Department's operating budgets. When these types of projects are identified and determined to be needed as a result of a proposed development, the potential improvements are typically funded by private sources. Traffic calming projects would ***not*** be

included since there is a separate policy and an account code already established for traffic calming projects.

These projects are typically identified as Traffic Engineering staff responds to various requests from citizens throughout Asheville. Once identified and reviewed in depth, many of these projects would then move into the design and construction stage if funding was available. According to our records, these types of projects have been approved in the past through the Capital Improvement Program including the widening of Yorkshire Street and emergency vehicle pre-emption at the intersection of College Street and Charlotte Street. Privately funded projects that have been constructed in the past include a double left-turn lane along NC 81 Swannanoa River Road at its intersection with US 74-A (South Tunnel Road) and a new traffic signal at the intersection of River Hills Road and the access for Pier One/Dick's Sporting Goods.

During September 2008 action was taken to approve funds from the General Capital Reserve Fund in the amount of $50,000 to install a traffic signal at the intersection of Fairview Road and Third Street in the Oakley community. This project is a good example of the type of project that should be funded through a Traffic Safety Projects Fund. During the ongoing construction of the Grove Park Inn Traffic Calming Project, a traffic signal was determined to be warranted at the intersection of Charlotte Street and Edwin Place. This project is another good example of the type of project that should be funded by the subject means.

This action complies with the City Council 2008-09 Strategic Operating Plan by protecting the traveling public by making traffic safety related improvements to the existing street infra-structure including intersections.

Pro:

- This action would provide a means to address traffic-related safety issues within a timely manner thereby reducing potential risk to the City.

Cons:

- This action would reduce the total amount of Capital Improvement Program Funds available on an annual basis.
- The total estimated annual cost is $100,000.

The total estimated annual cost is $100,000. $48,000 is proposed to come from savings from the Yorkshire Street widening project and $52,000 from the General Capital Reserve Fund. Currently, the balance in the General Capital Reserve Fund is $238,316 and after reducing it by the proposed amount, the new balance would be $186,316. Funds would only be spent on an as-needed basis as the various needs are identified.

Staff is carefully monitoring the approved budgets of the New Haw Creek Road sidewalk project and the Grove Park Inn Traffic Calming project to identify possible savings. At this time, staff is confident that after all of the expenses for both projects are reconciled, we will be able to identify $52,000 in savings that could then be transferred back to the General Capital Reserve Fund.

Staff recommends that City Council approve a budget amendment in the amount of $100,000 to create an annual Traffic Safety Projects Fund that would be used to design and install various traffic safety related improvements throughout the City of Asheville, excluding traffic calming projects.

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B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS FOR THE BUSINESS TECHNOLOGY IMPROVEMENT PROJECT WITH TYLER TECHNOLOGIES, INC., AS WELL AS OTHER

VENDORS FOR A CITY-WIDE SOFTWARE MIGRATION AND IMPLEMENTATION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-237 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS FOR THE BUSINESS TECHNOLOGY IMPROVEMENT PROJECT WITH TYLER TECHNOLOGIES, INC., AS WELL AS OTHER VENDORS FOR A CITY-WIDE SOFTWARE MIGRATION AND IMPLEMENTATION

Summary: The consideration of a resolution authorizing the City Manager to enter into contracts for the Business Technology Improvement Project (BTIP) with Tyler Technologies, Inc, as well as other vendors in total amounts not to exceed $2,000,000 for a city-wide software migration and implementation.

Review:

- During a financing discussion with Council on June 10, 2008, staff also discussed benefits and planned efficiency improvements
- Council approved a budget of $2,000,000 and allowed staff to proceed
- As part of Request for Proposals (RFP) process, staff has made the decision to enter into negotiations with Tyler Technologies

Pros:

- Prioritize a reasonable level of business technology as a means to make staff operations more efficient
- Meets multiple city council objectives
- Enhances ability to engage in process re-engineering

Con:

- Any software implementation causes some degree of organizational turbulence during implementation

This action ties into Council's "Green" goal by implementation of processes (i.e. contracting) that will require significantly less paper. It also ties into Council's "Sustainable" goal in several meaningful ways: (1) This project will better enable staff to fulfill the specific action item of "Ensure financial accountability by matching resources with strategic initiatives," specifically enhancing systems so that "creating meaningful performance measures" can be better accomplished; (2) In the same manner, the specific action item of "Strengthen efforts to create measurable goals, accountabilities, and outcomes for all city policies and operations" will also be enhanced by this project; and (3) This project will provide a foundational system so that the rollout of a modern development services system is possible, allowing staff to pursue the specific action item of "Reform and streamline the development review process to improve the ease and

efficiency of the customer's experience without compromising the quality of standards or other strategic goals (affordability, environment, etc.)" through deployment of better, greener, more online technology.

Fiscal Impact:

- Per the June 10, 2008, Council meeting, financing has been secured at $2,000,000
- RFP bids came in at up to $3.1M, even without taking into account supplementary costs such as hardware
- Of the qualified bids, the Tyler bid was the lowest
- Staff's original estimates included contingency, but current estimates of all relevant project costs are at $2M without contingency

Typically, these types of projects have 10-20% budgeted for contingency. Staff would like to make Council aware that, based on bids received, we do not have contingency budgeted.

We will keep Council updated in quarterly reports as to cash flows and project success, and make significant effort to closely manage the project to avoid change orders.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contracts for the Business Technology Improvement Project (BTIP) with Tyler Technologies, Inc, as well as other vendors in total amounts not to exceed $2,000,000 for a city-wide software migration and implementation.

Information Services Director Jonathan Feldman responded to various questions from Councilman Mumpower, some being, but are not limited to: is the timing for this venture ideal under current and anticipated budget restraints; in the face of the current economic realities may we not anticipate a reduction in the cost of technology upgrade services and software; since the $2 Million budget does not factor in normal contingency cost considerations of 10-20%, are there are other costs (hardware, staff training time, etc.) that will represent a future budget consideration around this system upgrade; and can we ask staff to go back to the vendor and explore renegotiation of the contract.

Mr. Feldman explained why this project is important now, noting the following examples of how this project is important to organizational re-engineering: (1) we anticipate that paper usage will decrease by at least 80,000 sheets per year; (2) finance is expected to save 900+ hours/year in increased efficiencies; (3) utility billing anticipated to save 1100+ hours/year in increased efficiency; (4) employee self-service functions are expected to save 700+ hours/year across the organization; and (5) contract tracking will become an automated and accountable process and is expected to significantly improve current paper and inter-office mail based processes.

Chief Financial Officer Ben Durant also responded to questions from Council regarding debt service; is this a sound long-term investment; and what is the dollar figure associated with the number of man hours saved.

Mayor Bellamy supported the action noting the following software purchases are sound core and central components for the City: general ledger and financial reporting; budgeting; fixed assets; project and grant management; payroll & personnel; miscellaneous billing & accounts receivable; utility billing; cash receipting; purchasing and requisitions; inventory management; contract management; accounts payable; bank reconciliation; land management & GIS integration; job cost/work order; fleet & equipment; facilities management; parking tickets; and business licenses/miscellaneous permitting. She did ask, however, that as negotiations take place, that Mr. Feldman try to get a lower rate.

Councilman Newman moved for the adoption of Resolution No. 08-237. This motion was seconded by Vice-Mayor Davis and carried on a 4-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 385

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING A PORTION OF WALLACK STREET

Mayor Bellamy opened the public hearing at 5:42 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution permanently closing a portion of Wallack Street. This public hearing was advertised on October 31, November 7, 14 and 21, 2008.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Patsy Brison, representing property owners Asheville-Buncombe Community Christian Ministry Inc. and Robert and Joan Ledford, have requested the City of Asheville to permanently close an unopened portion of Wallack Street.

He has received two communications from Bill Goacher, owner of 202 Asheland Avenue, and Beacon Properties, owner of 200 Asheland Avenue, who support the closure.

The Greenway Commission reviewed the closure of the unopened portion of Wallack Street at their meeting on November 13, 2008, and strongly advised to deny approval of the Wallack Street closure as part of this section is on the Greenway Master Plan.

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- The closure will impact the greenway master plan.

There will be no fiscal impact related to this closure.

In consideration of the impact to the Greenway Master Plan and the recommendation from the Greenway Commission, City staff cannot support the request for the closing of a portion of Wallack Street.

Rev. Scott Rogers, Executive Director of the Asheville-Buncombe Community Christian Ministry, spoke in support of the closure. He said that they were not aware of the meeting with the Greenway Commission and didn't have the opportunity to explain the reasoning behind the closure. He explained that due to the topography of the bank, a greenway is not appropriate for that area. He said the reason for the street closing request is so they can clean up their boundary lines since the property is for sale. He suggested that the Greenway Commission didn't have all the relevant information on the request when they voted to recommend denial.

Mayor Bellamy closed the public hearing at 5:47 p.m.

Vice-Mayor Davis, who was very familiar with the site, explained why he didn't think the greenway would be placed in that area, and supported the closing.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Davis moved to permanently close a portion of Wallack Street. This motion was seconded by Councilman Mumpower.

Councilwoman Cape could not support the motion to close but supported sending the request back to the Greenway Commission for further evaluation, with the petitioners present. She felt that greenways typically reduce crime as they invite more people to walk on them. The Greenway Commission has been tasked with the responsibility of reviewing the Greenway Master Plan and after hearing the petitioner's request, they may recommend the Plan be altered or that the area still remain on the Plan.

Councilman Newman agreed it may be difficult for a greenway to be constructed on that property but we do rely upon the Greenway Commission to give Council recommendations. He would support sending this back to the Greenway Commission and that the petitioners be given the opportunity to explain their request.

Upon inquiry of Vice-Mayor Davis, Parks & Recreation Director Roderick Simmons stated that the Greenway Commission did not walk or visit the site, but looked at the Greenway Master Plan and once it was determined that it was on the Plan, they recommended denial.

Councilman Mumpower felt the Greenway Commission did not do their due diligence in this action. The topography and realism of the property far exceeds the potential of a greenway.

Mayor Bellamy asked that the Greenway Commission be advised that City Council very much respects and honors their opinions, and may not always agree with them, but that they consider all factors when a request is brought to them, not just checking to see if the property is on the Greenway Master Plan.

Councilwoman Cape agreed with Mayor Bellamy in that the role of the Greenway Commission has a great impact on our community as we look for alternative routes to move around the City.

Vice-Mayor Davis withdrew his motion to permanently close a portion of Wallack Street. He then moved to continue this matter until January 27, 2009, in order to give the Greenway Commission an opportunity for further evaluation of the request with the petitioners being given an opportunity to be heard at the meeting. This motion was seconded by Councilwoman Cape and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS CONGRESS AT GASTON, LOCATED AT CONGRESS STREET, GASTON STREET AND CHOCTAW STREET, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A ONE MULTI-FAMILY BUILDING WITH 27 UNITS

ORDINANCE NO. 3679 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY CONGRESS AT GASTON, LOCATED AT CONGRESS STREET, GASTON STREET AND CHOCTAW STREET, FROM RS-8 RESIDENTIAL

SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A ONE MULTI-FAMILY BUILDING WITH 27 UNITS

Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone the project identified as Congress at Gaston, located on Congress Street, Gaston Street and Choctaw Street, from RS-8 Residential Single-Family High Density District to Urban Residential District/Conditional Zoning for the development of a one multi-family building with 27 units. This public hearing was advertised on November 21 and 28, 2008.

She said the subject property, currently owned by the City of Asheville, consists of .94 acres in the RS-8 zoning district. It is located within the city limits at the corner of Congress and Gaston Streets in the East Riverside community. The property is under negotiation for purchase by Mountain Housing Opportunities in accordance with the City's goal of making city-owned land available for development where appropriate and in accordance with other goals of the City. The transfer of property will come before Council for consideration at a later date.

The property is part of a larger parcel (5.92 acres total) that is currently vacant and divided by the Town Branch stream valley. The property was acquired by the City as part of the East Riverside Redevelopment Plan implementation in the 1960s and 1970s.

Directly to the west and north of the subject property are the residual parts of the city-owned property zoned RS-8 and Office II District (OII) . Further west, across the Town Branch stream valley and taking access from South French Broad Avenue, is a property in the OII zone containing medical offices. Properties to the north, above Choctaw Street, are also zoned RS-8 (Residential Single-Family High Density District) and contain single-family homes or are vacant. To the west, is another city-owned property zoned RS-8 containing public tennis courts. To the immediate south is a property zoned RM8 containing a residential quadruplex.

The proposal, by Mountain Housing Opportunities, is for a single building containing 27 dwelling units. The building is proposed to have an 8,133 square foot footprint and be 31 feet tall (three stories with covered parking underneath). In addition to the covered parking, surface parking and the creation of on-street parking are also shown in the plans. The developer is proposing a mix of one-, two-, and three-bedroom units for a total residential density of 28.72 units per acre. Thirty (30%) percent or 8 units are proposed to meet the City's requirements for affordable housing. Access to the parking areas is off of Congress Street. The buildings are being designed to meet "Healthy Built Homes" standards. Town Branch runs northwest of the property on which the development is proposed. This stream corridor is proposed for greenway development in the City's Greenway Master Plan. Discussions are underway with the developer concerning the development of the greenway in this area.

The applicant sought two modifications from the City's development standards for this project.

- The first request was for a design variance concerning the entrance spacing requirements in Section 7-8-25(f)(12)b. of the Unified Development Ordinance (UDO). This variance would waive the requirement that all buildings in the Urban Residential District include a well-defined, operable entrance at regular intervals not exceeding 45 feet on each primary façade. Due to the topography of the site, the need for extended slope for the required handicapped ramping at the additional entrances would create a problem with access to the sidewalk. This variance had to be granted by the Planning and Zoning Commission (Sec. 7-8-25(f)(12)g.). This variance was unanimously approved by the Commission their November 5, 2008, meeting.

- The second modification seeks allowance for two of the required street trees along Congress to be spaced more than sixty-five feet apart (proposed to be seventy feet apart). This modification is necessitated by the location of an existing sewer line, the entrance into the development, and the setback requirements in URD. Council must approve this modification.

Staff is supportive of both of these modifications.

The larger parcel (5.92 acres) is split zoned; part of the property is RS-8 and the other portion is zoned Office II. The City of Asheville Planning staff is initiating a rezoning of the remaining RS-8 portion of the lot to URD. This process is running concurrently with the conditional zoning request.

At a meeting on October 20, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Asheville Planning and Zoning Commission. The developer has resubmitted since that time, addressing the bulk of the conditions.

This conditional zoning request was recommended to City Council for approval by a 5-0 vote of the Asheville Planning and Zoning Commission at their meeting on November 5, 2008. The only speakers on this matter were staff and representatives of the developer.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet all the technical standards set forth in the City's UDO and Standards and Specifications manual. The developer has been working closely with City staff to ensure compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The developer, in proposing a URD development, has worked, in designing this project, with the topography of the land which slopes down approximately 25 feet toward Town Branch. The developer is in discussions with the Parks and Recreation Department concerning the development of the greenway in this area.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Although in a predominately single-family residential area, the development is located directly opposite tennis courts and a multi-family building. It is a small project (27 units) in an area with large streets so traffic should not be greatly impacted by the development.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   Although the project presents a greater density than development in the immediate area, it is in close proximity to numerous office, institutional, and multi-family developments. The project is designed so that balconies are facing the street (with parking in the rear) to provide a relationship between the dwellings and surrounding properties. The proposed

development meets the stated purpose of the Urban Residential District in complementing "existing residential neighborhoods by providing an improved diversity of housing types, scale, affordability, and character in areas where they can best be served....."

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed use supports the 2025 goals and vision as follows:
   - Increasing the supply of affordable housing.
   - Promoting compatible infill development.
   - Making surplus City-owned land available for development.
   - Permitting and encouraging transit supportive density (8-16 units per acre minimum) at transit nodes.
   - Supporting green building.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is located along Transit Route 18 and on streets with large rights-of-way that lead to several major roadways. Infrastructure and services are available to serve this development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Because the development is small (27 units), a traffic impact study was not warranted. As previously stated, the development is proposed to be located on streets with large rights-of-way that lead to several major roadways.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The project offers affordable units, aligning with City Council's goals.
- The proposed development provides housing in a transit-served area near numerous institutional and employment centers in Asheville.
- Higher density infill development furthers the goals and objectives of the comprehensive plan.
- The project takes surplus City-owned land and puts it back on the tax rolls.
- The project is being designed to meet "Healthy Built Homes" standards.
- Helps to further the City's greenway master plan.

Con:
- The project presents a density that is greater than found in the immediate vicinity.

Planning Staff and the Asheville Planning and Zoning Commission recommend this conditional zoning application to City Council. This conditional zoning request was recommended to City Council for approval by a 5-0 vote of the Asheville Planning and Zoning Commission at their meeting on November 5, 2008. At that meeting, the Commission approved a variance for this project, allowing fewer entrances on the façade facing Gaston Street than are required by the ordinance.

Mr. Mike Vance, representing Mountain Housing Opportunities, said that this is a first phase of a multi-year project which started over 1.5 years ago. They went through a large

neighborhood process in the summer of 2006 and this is the result. There will be a mix of 1, 2 and 3 bedroom condominiums. They have committed to 30% affordable, but their target numbers are that 11 of those 27 will be affordable by City standards and will also be sold to families with incomes below 80% of area median income. The price ranges proposed are from $125,000 up to the low $200,000, with a mix of affordable and market rate units. They have also been working with the plans for a future greenway. He noted that location is key as it follows their model of placing homes near services and employment. He asked for Council's support as they are continuing their goals of sustainable development.

Mayor Bellamy closed the public hearing at 6:11p.m.

Mr. Vance and Ms. Jane Mathews, architect for the project, responded to Councilwoman Cape regarding the community input into the project.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3679, to conditionally zone the project identified as Congress at Gaston, located on Congress Street, Gaston Street and Choctaw Street, from RS-8 Residential Single-Family High Density District to Urban Residential District/Conditional Zoning for the development of a one multi-family building with 27 units, subject to the landscape modification requested, the design variance, and subject to the following conditions: (1) Uses shall be limited to the 27 residential units proposed; (2) The project shall include 30% (8) units complying with the City of Asheville's affordable housing standards; (3) The project will be designed and constructed to meet Healthy Built Homes standards; (4) The project shall comply with all conditions outlined in the TRC staff report; (5) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (6) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (7) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (8) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 115

C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON CONGRESS STREET AT GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

ORDINANCE NO. 3680 - ORDINANCE TO REZONE PROPERTY LOCATED ON CONGRESS STREET AT GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN RESIDENTIAL DISTRICT

Mayor Bellamy opened the public hearing at 6:16 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property located on Congress Street at Gaston Street from RS-8 Residential Single-Family High Density District to Urban Residential District (URD). This public hearing was advertised on November 21 and 28, 2008.

Ms. Cogburn said that the 3.65 acre subject property, owned by the City of Asheville, is located off of Choctaw, Gaston, and Congress Streets in the East Riverside neighborhood. It is part of a larger parcel of 5.92 acres that is split zoned (RS-8 and Office II). The property, currently vacant, was acquired by the City as part of the East Riverside Redevelopment Plan implementation in the 1960s and 1970s. Another .94 acres part of this property is the subject of a separate conditional rezoning under concurrent review.

The property is bordered on two sides by property that is zoned RS-8 and on the others by property zoned RM-8 and Office II. The land uses in the area are varied. To the north is an area largely comprised of single-family homes. To the west are offices and vacant land. Offices are found immediately south of the property as well. To the east, is additional city-owned property containing public tennis courts and vacant land.

Planning and Development Staff initiated this rezoning after receiving application for a conditional rezoning to URD for the .94 acre portion of the parcel. The staff believes that that this City-owned property is a good location for development meeting the goals of the Urban Residential District. The stated purpose of the URD is "to complement existing residential neighborhoods by providing an improved diversity of housing types, scale, affordability, and character in areas where they can best be served by City services and infrastructure." Rezoning this prior to receiving a development application requiring conditional zoning makes the process simpler for the applicant without jeopardizing City oversight of the project. City review of any proposed project would be a part of any sale. It should be noted, however, that only a small portion of this property is actually realistically developable to any extent. The site is bisected by the fairly steep stream valley of Town Branch, leaving two separated developable areas.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed zoning would provide land for dense, infill housing in a transit-served, mixed-use area near numerous institutional and employment centers in Asheville.
- Higher density infill development furthers the goals and objectives of the comprehensive plan.
- Rezoning the property could make the property more attractive for purchase, thus taking surplus City-owned land and putting it back on the tax rolls.

Con:

- Although the surrounding area contains a mix of uses, the density allowed in URD is greater than what is found in the immediate vicinity of this property.

This rezoning petition was recommended for approval by a 6-0 vote of the Asheville Planning and Zoning Commission. No one spoke on the matter.

The Planning Staff and the Asheville Planning and Zoning Commission both recommend that this rezoning be approved.

Mayor Bellamy closed the public hearing at 6:18 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3680. This motion was seconded by Councilwoman Cape and carried unanimously.

At Mayor Bellamy's request, City Attorney Oast said that in the future, when appropriate, the development agreement would be brought before Council prior to the project consideration.

ORDINANCE BOOK NO. 25 – PAGE 121

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REFLECT THE CURRENT PRACTICES AND RESPONSIBILITIES OF THE TECHNICAL REVIEW COMMITTEE

ORDINANCE NO. 3681 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REFLECT THE CURRENT PRACTICES AND RESPONSIBILITIES OF THE TECHNICAL REVIEW COMMITTEE

Mayor Bellamy opened the public hearing at 6:19 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to reflect the current practices and responsibilities of the Technical Review Committee (TRC). This public hearing was advertised on November 21 and 28, 2008.

Ms. Hamel said that Article III of the UDO as it relates to the duties and responsibilities of decision making bodies has remained virtually unchanged since the UDO was adopted in 1997. This amendment will modify the UDO to reflect the current practices and responsibilities of the TRC as they have evolved in practice.

In August 2008, the TRC adopted a new and improved set of Rules of Procedure that reflects a number of improvements established for projects and applications being reviewed by the Committee. This amendment will bring the UDO into accordance with the recently adopted Rules of Procedure. The following items provide a summary of the proposed changes:

- Updating the types of development proposals and applications the committee is responsible for reviewing;
- Clarifying the type of action required by the committee for specific types of development review (approval, denial, or recommendation to another advisory body);
- Updating membership to reflect the current structure of the committee;
- Updating the meetings schedule to reflect the number of meetings held per month in accordance with the current meeting schedule (from one meeting per month to two meetings per month)

This ordinance supports the *Asheville City Development 2025 Plan* by improving communication and coordination for a development review process that requires public participation. Additionally, the ordinance supports the *Asheville City Council's Goals and Vision* by completing UDO amendments to improve clarity and address community goals.

Pros:

- The amendment brings the UDO in line with the established Rules of Procedure adopted by the TRC
- Reflects current procedure and practices of the TRC
- Simplifies the information to improve clarity and comprehension

Con:

- None identified

City staff recommends approval of the code amendment as proposed.

Mayor Bellamy closed the public hearing at 6:20 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3681. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 124

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING ANIMAL CEMETERIES AND ANIMAL CREMATORIES

Mayor Bellamy opened the public hearing at 6:21 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) concerning animal cemeteries and animal crematories. This public hearing was advertised on November 21 and 28, 2008.

Ms. Cogburn said that the Planning and Development Department recently received an inquiry about the development of a pet cemetery and crematory. Presently, the UDO contains no reference to animal cemeteries or crematories. As a result, such uses would be allowed only in the River District, where all uses are permitted unless specifically prohibited. Staff feels that the ordinance should address such uses specifically, and, therefore, proposes the following amendment to the UDO to establish fair and reasonable standards for such uses in the City of Asheville's zoning jurisdiction. In drafting this ordinance, staff conducted research on animal cemetery and crematory operations and regulations and also looked at ordinances from other communities. The proposed ordinance changes:

- Establish definitions for "animal cemeteries" and "animal crematories."
- Allow animal cemeteries as a Use by Right Subject to Special Requirements in all residential districts, and the CBI, CBII, Institutional, HB, RB, River, CBD, CI, and Industrial Districts. These are the same districts that allow cemeteries for humans. The special requirements would require that the cemetery be operated by an incorporated entity and that no internment occur within ten (10) feet of a property line or within a required setback, whichever is greater.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the Institutional, HB, RB, and River Districts. The conditions would address emissions, other potential nuisances, and buffering, and would require that the use be accessory to an animal cemetery, veterinary clinic, or animal shelter.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the CI and other Industrial Districts. The conditions would address compliance with applicable state and federal regulations.

This ordinance was recommended for approval by a 6-0 vote of the Asheville Planning and Zoning Commission. No one spoke on the matter.

This ordinance supports the *Asheville City Development Plan 2025* goal of reviewing and modifying development regulations to be responsive to technological and social changes and economic development in the community.

Pros:

- Adds language to address uses not presently referenced in the UDO.

- Adds fair and reasonable standards for the establishment of animal cemeteries and crematories.

Con:

- Objections may be raised to allowing animal cemeteries and crematories in the City of Asheville.

City staff and the Asheville Planning and Zoning Commission recommend that City Council adopt the ordinance.

Mayor Bellamy closed the public hearing at 6:23 p.m.

Councilman Newman moved to approve an amendment to the Unified Development Ordinance to add development standards for animal cemeteries and crematories. This motion was seconded by Councilman Mumpower.

Due to a concern raised by Vice-Mayor Davis regarding the allowance of animal cemeteries as a Use by Right Subject to Special Requirements in all residential districts and a concern raised by Councilwoman Cape regarding clarification of the definition of animal cemeteries, Councilman Newman withdrew his motion to approve, and moved to continue this matter until January 13, 2009. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. INTERVIEW DISCUSSION FOR CITY COUNCIL VACANCY

Mayor Bellamy explained the interview process and announced that public comment would not only be taken at this meeting, but also prior to the actual voting on the vacant seat at the December 9, 2008, meeting.

Mr. William Meredith felt the process should have been a special election than appointment. He appreciated Council's consideration of his application.

It was the consensus of Council to narrow the field of applicants to six 30-minute interviews.

Mayor Bellamy thanked all the candidates for their response to the City Council vacancy. Applicants include: Catherine Alter; Charles W. Archerd; Malcolm F. Arthur; Randall Barnett; Dana W. Bierce; Keith V. Blankenship; Cecil Bothwell; Jenny G. Bowen; Brian Bradley; Bill Branyon; Claude Jeffery Chandler; Anthony Alan Coxie; Abigail Emison; Sylvia E. Farrington; Clifford O. Feingold, DDS; Linda S. Fowler; Bryan Freeborn; Phillip H. Gray; Lisa-Gaye Hall; Spencer Ellis Hardaway; Phillip Hardin; Ed Hay; Rebecca Hecht; Jan Howard; Charlie Hume; George E. Keller; Michael R. Kerr; Kathryn Liss; Esther Elizabeth Manheimer; Jay Marino; Catherine S. Martin; Barber H. Melton; William C. Meredith; Kelly Miller; Suzanne Molloy; Duane Nix; John M. Noce; James W. Oglesby; John Quinn; Jason Rector; Richard Sandoval; David Schulman; Gordon D. Smith; Glenda P. Weinert; Linda Carol Williams; Brian P. Woods; and John R. Yarnall.

Each Council member (Councilman Russell submitted his names prior to the meeting) submitted their names to be considered for an interview, with the top six being interviewed. After tallying the votes, the following resulted: Charles W. Archerd (3 votes); Sylvia E. Farrington (4 votes); Clifford O. Feingold (1 vote); Linda S. Fowler (2 votes); Bryan Freeborn (2 votes); Spencer Ellis Hardaway (2 votes); Ed Hay (1 vote); Charlie Hume (4 votes); George Keller (1 vote); Esther

Manheimer (4 votes); Jay Marino (1 vote); Kelly Miller (4 votes); Gordon D. Smith (1 vote); Linda Carol Williams (2 votes) and Brian P. Woods (1 vote). After a brief discussion, it was the consensus of Council to narrow the field of interview applicants to the following 5 that had received either 3 or 4 votes: Charles W. Archerd, Sylvia E. Farrington, Charlie Hume, Esther Manheimer and Kelly Miller.

On behalf of City Council, Mayor Bellamy thanked all the individuals who applied for the position. From reviewing the applications, she noted we have some outstanding individuals in our community who are willing to serve.

It was the consensus that during the appointment process of the meeting on December 9, 2008, City Council members will have the opportunity to express their preference prior to a motion being made.

Mayor Bellamy said that all pre-arranged 30-minute interviews (with a 5 minute break between each) would be held beginning at 1:40 p.m. on Tuesday, December 9, 2008, in the Council Chamber. She urged the public to attend. In addition, all interviews would be live on Charter Channel 11.

Mayor Bellamy said that the City's Charter provides that in the event a seat becomes vacant that this body decides who will fill that seat. There have been times where Council has chosen names without any application process. There have also been times where Council has chosen the next highest vote-getter from the last election. We are in our statutory authority to fill the vacancy in this way. We have tried to be as transparent as possible, with applications being submitted to the media or public daily as they came in. As soon as the deadline closed, we placed on our website all applications and supporting materials. We have an open process and want to work and move forward together.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. William Meredith asked Council to consider a rule in the future where a current seated Council member must fulfill their term prior to running for a different office.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 6:52 p.m.

Magdalen Bunneson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – December 9, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vacant Council Seat

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized the following City employees who were instrumental in the City receiving the International Economic Development Council New Media Award: Stephanie Monson, Jason Mann, Blake Esselstyn, and David Michelson. He then explained how Asheville was recognized for a new economic development initiative. The City of Asheville city cross-departmental team developed the award winning new application. The new tool that is designed to assist new and existing businesses make informed business location decisions. Asheville was a clear standout with mapAsheville-Priority Places, an interactive mapping analysis application designed to strengthen quality economic development investment in the City. MapAsheville-Priority Places provides users the ability to search and analyze key location factors based on priorities established by the user. It also provides tapestry reports of demographic information on the selected priority places. The application is part of the mapAsheville suite of GIS-based tools designed to provide information about the City. Other applications in mapAsheville include Crime Mapper, which provides access to crime related information and statistics by area; Development Mapper, which provides increased access to information concerning large-scale development activities in the City; and Asheville's GIS application, which provides a streamlined interface for basic users, as well as tools for direct access to the advanced GIS user's interface.

City Manager Jackson recognized the following City employees who completed in the Worldwide Firefighter Relay Competition. In the Women's Relay - Charley Cox, Ruth Olson, Joy Ponder, Karen Shuart and Kelley Webb. In the Men's Relay - Rick Miller, David Sauer, Garry Shackelford and Jason Worley. For a whole season, 9 local Asheville firefighters have been training and competing in nearby Scott FF Combat Challenge events in hopes to qualify to attend the World Competition in Las Vegas. Their hard work paid off and both a women's relay team and a men's relay team competed this past week in the world competition. Both teams ran qualifying times to move forward to the final competition held on Saturday, November 15th, 2008. The men's team advanced to the semi-final rounds, finishing with an honorable time of 1:27. The women's team advanced into the finals and respectfully finished second in the world just .63 seconds slower then the first place team. The whole competition will air on Versus channel in January 2009 including the final race of our Asheville women's relay team bringing home the silver. The teams were sponsored by a partnership between Asheville Fire and Rescue, the Asheville Firefighters Association, and private businesses coupled with multiple fundraisers. We

are proud of the recognition for Asheville that these local firefighters presented at such an impressive event.

City Manager Jackson then noted that the Asheville Police Department was presented to the Commission on Accreditation for Law Enforcement Agencies, Inc. on Saturday, December 6 for review of their on-site visit by assessors last August. Based upon the August on-site they had the best accreditation report and on-site visit since we began this process and were first accredited in 1994. The Commission had nothing but praise for the Asheville Police Department and voted to reaccredit us for another three years.

Police Chief Bill Hogan said that seeking accreditation is a challenging, demanding, stressful, and time consuming process that he believed is worth the effort because it proves to this community and other law enforcement agencies that we meet all the required national standards to become one of the select few agencies to receive this certification and distinction. In the United States there are 16,000+ law enforcement agencies and Asheville is one of the less than 800 national and international law enforcement organizations that have met the demanding standards of excellence to receive the distinction of accreditation. This recognition is a direct reflection of each Police Department employee and their personal commitment to the Guiding Principles and adherence to Police Department and City policies. A number of Police Department employees had direct contact with the assessors during their visit in August and they impressed them with their knowledge and dedication to our profession and this City.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", and "E" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 25, 2008, AND THE FORMAL MEETING HELD ON DECEMBER 2, 2008

Councilwoman Cape asked that the November 25, 2008, minutes be approved with the inclusion of the word "not" in the following sentence regarding discussion of transportation of nuclear waste: "...We are saying that through the middle of our downtown is **not** an appropriate route for taking this kind of waste."

B. RESOLUTION NO. 08-238 – RESOLUTION AMENDING THE 2008 CITY COUNCIL MEETING SCHEDULE TO DELETE THE DECEMBER 16, 2008, WORKSESSION

RESOLUTION BOOK NO. 31 – PAGE 386

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A NON-MATCHING GRANT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR STORMWATER MANAGEMENT FEATURES AT THE NATURE CENTER, INCLUDING RAIN GARDENS AND WETLAND AREAS

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A NON-MATCHING GRANT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR STORMWATER MANAGEMENT FEATURES

ALONG THE SECOND PHASE OF REED CREEK GREENWAY, INCLUDING A RAIN GARDEN AT THE CAUBLE STREET TRAILHEAD

These items were removed from the Consent Agenda for discussion and/or individuals votes.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE TRANSPORTATION DEMAND MANAGEMENT PROGRAM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda, with the amendment to the November 25, 2008, minutes. This motion was seconded by Councilman Newman and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 08-239 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A NON-MATCHING GRANT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR STORMWATER MANAGEMENT FEATURES AT THE NATURE CENTER, INCLUDING RAIN GARDENS AND WETLAND AREAS

RESOLUTION BOOK NO. 08-240 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A NON-MATCHING GRANT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR STORMWATER MANAGEMENT FEATURES ALONG THE SECOND PHASE OF REED CREEK GREENWAY, INCLUDING A RAIN GARDEN AT THE CAUBLE STREET TRAILHEAD

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds for stormwater demonstration projects at the WNC Nature Center and at the Cauble St. trailhead to the Reed Creek Greenway.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Water Resources to implement water quality projects. In conjunction with the City of Asheville, the North Carolina State University Water Quality Group has identified grants funds and is offering to coordinate the funds to the City to support stormwater demonstration projects at the WNC Nature Center, and at the Cauble St. trailhead to Reed Creek Greenway. Each grant requires a cash or in-kind match from the City.

The first grant at $115,800 will be used to construct rain gardens and stormwater wetlands on the grounds of the Nature Center. The rain gardens will capture, treat, and cool much of the existing runoff from animal habitats while simultaneously creating an educational display and beautifying the grounds. The stormwater wetlands will intercept, treat, and cool

runoff from existing impervious surfaces throughout the facility before releasing it into the Swannanoa River. The in-kind match for the project valued at $57,900 consists of 1) staff time for project administration, 2) staff time and equipment for site preparation and construction, and 3) sign fabrication.

The second grant at $53,000 will be used to construct a rain garden along the Reed Creek Greenway at the Cauble St. trailhead. The rain garden will collect, treat, and cool stormwater runoff from the parking area and road as well as a portion of impervious surfaces from the adjacent CITGO gas station before releasing it into Reed Creek. The cash match for the project valued at $26,500 is budgeted in the City's FY 08/09 CIP budget for construction of Reed Creek Greenway and will not require any additional funding from the City.

The projects comply with the City Council Strategic Operating Plan Focus Area: Green - Asheville will be the southeastern leader in energy and environmental sustainability while preserving and the city's natural beauty by expanding city education programs to include climate awareness, water conservation, recycling, stormwater, and sustainability initiatives.

This action complies with the Unified Development Ordinance: Stormwater, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection Ordinance, article 7, chapter 12, section 2.

Pros:

- Both projects will strengthen the City of Asheville's commitment to water quality
- Both projects will serve as public examples of the type of best management practices as adopted by the City as part of the new Stormwater, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection Ordinance (section 7-12-2)
- Furthers the mission of the Nature Center by providing examples of native flora while serving as a model of resource stewardship
- Addresses need to manage stormwater from new animal habitats and in public places

Cons: None noted.

Increases the City's Fiscal Year 2008/09 capital improvement budget by $168,800.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept grant funds from North Carolina Department of Environmental and Natural Resources, Division of Water Resources to implement stormwater demonstration projects at the WNC Nature Center and at the Cauble St. trailhead to Reed Creek Greenway.

Councilman Mumpower felt that these items demonstrate the dysfunction of federal and state governments in providing grants with the realities we find ourselves in today. They should concentrate on their core responsibilities. With the current economic climate, he felt we have no business in participating in these kind of activities.

Councilman Newman felt that our taxpayers pay federal and state taxes and for them to receive nothing in return is unfair. The grants are competitive and awarded based on specific criteria.

Councilwoman Cape felt that the role of government is to help guide society towards a better end. She explained how we have a responsibility to practice good management.

Councilman Newman moved for the adoption of Resolution No. 08-239. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

Councilman Newman moved for the adoption of Resolution No. 08-240. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION NO, 08-240 – RESOLUTION BOOK NO. 31 – PAGE 389

D. RESOLUTION NO. 08-241 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE TRANSPORTATION DEMAND MANAGEMENT PROGRAM

Summary: The consideration authorizing the City Manager to apply for a grant and enter into an agreement with the North Carolina Department of Transportation (NCDOT) for administration costs of the Transportation Demand Management (TDM) program.

TDM programs are programs which promote an alternative transportation option to the single occupant vehicle. Included among these alternatives are carpooling, vanpooling, telecommuting, transit, bicycle, flexible work hours, compressed work weeks, and parking policies and price structures.

NCDOT's Public Transportation Division is funding TDM programs across the state to support the provisions of the Ambient Air Quality Improvement Act of 1999, Senate Bill 953, to address growing concerns over ground level ozone pollution from motor vehicles and the need to deal with increasing vehicle miles traveled (VMT) and NO_x emissions. This bill established the goals of reducing emissions of nitrous oxides (NO_x) from motor vehicles by 25% by 2009 and reducing the growth of VMT in the State by 25% by 2009.

This program only funds the administrative costs associated with the TDM program, up to 50% of the total administrative expenses. This includes salaries, fringe benefits, marketing, etc.

There are six TDM strategies that the City of Asheville's TDM program is required to employ in order to accomplish the TDM Program Goals set by NCDOT. They are:

1. Conduct marketing efforts/activities identified in a marketing plan.
2. Coordinate with local transportation and land use planning efforts.
3. Facilitate ridematching services through the ShareTheRideNC website.
4. Promote the Best Workplaces for Commuters^{SM} Program.
5. Collect and calculate data on VMT and NO_x reductions through TDM activities.
6. Operate in a manner consistent with the NCDOT goals regarding making our transportation network safer, making our transportation network move people and goods more efficiently, and making our infrastructure last longer.

The City's TDM program began in August 2005 and was administered under the French Broad River Metropolitan Planning Organization (MPO) and the City of Asheville's Transportation and Engineering Department. Since the functions of the MPO have been relocated to the Land of Sky Regional Planning Council, the TDM program was given its own budget code of 1606 to help with accountability. The 2008/09 budget for this program was approved during the City of Asheville's budget process.

Programs currently being administered are, but not limited to:

- The *PASS*port (employer bus pass) Program
- The Emergency Ride Home Program
- Strive Not to Drive – annual promotional event
- Share the Ride NC – Statewide ridematching program

On March 10, 2008, the City of Asheville applied for the FY2009 TDM Grant. On June 5, 2008, the Board of Transportation approved the funds in the maximum amount of $108,109 for the City of Asheville's TDM Grant.

This TDM program supports the City of Asheville's 2008/09 Strategic Plan by helping to promote emission-reducing options, as well as supporting the Asheville Transit System through programs such as the *PASS*port program.

Pros

- The current 50% match is reimbursed by NCDOT.
- To date, these statewide programs have reduced the growth of VMT by 24.6% - the goal for Senate Bill 953 was 25%.

Cons

- None.

The project cost will be $108,109; 50% of this total will be paid by NCDOT and 50% by the City from already budgeted funds.

City staff recommends City Council authorize the City Manager to apply for a grant and enter into an agreement with the NCDOT for administration costs of the TDM program.

Councilman Mumpower felt that these items demonstrate the dysfunction of federal and state governments in providing grants with the realities we find ourselves in today. They should concentrate on their core responsibilities. With the current economic climate, he felt we have no business in participating in these kind of activities.

Councilman Newman felt that our taxpayers pay federal and state taxes and for them to receive nothing in return is unfair. The grants are competitive and awarded based on specific criteria.

Councilwoman Cape felt that the role of government is to help guide society towards a better end. She explained how we have a responsibility to practice good management.

Councilman Newman moved for the adoption of Resolution No. 08-241. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Vice-Mayor Davis Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31– PAGE 391

E. RESOLUTION NO. 08-242 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant and enter into an agreement with the N.C. Department of Transportation to fund the Transit Planning program.

The Metropolitan Planning Organization (MPO) 5303 planning grant from the Federal Transit Administration (FTA) is a grant designated exclusively for transit planning which renews annually. The funds are currently administered by the City of Asheville as a Direct Recipient of federal transit funds. The funds are primarily used to pay staff salaries for time spent on transit planning. The FTA provides 80% of the funds. The state provides 10% and the City of Asheville provides 10%.

This fiscal year 2008-2009 funding is in the amount of $65,020, $6,502 (10%) of which are required to be a local match. This will continue funding that has been received in prior years.

The grant revenue and the match of $6,502 are currently budgeted in the Transportation and Engineering Department's budget.

These program supports grant administration and reporting activities; long range and short range transit planning; transportation improvement program preparation, Title VI and DBE programs, planning and operational analysis.

Regarding the Strategic Operating Plan, this program will support the green and sustainable focus areas, specifically developing a sustainable funding structure for Asheville Transit.

Pros:

- The funds help funding an existing position.
- Approval allows $58,518 of federal and state funds to be received for transit planning.

Cons:

- None.

The project cost will be $65,020 with local participation of $6,502.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for a grant and enter into an agreement with the N.C. Department of Transportation to fund the Transit Planning program.

Councilman Mumpower felt that these items demonstrate the dysfunction of federal and state governments in providing grants with the realities we find ourselves in today. They should concentrate on their core responsibilities. With the current economic climate, he felt we have no business in participating in these kind of activities.

Councilman Newman felt that our taxpayers pay federal and state taxes and for them to receive nothing in return is unfair. The grants are competitive and awarded based on specific criteria.

Councilwoman Cape felt that the role of government is to help guide society towards a better end. She explained how we have a responsibility to practice good management.

Councilman Newman moved for the adoption of Resolution No. 08-242. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 392

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE PERMANENTLY CLOSING OF A PORTION OF FERNWOOD AVENUE

RESOLUTION NO. 08-243 – RESOLUTION TO PERMANENTLY CLOSE A PORTION OF FERNWOOD AVENUE

Mayor Bellamy opened the public hearing at 5:27 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close a portion of Fernwood Avenue. This public hearing was advertised on November 14, 21, 28 and December 5, 2008.

N. C. Gen. Stat. sec.160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, property owners; Myra Hirschberg and Thomas Caldwell, Adam S. Pittman Guy K. Penland, Anita F. Hatcher, Lisa R. Mathis, Kay Susan Bennett, and Robert J and Phyllis Roberson have requested the City of Asheville to permanently close an unopened portion of Fernwood Avenue.

The Greenway Commission reviewed the requested closure at their meeting on November 13, 2008, and concluded there was no visible use for retaining this unopened parcel of Fernwood Avenue.

The closing is subject to the retention by the City of Asheville Water Resources Department its successors and assigns, of a 20-foot wide permanent easement for the operation and maintenance of a two inch water line lying 10 feet on each side of the center line of said two inch water line located within the proposed Fernwood Avenue closure.

Regarding the Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close an unopened portion of Fernwood Avenue.

Mayor Bellamy closed the public hearing at 5:29 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-243. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 393

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS CARRIER POINT, LOCATED AT STATE STREET AND SHORT MICHIGAN AVENUE, FROM COMMERCIAL DISTRICT, RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16

RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 140 CONDOMINIUM UNITS WITH SITE DEVELOPMENT MODIFICATION REQUESTS TO SETBACKS AND LANDSCAPING STANDARDS

ORDINANCE NO. 3682 – ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS CARRIER POINT, LOCATED AT STATE STREET AND SHORT MICHIGAN AVENUE, FROM COMMERCIAL DISTRICT, RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 140 CONDOMINIUM UNITS WITH SITE DEVELOPMENT MODIFICATION REQUESTS TO SETBACKS AND LANDSCAPING STANDARDS

Mayor Bellamy opened the public hearing at 5:30 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone the project identified as Carrier Point, located at State Street and Short Michigan Avenue, from Commercial Industrial District, RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of 140 condominium units with site development modification requests to setbacks and landscaping standards. This public hearing was advertised on November 28 and December 5, 2008.

The applicant seeks the conditional zoning of approximately 11.04 acres currently zoned CI, RS-8, RM-8 and RM-16 to RM-16 CZ for a multi-family condominium project with 140 units. The property is located between State Street and Short Michigan Avenue within the City's corporate limits.

If the conditional zoning application is approved, the site would have an overall density of 12.68 dwelling units per acre. The maximum net density in the RM-16 zoning district is one dwelling unit per 2,500 square feet or approximately 17.4 dwelling units per acre; however it should be noted that other site features would likely not support this level of density. The project is proposed to be built in one phase.

The following list provides a breakdown of the proposed development:

- 3 condominium buildings with 3 – 4 story configurations
- Maximum building heights of approximately 31 feet (primary fire department access to ceiling of highest occupied floor)
- 27 – one bedroom units
- 105 – two bedroom units
- 8 – three bedroom units

The subject property is vacant and consists of seven primarily wooded lots. A named stream, Moore Branch, bisects the property along State Street and serves as a tributary to the French Broad River. Over 30% of the site has been designated as open space and tree save area and these areas have been concentrated along the boundaries of the stream to the property's north, south and eastern perimeters.

The primary access point to the subject property is being proposed along State Street. A secondary emergency vehicle access point is proposed through the extension of Grenada Street

via Short Michigan Avenue. This access is proposed to be restricted through the use of bollards or other similar means and will not allow for non-emergency vehicle ingress and egress.

The applicant will be requesting the closure of two unimproved rights-of-way as part of the development and these will be conducted through separate applications if the project is approved by City Council. The rights-of-way subject to closure petition involve Swannanoa Drive and Stewart Street. The applicant owns the property on the adjacent sides of the rights-of-way that will be petitioned for closure.

The applicant is requesting a modification to the site development standards of the Unified Development Ordinance (UDO) pursuant to Section 7-7-8(c)(6) of the UDO from City Council. The RM-16 zoning district requires additional setbacks for side and rear yards based on the number of residential units for a maximum required setback of 40 feet. The modification request would allow for parking spaces to occur and a portion of building #1 to encroach into the required 40 foot side and rear yard setbacks by up to 34 feet resulting in a minimum six (6) foot setback in some areas. A second modification was initially sought for a reduction in perimeter parking landscaping standards. However, staff has since worked with the applicant to resolve the need for this modification by subsequent site plan revisions that include tree islands along the perimeter continuous runs of parking spaces.

The applicant intends to pursue LEED certification for the project; and a list of green building techniques/features is attached for City Council consideration. The applicant has made a commitment that 10% or 14 of the total units will be offered at rates meeting the City's definition of affordability. Staff is also recommending measures to maintain some long-term affordability and/or income qualifications for the affordable units if the applicant is unable to provide the committed percentage of the aforementioned units. The Planning & Zoning Commission (P&Z) approved the project with the condition that 10% of the units are sold at the City's affordable rates and be reserved for income qualified households. The applicant has since stated that their goal is to provide significantly in excess of 10% and would prefer not to be restricted. Staff has revised a proposed alternative condition for the Council's consideration in the event that the applicant does not meet their stated goals.

The subject site is surrounded by a mix of single-family residences, vacant lots and commercial uses zoned RS-8, RM-8, RM-16, CI and River.

The RM-16 residential multi-family high density district was created to permit a full range of high density multi-family housing types along with limited institutional public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

At their October 20, 2008, meeting the Technical Review Committee (TRC) approved this project subject to the conditions. One neighbor expressed concerns about the proposed driveway cut and retaining wall along State Street, removal of existing vegetation and proposed rights-of-way closures.

At their November 5, 2008, P&Z meeting, they unanimously approved this project subject to the conditions in both the P&Z and TRC staff reports. The Commission heard from neighboring citizens with concerns ranging from pedestrian and automobile traffic, rental vs. owner occupied units, stormwater, loss of vegetation and restricted vs. unrestricted access to the site from Grenada Street. Considerable discussion ensued about the proposed secondary access along Grenada Street and the Commission ultimately approved the project with the condition that the applicant be allowed to close access on Grenada Street via Short Michigan Avenue with a vehicular and pedestrian barrier that meets the City's emergency standards.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use is generally compatible with the surrounding natural features and topography. The applicant could utilize the existing road infrastructure and available rights-of-way for access from Short Michigan Avenue rather than impacting Moore Branch in order to provide access from State Street where the stream crossing will require the installation of a culvert to accommodate natural stream flow and the proposed driveway. However, legitimate safety concerns regarding access from Short Michigan Avenue renders this option undesirable. The design of the project seeks to condense/restrict development to the higher, flatter portions of the property while keeping the natural sloping property towards Moore Branch undeveloped and as designated open space and tree save area. The project must comply with all City standards in regards to grading and erosion control.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Staff does not expect that the proposed use would negatively impact adjacent property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed density of 140 dwelling units is consistent with the requirements of the RM-16 zoning district. The majority of the site is currently zoned CI and the density permitted in that zoning district is 16 dwelling units per acre or 1.4 units less than the proposed zoning of RM-16 allows per acre. While the RM-16 zoning district will allow for a slightly higher density per acre, it does not permit the range of uses (specifically commercial) that CI allows. Therefore, the RM-16 CZ designation restricts the property to that of a residential nature specific to the attached site plan. Given the proximity of other multi-family housing, commercial uses and available infrastructure in the area staff feels that a condominium development of this size and density is appropriate for the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The application of compatible infill growth supports key goals and objectives as described in both The Asheville City Development Plan 2025 and the City Council Goals and Vision Plan. The comprehensive plan identifies affordable housing as one of the most pressing problems facing the City of Asheville. The developer has made a specific commitment to include designated affordable units into the project as a whole. Other goals include high density, infill development and green building construction techniques.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   A traffic impact study is not required for the subject project because the anticipated traffic at full-build-out conditions will be less than 100 vehicles per hour (68 vehicles per hour during the morning commuting peak hour and 79 vehicles per hour during the afternoon commuting peak hour). Based on the anticipated traffic, the proposed use should not cause undue traffic congestion or create a traffic hazard. In addition, from a traffic-engineering standpoint, the proposed single, two-way access point should be able to serve the anticipated traffic.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed development will provide 14 additional affordable dwelling units to the City's current inventory.
- The applicant intends to pursue LEED certification for the project and a list of proposed green building techniques/features has been provided.
- Provides another opportunity to further the City's goal of high density infill development in proximity to employment centers, services and transportation lines.

Cons:

- In its current configuration, the project will impact a natural stream and restrict access to one of its proposed entrances.
- Results in the additional loss of CI zoning.

Staff concurs with P&Z and recommends approval of the proposed project and conditional zoning request subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must meet City of Asheville lighting standards and utilize cut-off or full-cutoff fixtures in order to avoid any light trespass and offensive glare; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials, green features and orientation on site must comply with the conceptual site plan and building elevations presented with this application; (5) Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) This project shall undergo final review by the TRC prior to issuance of any required permits; (7) Applicant must make application for rights-of-way closures if project is approved by City Council and before final TRC submission; (8) A lot recombination application for all seven (7) subject lots must be submitted before zoning permit issuance; and (9) 10% of the total number of units must be sold at affordable rates to income qualified households per the City of Asheville's standards; in the event that the applicant meets their stated goal that more than 10% of the units will meet the affordability standards, this condition will be waived. Staff also supports the applicant's efforts to achieve a higher goal of providing an entirely affordable product to the citizens of Asheville.

Mr. Will Buie, engineer with Lapsley and Associates, said they have been working with staff on this project for quite some time. He explained how this project brings a lot of things to the City that are very positive. He showed a colored rendering of the site with access off State Street. The project only requires one access; however, should that access off State Street become flooded in a 100-year storm event, they recommended that the owner consider a

secondary access to the property for emergency vehicles only, off Grenada Street. They worked with staff on access, stormwater, parking, affordable housing, green building techniques, and LEED certification. He asked for Council's support of this conditional zoning request.

Mr. Ken Etterman, Project Manager, explained that their goal is to provide an affordable and LEED certified product on an infill site that has topography challenges. He pointed that they had two meetings with neighborhood groups to discuss this project. They have worked with their immediate neighbors to minimize any impact.

Mr. Christopher Gibbs, property owner across the street on State Street, spoke in opposition of the conditional zoning explaining for various reasons, some being, but are not limited to (1) the Carrier Point development is out of tune with the existing neighborhood; (2) the proposed entrance on State Street is dangerous, unnecessary and forced; (3) the roads around the proposed development are already at or beyond capacity; (4) the proposed Carrier Point development will lower property values in the adjoining neighborhoods; (5) State Street, Riverview Road and adjoining bridges are already over used as cut-through roads; (6) there are several bottleneck areas which cannot handle more traffic; (7) there is no parking adjacent to the proposed development; and (8) every feature of this site shows that the natural entrance should be from the existing right-of-way off of Short Michigan Avenue.

Mr. Fred English spoke against the conditional zoning request due to its proximity to Pisgah View Apartments and its drug activity.

Mayor Bellamy closed the public hearing at 5:41 p.m.

Mr. Pennington, Mr. Buie and Mr. Etterman responded to various questions/comments from Council, some being, but are not limited to: was the community informed about the setback requests; has the developer met with adjoining neighbors to address any concerns they may have; what is the impact to the stream; are the units condominiums; and are the elevation drawings accurate.

Councilwoman Cape stated that people in that area are trying hard to reclaim their neighborhood and bring a sense of neighborhood to that area. We do have challenges with Pisgah View Apartments around the corner and she wants to be careful about going in and struggling against the people who are trying to establish balance in that community.

Councilwoman Cape felt that this setback appears to be an intrusion into the required setbacks which supports separation between changes of use and is designed to support and maintain the quality of life of the differing uses. When Councilwoman Cape questioned if the 130 units vs. the 140 units had to do with meeting the required setbacks, Mr. Etterman explained that the higher density is required as they are working on a challenging site while trying to build an affordable project.

In response to Councilman Mumpower about how much confidence the developer has in completing the project; Mr. Etterman assured Council that they would not start the project or grade the site unless they have funding and pre-sales to move forward.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that a condition could be included to not release the site for grading until all the appropriate approvals have been obtained. Mr. Etterman agreed with that condition.

In response to Mayor Bellamy, Assistant Director of Transportation and Engineering Ken Putnam said that they did look at the entrance of the project on State Street. When the Technical Review Committee has its final review, they will ensure that site distance triangles are maintained and the entrances made have the appropriate site distances.

In response to Vice-Mayor Davis, Mr. Etterman said that their price range will be approximately $125,000 to $160,000.

Councilwoman Cape said that the Housing & Community Development Committee is looking at Pisgah View Apartments and others to try to re-engineer those housing developments so they are not at one level price point because problems can arise. She felt there needs to be a mix of price points in the project so there will be a mixture of people into the community.

Mayor Bellamy said the City has invested in Carrier Park and we are looking at more improvements in the River District. We also need developers to invest in the River District. With the Appledorn development in Shiloh, there was controversy by the neighbors at the start, but that development has now reinvigorated that community. Too often there is stigma on affordable housing, but what makes housing change is having community support of not accepting bad behavior. We need help from not only the police, but the neighborhood as well. She sees this project as an opportunity for working individuals in this community to live in Asheville.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3682 to conditionally zone the project identified as Carrier Point, located at State Street and Short Michigan Avenue, from Commercial Industrial District, RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District and RM-16 Residential Multi-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of 140 condominium units with site development modifications to setbacks and landscaping standards, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must meet City of Asheville lighting standards and utilize cut-off or full-cutoff fixtures in order to avoid any light trespass and offensive glare; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials, green features and orientation on site must comply with the conceptual site plan and building elevations presented with this application; (5) Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) This project shall undergo final review by the TRC prior to issuance of any required permits; (7) Applicant must make application for rights-of-way closures if project is approved by City Council and before final TRC submission; (8) A lot recombination application for all seven (7) subject lots must be submitted before zoning permit issuance; (9) 10% of the total number of units must be sold at affordable rates to income qualified households per the City of Asheville's standards; in the event that the applicant meets their stated goal that more than 10% of the units will meet the affordability standards, this condition will be waived. Staff also supports the applicant's efforts to achieve a higher goal of providing an entirely affordable product to the citizens of Asheville; and (10) not release the site for grading until all the appropriate approvals have been obtained. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilwoman Cape voting "no".

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C. PUBLIC HEARING TO CONSIDER A REQUEST TO REVIEW A PROPOSED SIGN PACKAGE IN ACCORDANCE WITH SECTION 7-13-10 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE RIVER ARTS DISTRICT

ORDINANCE NO. 3683 – ORDINANCE ADOPTING THE RIVER ARTS DISTRICT SIGN PLAN PACKAGE

Mayor Bellamy opened the public hearing at 6:04 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance adopting the River Arts District Sign Plan Package. This public hearing was advertised on November 28 and December 5, 2008.

In 2007, City Council adopted a provision in the sign ordinance that allows mixed-use areas an opportunity to propose a signage plan that would address way-finding signage in a comprehensive fashion. This is the first such sign package reviewed for a distinct district in the City. The applicant is the River District Artists, an artist group with over 100 members. The group has been responsible for the successful studio strolls in the spring and fall each year as well as other special studio events.

In the past the River District Artists (RDA) had signs permitted as "special temporary event of public interest" as found in Article 14 of the Unified Development Ordinance (UDO), Accessory and Temporary Uses and Structures. This has not been a streamlined process for either City staff or members of the RDA. The sign package request is a way to comprehensively review the sign program and gain City approval without submitting a new sign application for each event.

The River Arts District is best defined by a map which is a self-identified arts district area which has now come to be recognized by the City. Over time the River Arts District may expand into additional areas by a vote of the RDA and it is intended that this sign package agreement would apply to the expansion areas as well. He showed the detail of the logo that has been developed for the River Arts District. This design will be modified (enlarged or reduced) to create the other signage requested in this application so that a unified brand for the River Arts District is established. The special signage associated with this package will be in addition to the individual business signs currently allowed in the sign ordinance.

While the district is predominately zoned River, it also includes other commercial districts such as Commercial Industrial and Urban Place and has been identified as a special area deserving preservation, rehabilitation and careful redevelopment for the past two decades through several plans and through the goals of the River District designation in the UDO. The River Arts District also received special recognition in the Wilma Dykeman Riverway Master Plan adopted by City Council in 2004 and is summarized as a special and unique mixed-use district with a goal to maintain and preserve the older industrial uses, buildings and character. Opportunities for economic growth for artists, live/work units and other combinations of permanent and temporary uses are encouraged and supported in this district.

The signage package for the River Arts District is summarized below and includes the following types of permanent signage:

- Banner signs to be placed on buildings housing participating artist members and attached to each building in a variety of ways including projecting and flat mounted brackets to be at least 9 feet above the sidewalk/ ground level. The banner signs will be placed at each building entrance or every 100 feet along the building whichever is greater. Banners will vary in size to include: 24"X48", 36"X60" and 48"X72". The largest sized signs will be limited to buildings (or portions of buildings) that meet either of the following scenarios:

    1. Setback 25 or more feet from the pavement edge
    2. Buildings 10,000 square feet or larger

- Three monument signs to be placed at locations within the River Arts District and limited to 24 s. f. per sign face (double faced) and height up to 9 feet tall. Locations will be determined at a later date and shall comply with all other requirements for "community identification signage".

- Wall murals featuring the River Arts District logo with a size not to exceed 200 square feet at two locations. The sites are to be determined by RDA and of course, with the building owner's permission.

Along with the permanent signage, RDA is requesting approval of the following temporary signs that will be placed during events that include Studio Strolls, 'open house' demonstration events and other special events. Temporary signage will not be limited by number of events but by duration of signage.

The types of temporary signage include the following:

- A-frame signs to be placed on private property and public sidewalks where 6 feet of clearance is maintained. A-frame signs placed on sidewalks will also be subject to liability insurance and other requirements of the City. The size of the signs will be no larger than 24" X 48" and will be displayed only during special events.

- Off-premise ground signs limited to four square feet and placed on private property outside of the public right of way (ROW). Signs may appear 24 hours prior to the event and be removed within 24 hours upon its conclusion.

- Pennant Streamers to be mounted on the building face or courtyard areas and limited to 200 linear feet per building. These special event pennants will be limited to 24 hours before and after the event is completed. Pennants will be placed at least 14 feet above the sidewalk and will not cross the street.

Some of the requested signage would normally be considered on-premise temporary signage and could be permitted on a case by case basis under existing standards; however, more flexibility and frequency needed to be considered to meet the special needs of the district. Most of the off-premise signage would not be allowed in the form requested but could be considered in smaller numbers or in different forms. The fact that no single business will have additional advertising space as a part of this program but rather the signage will apply to the district as a whole mitigates this issue.

The following summary has been created to better understand the signage requested for the River Arts District, and to note what would be allowed under the existing sign code.

SIGNAGE PROPOSED	UDO ALLOWED	RIVER DISTRICT ARTISTS REQUEST	DEVIATIONS
Banner Signs (Permanent sign)	Banner signs are allowed in several commercial districts with specific size and maintenance requirements	Banner signs will match requirements for similar signs as noted in the ordinance. The largest of the signs 48" X 72" will be limited to buildings (or portions of buildings) 10 K sq. ft. or more or buildings setback 25 feet or more from street edge	Banner signs are allowed in commercial districts however "River Arts District" branding would not be allowed except if approved with the sign package. The RDA request also includes non-standard sizes.
Community Identification Monument	Community identification signs are limited to a single sign at the	3 separate signs up to 24 s. f. (double faced) and up to 9'	The 3 monument signs proposed means that two additional signs are

Signs (Permanent sign)	entrance to a community and limited to 24 square feet (double faced) and 9' tall.	tall, to be placed at locations to be determined by the RDA meeting COA standards.	requested through the sign package.
River Arts District Murals (Permanent sign)	'Art' murals are not regulated by the code. However if a business name is included or the nature of the business is portrayed as a part of the mural then it is similar to a standard development sign subject to the size and quantity limitations identified in the code for the zoning classification.	Murals using the River Arts District logo are to be placed at two prominent locations to be determined by the RDA. The size of each mural will be limited to 200 square feet.	Multiple tenant development signs are limited to 200 s.f. total in these zoning districts. The 2 mural signs will be up to 200 square feet each. They are not associated with any specific development and best fit in a sign package.
A-frame signs (Temporary)	Allowed in CBD, NCD, UV and UR Districts, sidewalk locations are required to meet City co-insurance and other standards	Special allowance for this sign package meeting size standards and located on private property or City sidewalks following COA procedures.	A-frame signs are not normally allowed in River, UP and CI districts.
Off-premise ground signs (Temporary)	Certain off-premise signs are allowed in non-residential areas with specific requirements for spacing, size, for locations outside of the ROW and the sight visibility triangle Snipe signs in public rights of way are expressly prohibited	Approximately 35 small ground signs to be placed at strategic locations directing patrons to the district.	The proposed signs would exceed the number of signs allowed and the spacing requirements for off-premise signs. All signs would need to be placed out of right-of-way areas unless special approvals are obtained.
Pennant streamers (Temporary)	Not allowed unless part of a temporary sign application meeting those standards. Pennants displayed to draw attention and move/ flap in the wind would be prohibited	Pennants streamers limited to 200 linear feet attached to buildings and used in courtyard spaces.	Request includes pennants that may otherwise be prohibited as a "wind sign"

The stated purpose for allowing a separate signage plan outlined in Article 13 of the UDO is as follows:

"..... to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development"

The sign package request meets the special purpose of encouraging creativity and way-finding for a district that is specifically identified and highlighted in City of Asheville adopted plans, particularly the *Wilma Dykeman Riverway Master Plan*. No businesses are seeking additional identification space; instead the request will help identify a unique district for both residents and tourists. This proposal will be coordinated with the wider City co-sponsored wayfinding program for this area and other community destinations to help raise awareness of the district and direct patrons, citizens and visitors to an area that is uniquely Asheville. Although the details of the way finding program are not entirely determined at this time the River Arts District name will be incorporated into directional signage along major roadways and will number about 15 signs. The river front area is difficult to find for residents and tourists because access is confusing, many of the streets change names, and no single road provides a clear direct route. In addition there are few structures that act as a distinct landmark for the district. The River Arts District sign package combined with the proposed wayfinding program will establish the district name and logo as the common identification tools for the area and strategically placed banner signs, monument signs and murals will reinforce the boundaries and assist in wayfinding

This request supports the *Asheville City Council's Goals and Vision Plan*- particularly in the area of sustainability by improving opportunities for economic development at the river areas; support and expansion of the local arts community is important to the local economy.

Review by other public bodies: The RDA sign package will be presented to the River District Design Review Committee (RDDRC) at their December 3, 2008, meeting. They were unanimous in their support and supported the pennant streamers request. Sign package requests do not require review by the Planning and Zoning Commission.

Pros:

- Provides clear and recognizable logo for a specific district
- Promotes the City goals of wayfinding for community destinations
- Encourages entrepreneurship and support for the arts and other small businesses
- Supports economic development goals adopted by City Council
- Offers an organized method for coordinating various types of signage
- Reinforces Asheville's brand as a place unique among other cities in the state and region
- Saves time for staff and members of the River District Artists as signs are installed

Cons:

- Ground signs may be confused with snipe signs which are generally considered to be a nuisance in an urban environment; however, the careful placement and limited duration of use should offset some of these perceptions.
- The success of the sign program relies on the continued success of the River District Artists organization.
- Banner signs will have to be maintained and replaced as needed.
- The pennant streamers may be inconsistently and haphazardly displayed that may create a distraction (through movement by wind).

There is no expected fiscal impact for the City of Asheville for the approval of this sign package. There could be an indirect benefit to Asheville's local economy by supporting the River Arts District community.

Staff recommends that the signage plan for the River Arts District be approved as proposed but with the following amendments: (1) Place and space River Arts District murals so that they are not facing the same direction in the district; (2) Eliminate pennant streamers from the sign program because they will be difficult to consistently display and will have limited usefulness; and (3) Ground signs be approved so as to be placed to avoid rights of way and sight visibility triangle conflicts.

Mr. Fred English spoke in support of the sign package.

Ms. Pattiy Torno, Chair of the River District Design Review Committee, spoke in support of the River Arts District sign package, including pennant streamers. She briefed Council of the history of the River Arts District and how it has continued to grow to up to over 100 artists. The only negative comment they have heard is from people who are frustrated in finding the River Arts District.

Mayor Bellamy closed the public hearing at 6:18 p.m.

In response to Councilman Mumpower, Ms. Torno said that the sign package will be funded by the River Arts District.

Mayor Bellamy thanked the Committee members for their work in the River Arts District.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3683, including pennant streamers. This motion was seconded by Councilwoman Cape and carried unanimously.

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V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. APPOINTMENT OF NEW COUNCIL MEMBER

Mayor Bellamy announced that she received an e-mail from Ms. Sylvia Farrington that she has withdrawn from the process due to family priorities. She was not interviewed earlier in the day with the following other candidates: Mr. Charles Archerd, Mr. Charlie Hume, Ms. Esther Manheimer and Mr. Kelly Miller.

At 6:21 p.m., Mayor Bellamy asked for public comment.

Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation, spoke in support of Mr. Kelly Miller.

A west Asheville resident felt Council should chose the candidate's values that are similar to former Councilwoman Holly Jones.

Mr. Fred English felt the vacant seat should have been filed by the 4th highest vote-getter from the General Election – Mr. Bryan Freeborn.

Mr. George Briggs spoke in support of Mr. Kelly Miller.

Ms. Kathy McCartin, President of the Biltmore Park Homeowners Association, spoke in support of Mr. Charlie Hume.

Ms. Jean Warner, resident on North Liberty Street, spoke in support of Mr. Kelly Miller.

Ms. Pam Myers, Director of the Asheville Art Museum, spoke in support of Mr. Kelly Miller.

At 6:34 p.m., Mayor Bellamy closed the public comment period.

Mayor Bellamy read Section 7 of Asheville's Charter, which reads "Any vacancy in the office of mayor or council shall be filled by the council for the remainder of the unexpired term from the qualified electors of the City of Asheville." The Charter does not provide a process for filling that vacancy but allows Council to make that determination. We received 47 applications and narrowed the interviews down to five. One candidate withdrew and Council interviewed the remaining four candidates earlier in the day.

After each Council member expressed their appreciation to all candidates stating they all of them had outstanding qualities, Vice-Mayor Davis chose Esther Manheimer; Councilman Russell chose Kelly Miller; Councilman Newman chose Esther Manheimer; Councilman Mumpower chose Charlie Hume; Councilwoman Cape chose Esther Manheimer; and Mayor Bellamy chose Kelly Miller. Results: Esther Manheimer had 3 votes; Kelly Miller had 2 votes; and Charlie Hume had 1 vote. There was not a majority vote (4) for any candidate.

Councilman Newman moved to appoint Esther Manheimer to the vacant City Council seat. This motion was seconded by Vice-Mayor Davis and said motion died on a 3-3 vote, with Vice-Mayor Davis, Councilwoman Cape and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "no."

Councilwoman Cape noted that Esther Manheimer and Kelly Miller were both fine people and the Council would be fortunate to have either person fill the vacant seat.

Councilman Mumpower moved to appoint Kelly Miller to the vacant City Council seat. This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape, Councilman Mumpower and Councilman Russell voting "yes" and Vice-Mayor Davis and Councilman Newman voting "no."

On behalf of City Council, Mayor Bellamy congratulated and welcomed Kelly Miller as a member of the Asheville City Council.

Mayor Bellamy announced that Mr. Miller would take his Oath of Office on Friday, December 12, 2008, in the Council Chamber beginning at 5:00 p.m. The public was invited to attend.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of November 21 – December 4, 2008: Christopher San-Miguel (Streets), Brenda Hankinson (Streets), PSNC (Water), Janet Daye (Transit Services), Joe Austin (Police), AT&T (Water) and Evelyn C. Hill (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy noted that this is the last meeting for 2008. She thanked her fellow Council members for everything they have accomplished during 2008. She thanked them for helping her mature as a person and looked forward to a positive 2009 as we have a lot to do as a Council and as a community. She wished everyone a wonder and safe holiday season.

Mayor Bellamy adjourned the meeting at 6:55 p.m.

Magdalen Burleson
CITY CLERK

Jerry M. Bellamy
MAYOR

Friday - December 12, 2008 – 5:00 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

Mayor Terry M. Bellamy welcomed everyone to the special session. On a somber note, she said that Councilwoman Cape's father, Robert H. Cape, passed away on Thursday, December 11, 2008. She asked that everyone keep Councilwoman Cape and her family in their prayers.

The Marine Corp JROTC from Asheville High School presented the Colors and the National Anthem.

Mayor Bellamy then introduced Dr. Bruce Frank from Biltmore Baptist Church who gave the invocation.

The Honorable J. Calvin Hill, Judge of the Buncombe County District Court, administered the Oath of Office to:

Council Member Kelly McDonald Miller

Council member Miller thanked his family and friends for their support and for the honor of being a member of the Asheville City Council. He promised to work diligently with Council to face the challenges ahead.

Mayor Bellamy was pleased to note that new Buncombe County Commission Chairman David Gantt was in attendance. She expressed her excitement of working with Council over the next year. She invited the audience to attend a small reception immediately following this meeting to honor Councilman Miller, with Dr. Robert Blackburn blessing the food.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 5:10 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Friday – January 9, 2009 - 1:00 p.m.
Saturday – January 10, 2009 - 9:00 a.m.
WNC Nature Center - Asheville, NC
Council Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Bellamy welcomed everyone to the City Council retreat and said that the focus of this retreat will be to together move the City in a good direction.

Mr. Keith Mastin, Education Director, welcomed City Council and staff to the WNC Nature Center.

Mr. Dan Lazar, member of the Board of Directors for the Friends of the WNC Nature Center, noted that it is on the site of the old Asheville City Zoo, which was converted into the nature center in 1974. The Nature Center teaches children, in that over 18,000 children participated in the Center's environmental education classes in Fiscal Year 2008 and over 25,000 children visited the Nature Center with their families in Fiscal Year 2008. The total Fiscal Year attendance was 86,000 people and the Center was designated a Blue Ridge Natural Heritage site in 2008.

Mr. Doug Williams, President of the Friends of the Nature Center, explained why it was important to invest in the Nature Center at this difficult financial time, and explained who the Friends of the Nature Center are. He explained the past projects funded by the Friends of the Nature Center and the 2009 planned projects, one of which is to raise funds to build an on-site veterinary clinic for the Center's animals that will be used as an educational tool for veterinary students. The veterinary clinic will have a total cost of $410,000, with the committed funds being $125,000 from the Friends and public donations to date is $7,500. Still needed is a proposed designation of 2009-10 State Grassroots Science Museum Grant of $100,000, with the unfunded balance being $177,500. The City can help by (1) designating the 2009-10 State Grassroots Science Museum Collaborative grant (estimated $100,000) for the construction of the veterinary clinic; and (2) include $177,500 2009-10 Capital Improvement Funds funds for the construction of the veterinary clinic.

Mayor Bellamy thanked Mr. Mastin for the use of the Nature Center and Mr. Williams for their report.

Retreat Agenda and Process

Mayor Bellamy introduced Mr. Lewis Isaac, who will be the facilitator for this meeting. He in turn reviewed the agenda, the role of the facilitator and the ground rules. Mayor Bellamy offered Council members to make any changes to the agenda, which they did not. She explained what she hoped would be accomplished and how.

Updates from Staff

Budget Update

Chief Financial Officer Ben Durant recapped the First Quarterly Report. He said that at the November 18, 2008, City Council worksession, staff presented the first quarter Fiscal Year (FY) 2008-09 Financial Report, as well as a Preliminary Budget Forecast for FY 2009-10. Due to the economic recession, staff projected that general fund revenue would come in under budget in the current fiscal year by $1.0 Million. Staff also reported to Council that the management team had already identified a set of budget savings strategies to address the $1.0 Million shortfall in the current year. These strategies

included, among others, implementation of a selective hiring program and the delay of capital equipment purchases.

Staff also reported to Council that initial budget projections for next FY 2009-10 showed that expenditures would exceed revenues in the general fund by approximately $5.3 Million. These initial projections reflected the cost of a "continuation budget" that included existing business practices and service levels. The management team was subsequently able to reduce this initial budget gap with the following recommended strategies: (1) eliminate market-based pay adjustments for employees; (2) reduce the employee merit pay pool; (3) offer an early retirement incentive program to reduce overall personnel costs; and (4) forego the annual contribution to the Housing Trust Fund.

Adjusting the budget projections to account for these four recommended strategies lowered the projected budget gap for FY 2009-10 to approximately $3.0 Million.

In December, the City received its October sales tax distribution from the N.C. Dept. of Revenue and it was up 23% over last October. As Council may recall, sales tax receipts were down 19% in the month of September. This double digit swing in collections between September and October is due to timing issues with the State's sales tax reports, and it highlights the difficulty in using monthly sales tax data to make meaningful projections. More importantly, through the first four months of FY 2008-09, the City's sales tax revenue is only 0.2% higher than at this time last year. In December, the City also received verification from Progress Energy that we are owed approximately $300,000 in utility tax back payments from the State. We expect to receive this one-time payment in mid-March of this year. Based on this information and updated estimates in other revenue categories, staff is anticipating that the current year shortfall will still be in the range of $850,000 to $1.0 Million.

Staff has not received any data as of yet to suggest that the preliminary budget projections for FY 2009-10 warrant any revisions at this time. However, several key pieces of information that will impact next year's projections will be received in the next 4 to 6 weeks. Important upcoming dates include (1) Late January: Official FY 2008-09 current year assessed valuation data will be received from Buncombe County; (2) February 2: Deadline for departments to submit initial continuation budget requests to the Finance Department; (3) Mid-February: December sales tax revenue will be reported by the State; and (4) February 15: Final deadline for employees to accept the City's early retirement incentive.

Staff will update the preliminary budget projections for FY 2009-10 based on the data received over the next six weeks and report back to Council in late February during the 2nd Quarter Financial Report. Also, it should be noted that the management team is continuing its in-depth analysis of re-engineering opportunities, as well as evaluating our service priorities and levels. Staff will also provide an update on these efforts during the February Financial Report and seek initial Council policy direction on staff's re-engineering ideas and service prioritizations for FY 2009-10.

Throughout Council discussion, Mr. Durant and City Manager Jackson responded to various questions/comments from Council (noting that questions that could not be answered would be provided to Council), some being, but are not limited to: is there a possibility the State may withhold funds; what is the rationale behind no annual contribution to the Affordable Housing Trust Fund this year; what is the status of the demolition lien on the Tunnel Road hotel property; will the street and sidewalk fund remain flat as it did in the Fiscal Year 2007-08 budget; what is the status of the 51 Biltmore Avenue parking deck and what are the plans for improving some of the other parking decks; what is the financial impact of the changes in legislation for the Transit Department's funding; what is the impact to the taxpayer for the City paying for water and stormwater utilities; what is the breakdown of the debt service requirements from the general fund, excluding payments for the $40 Million in revenue bonds for capital improvements for water lines; what would be the financial impact of Asheville Greenworks (Quality Forward) closing and how would it impact our downtown; how much do we spend in maintenance and cleaning the City; how much is currently in the Housing Trust Fund and how much has been repaid to the Housing Trust Fund; what is the impact to the tax base from the development of housing from the Housing Trust Fund; explanation of the amount the Local Government Commission requires and the City's policy regarding fund balance; how have salaries and fringe benefits rose over the past 3-4 years compared to other costs; what is the

rationale for not cutting each department's budget by 5%; is it anticipated that the property tax collection will be lower due to people being laid off or salary cuts; and suggestion to look at what other municipalities are doing to balance their budgets.

Mayor Bellamy, Councilwoman Cape and Councilman Newman all spoke about the value of the Housing Trust Fund and how valuable those funds are to leverage affordable housing tax credit projects. Mayor Bellamy and Councilwoman Cape supported the Housing Trust Fund being scaled back, but not in foregoing the annual contribution altogether.

Strategic Plan

Assistant City Manager Jeff Richardson briefly reviewed with Council the 2008-09 Strategic Plan's key milestones.

In response to Councilman Newman, Councilwoman Cape was pleased to report that since the City started their program in 2006-07, we reduced our energy consumption by a total of 12.8% last year. The Sustainable Advisory Committee on Energy and the Environment's annual report will be coming to Council shortly that will provide additional information.

Conclusions from Department Director Retreat

Assistant City Manager Jeff Richardson briefed Council on the staff discussion at the Department Director retreat held in December, 2008.

Mr. Richardson touched on Department Director's FY 2009-10 goals as follows: (1) reduce expenditures (a) reengineering opportunities; (b) organizational chart analysis (early retirement); (c) service prioritization (reduction strategy); and (d) communications strategy; (2) pursue revenue sources (a) annexation; (b) revenue larger fees for cost recovery potential (i) (non-city residents); (c) revenue reengineering ideas; (d) water rate increase (Consumer Price Index); (e) verify utility tax revenue received; and (f) asset management – real estate; (3) Capital Action Plan (a) policy direction for Capital Improvement Project affordable (size and scope); (b) 2/3 bond issuance; (c) economic stimulus package; (d) prioritize and refine inventory of deferred maintenance (i) buildings; (ii) rolling stock; and (iii) parks; (e) safety and security infrastructure/management systems; and (f) lobby for State and Federal Transportation money; (4) process improvements/BTIP (a) training for staff regarding process redesign and software tools; (b) implement process design and documentation (i) identify process improvements to take advantage of technology; (c) technology tool training (how to use?); (d) maintain involvement in process owners and key staff throughout process; (e) fully develop DRP prior to implementation of technology; and (f) communication plan; (5) employee retention (a) redefine Employer of Choice; (b) goal, communicate, communicate, communicate; (c) manage leadership schedules to allow time for informal time with employees; and (d) realistic total compensation program/package. The old Employer of Choice was agreed to be discussed at a later date – The Asheville Way (a) set aside funds for leadership training; (b) revitalize Corporate "U" (i) focus middle management; (c) continue discussions on diversity training; (d) manage leadership schedules to allow time for informal time with employees; (e) look for grant opportunities from private foundations for funding; (f) create Training Director position; (g) identify who the most likely candidates for succession are; (h) establish mentoring program; and (i) realistic total compensation package; and (6) (a) lobby for state and federal transportation money; (b) economic stimulus package (i) AT&T; (c) strengthen and market City of Asheville Youth Leadership Academy for workforce development; (d) development plan for Technology Park in Central Business District and high education and training center; (e) foster relationship with governmental agencies and private sector; (f) continue redevelopment of key city sites to promote high density infill (i) RFP sites; and (ii) 51 Biltmore; (g) revisit the current ED incentive package; (h) revisit Unified Development Ordinance amendments not involving life safety issues; (i) one stop shop; (j) continue to Wilma Dykeman implementation and encourage a joint City/County Advisory Commission; (k) review Community Development Block Grant policies for opportunity to promote affordable housing and infrastructure; (l) finalize and/or compete Downtown Master Plan, Transit Plan, and Parks and Recreation Master Plan; and (m) continue in-kind support of HUB; and (7) revisit Council implementation schedule on strategic goals.

City Manager explained that staff recognizes the challenges that we face as an organization to get through this fiscal crisis and the need to revisit how ambitious we set out to accomplish new and innovative things.

Mayor Bellamy said that Council will need to balance their goals to ensure that the quality of life or quality of service for our citizens is not put in peril.

Customer Service Summary

Assistant City Manager Jeff Richardson highlighted some of the Customer Service survey strengths and challenges communicated to our organization. Challenges/opportunities include: (1) transportation services; (2) affordable housing availability; (3) planning/community code enforcement; (4) Economic Development/employment opportunities; (5) downtown safety at night; (6) community environment; (7) recreation center; and (8) public trust. Strengths being (1) quality of life; (2) Asheville as a place to live; (3) neighborhood safety; (4) fire services; (5) garbage collection; (6) opportunities to attend cultural activities; (7) educational opportunities; (8) sense of community; (9) participation in community activities; (10) volunteer image; and (11) employee responsiveness.

Council Discussion

Mayor Bellamy said this is an opportunity to reaffirm the Asheville City Council 2008-09 Strategic Plan with the four focus areas of sustainable, affordable, green and safe, with opportunity for re-wording goals, objectives and action items or deleting them if accomplished. After a short discussion, it was the consensus of Council to add an additional focus area of "Fiscal Responsibility".

Each Council member explained their personal goals for 2009-10 as follows, some reaffirming the goal which is currently in the existing 2008-09 Strategic Operating Plan:

Councilman Newman

- Efforts to resolve lawsuit regarding Sullivan Act – ability for Asheville to grow through voluntary annexation agreement as new development takes place and seeks to connect to City services
- Reformation of the Unified Development Ordinance to achieve Council's goals in terms of green building and affordability
- Partnerships to achieve more effective prosecution of all offences

Councilman Mumpower

Councilman Mumpower said that his goal recommendations are predicated on the following (1) a belief that the Federal borrow and spend policies are neither appropriate or adequate to the role of security our economy and that our national and local economic downtown will be dramatic and long-term; (2) a positive that the best governments are those which anticipate revenue/service issues before the fact rather than react during or after the crisis; (3) a belief that sacrifice, adjustment, and recovery should be modeled from the top down; and (4) a position that we should not participate in further harm to our economy be seeking or accepting federal or state revenue that is derived from borrowed funds or budgetary largesse.

- An immediate 20% salary reduction for City Council members (senior managers should be encouraged to consider their own 10% cut)
- Discontinue funding all outside agencies, festivals, home loans, council travel, planning, paid consultation, and all other non-essential services – dedicate all resources to essential city services. Further, he believes that we should return all federal and state money that is in the pipeline but has not yet been used – including federal funding for Memorial Stadium (we mock the sacrifice of veterans by undermining the system for

which they sacrificed)

- Make "safety" a priority as Asheville's unique commodity for attracting new residents and businesses – "The Safest City in America" has the potential to become a very important product in a dangerous world. In anticipation of stepped up criminal activity in a time of economic difficulty, develop a publically championed zero tolerance policy for all criminal activity – press for more accountability from state criminal judicial system. Look for ways to eliminate "leakage" of our limited public safety resources – waiting time in courtrooms, involvement in non-essential services while on city duty (festivals as an example), etc.
- Instruct City Manager to implement a 10% cut in the City budget within 30-60 days – be prepared with a plan for a 20% cut in the new budget year
- Pursue a four day work-week for City staff and work to cut back hours versus staff as a means to spreading the impact of the upcoming downturn – resist temptations to prematurely use City fund (savings) reserves. Begin screening to roll back enforcement responsibilities and unnecessary rules in the Unified Development Ordinance and other city ordinances (flag ordinance, chicken costume regulation, double standard sign ordinances, etc.)
- Recognition of progress – but continued failure to illuminate our open air drug markets and reassessment of methods, needs, and opportunities to more seriously commit to securing this goal and more effectively protecting our children (it is a personal view that our failure to eliminate our open air drug markets and resulting harms in public housing and vulnerable low income neighborhoods as a form of child abuse)
- Work with the Housing Authority to establish a partnership program that establishes one housing development as a model "Safe Place" – including zero tolerance for any criminal activity, stepped up police enforcement, zero tolerance for rule violations, strict standards of behavior for residents/visitors, outside support from volunteer churches and civic organizations, increased use of technology, etc. – we need a model that is working to prove that we can do it in every public housing development
- Stop dodging our local responsibility to enforce illegal immigration – this is hands down America's quickest and most realistic jobs creation program and will dramatically reduce the drain on our social services, health care, education, and criminal justice systems
- Support an "all of the above" policy on energy independence – emphasizing realistic and empirically ground methodologies;
- Dedicate ourselves to jobs creation – model and encourage a city-wide "Buy America" policy, creatively support local export industries, push 287 (g), and encourage 21st century education to match 21st century realities (stop pushing "college" and start pushing skills and employability).

Councilwoman Cape

- Support voluntary annexation agreement as new development takes place and seeks to connect to City services
- Get in front of the conversation of what we are interested in, in terms of affordability, green initiatives, incentivizing, etc. and have that information ready when we get out of our economic turndown
- Understanding of conditional use limitations and how can we make our processes work better to achieve our goals
- Support City's goal of energy reduction
- Utilize the economic incentives we received for energy efficiencies to see how can we help jump start the economy, along green building and green businesses, with the tools we have in place

Councilman Miller

- Work with the County and State legislators on the water issue: possible solution prior to any further legal expenditures. Is there a win-win where both sides give up a little to achieve a lot? Annexation issue is also part of this priority;

- Budget – Adhere to our mission: the City of Asheville is committed to delivering an excellent quality of service to enhance your quality of life. How do we do this, knowing we have a budget deficit and a sick economy
- Health of downtown Asheville: implementing solutions to four important social issues affecting the City's health: (a) graffiti and vandalism; (b) cleanliness; (c) towing; and (d) panhandling
- Asheville Downtown Master Plan: adoption and developing a specific plan of action that is complete with timeline and fiscal/policy implications so we can convert the plan from written recommendations to action
- Economic development and job creation: maintain aggressive and proactive strategies with key partners to make the City of Asheville as business friendly as we possibly can during these difficult times
- PSP: no idea the impact a completed PSP will have on our community as well as budget and resources. A well vetted management plan for a completed PSP that includes annual maintenance and operations plan, budget, usage guidelines and a governance model that achieves predetermined objectives
- Comprehensive growth management plan: (Pat Smith with community foundation)
- Riverfront development – Wilma Dykeman Riverway or greenway infrastructure
- Healthy lifestyles what are those programs and policies we can affect that add to Asheville's growing reputation as a healthy place to live, work and play. Lighten up for life, bike paths, sidewalks, farm to table
- Affordable housing: maintain those dollars in the Affordable Housing Trust Fund, if possible
- Green sustainable solutions: provide incentives and easy to understand green solutions for industry, residents and small businesses so we can truly walk the sustainability talk (Community Energy Advisory Council)
- Volunteerism
- Safe/secure

Councilman Russell

- Look at publicly owned properties and ways to improve our ordinances for our own spaces;
- Unified Development Ordinance – look at ways at being more objective and predictable
- Consolidation
- Concentrated effort to review financial impacts for all projects
- Business friendly and encouragement of economic growth

Vice-Mayor Davis

- Civic Center, use of volunteers and review of public skating venue
- Public safety – Continue efforts to eliminate open air drug market – Partnership for a nuisance court
- Hope to keep merit pay in to some degree
- Riverfront development – City function with office
- Fireworks on New Years Eve

Mayor Bellamy

- Recommend no tax increase
- Advocate for measured reduction strategies across departments
- Support funding for Affordable Housing Trust Fund
- Support funding for basic city services including infrastructure, public safety, park and parks and recreation
- Use current funding that has been allocated and raised to complete W.C Reid Center
- Recommend pursuing opportunities for cost savings – during the fuel shortage were

there practices that were adopted that can be continued to cut costs
- Reduce the number of monthly Council meetings
- Work with Buncombe County and State legislators on addressing concerns in the water Agreement
- Develop a local economic stimulus package, similar to the N.C. Dept. of Transportation's potential Economic Stimulus and Recovery Plan, which she presented out to Council
- Lobby federal and state legislators on behalf of needs outlined in economic stimulus Package
- Develop a Riverway Redevelopment Commission in connection with Buncombe County, Chamber, Riverlink and river property owners
- Work with Henderson County on providing water to Northern Henderson County - receive land back and split the proceeds of a sale
- Work towards additional green jobs for the citizens of Asheville
- Maintain diversity
- Maintain goals of being a safe, affordable, green and sustainable City of Asheville
- Keep Asheville clean

Mayor Bellamy noted two recommendations (1) Planning & Zoning – Keep safe, attractive, energy efficient homes among your highest priorities by continuing your support of the Asheville Housing Trust Fund; (2) Asheville Downtown Commission – (a) commitment to aid in communication and help to be a better liaison for downtown issues; (b) partnership with Pritchard Park warden; (c) implement Social Issues Task Force's downtown plans; (d) better infrastructure – implement Wayfinding Program; and (e) better communication/management of City's downtown services.

It was the consensus of Council for the Mayor to write a letter to the Grove Park Inn expressing the City's appreciation for the fireworks the first three Saturdays in December, 2008.

City Council then, with the understanding that we are in a time of economy concern, affirmed the Asheville City Council 2008-09 Strategic Plan (including the fifth focus area of fiscal responsibility) and re-worded the existing goals, objectives and action items, deleting them entirely if accomplished or if they could not be accomplished in 2009-10.

In response to Councilwoman Cape, City Manager Jackson provided Council with copies of the Planning & Development Department's current development process review schedule being worked on, which detailed the process, timeline and particular section amendments being reviewed.

The following is a list of the new goals and objections, that received majority support of Council, to be folded into the 2009-10 Strategic Operating Plan:

- Explore potential of a zero tolerance policy
- Provide leadership in buying and hiring local
- Consolidation
- Support efforts to improve public safety in downtown parks and public spaces
- Continue support of Housing Trust Fund
- Develop an economic stimulus package
- Expand all non-salaried volunteer opportunities

City Manager Jackson said that the following items, which did not receive majority support of Council, would be reviewed to see if it is in the specific department's current work plan:

- Review of the Affordability Housing Task Force
- Review of the Sustainable Advisory Committee for Energy & the Environment
- Review of the conditional use process (consensus of Council to have City Attorney Oast bring forward an ordinance to delete this process)
- City Council salary reduction
- Discontinuance of outside agency funding

- 10% cut in the City's budget
- Four day work-week (consensus to reaffirm program)
- Review enforcement responsibilities in the Unified Development Ordinance
- Enforcement of illegal immigration laws
- balanced approach to energy use
- Suspension of additional investment this year in planning documents, consultants and studies

At Mayor Bellamy's request, it was the consensus of Council to have the Veterans and Memorial Day celebrations included as part of the festivals that the City adopts annually. She noted that Memorial Day has been included since 2002.

At 5:10 p.m., Mayor Bellamy said that the City Council retreat will continue at 9:00 a.m. on January 10, 2009.

Saturday, January 10, 2009 - 9:00 a.m.
WNC Nature Center - Asheville, NC

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower (left meeting at 11:44 a.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy welcomed everyone to the continuation of the City Council retreat, noting that she was pleased with the progress made at the meeting yesterday.

City Council Committees

Mayor Bellamy initiated discussion concerning whether the four City Council Committees are worthwhile of Council's time.

After discussion, it was the consensus of the majority of Council to continue with the four City Council Committees, as each have value. She felt that items should be routed through the appropriate City Council committee prior to consideration by the full Council. If there is no City Council Committee for the item, the matter is to be reviewed by City staff. Mayor Bellamy suggested that all strategic goals be aligned with the specific Council Committee for reporting, as that may help with the focus of the Committee. City Manager suggested that once the strategic goals are reworded, they would be routed through the Council committees for review and comment/revision before being placed on Council's agenda for adoption. Staff liaisons to the Council committees will also place an item on the Committee's quarterly agenda for a strategic operating plan update, with periodic reporting by the Committee chairs to the full Council.

Public Safety Committee – Mayor Bellamy and Vice-Mayor Davis – A third member is yet to be determined

Planning & Economic Development Committee – Vice-Mayor Davis, Councilwoman Cape and Councilman Russell (change to 2:00 p.m. on the second Wednesday of each month)

Finance Committee – Councilman Newman, Councilman Russell and Councilman Miller

Housing & Community Development Committee – Councilwoman Cape, Councilman Newman and Councilman Miller (with regular meeting time and date to be determined)

Boards & Commissions Committee – Vice-Mayor Davis, Mayor Bellamy and Councilman Mumpower (with regular meeting time and date to be determined)

It was the consensus of Council to include the appropriate City Council committee recommendation in all staff reports.

Boards & Commissions

After a brief discussion about the role of City Council liaisons, it was the consensus of Council to ask the Boards & Commissions Committee prepare a letter, with prior Council review, to all Chairs re-establishing the values of the committee, advising them of their City Council liaison, explaining City Council's role as a liaison vs. a regular voting member, re-stating their mission and the importance of the committee to reflect citizen views on topics, etc. She felt the liaison's role is to advise the board what Council's goals are specific to that particular board and that the board be reminded to keep the liaison involved. An annual report from each Committee will be provided to Council, along with monthly minutes shortly after the meetings occur.

It was the consensus of Council that the Boards & Commissions Committee (1) review all boards to determine if they receive funding from the City and if so, there should not be a voting member of Council on the board; and (2) look if there are any competing roles or overlapping responsibilities for the different boards.

Recognizing the importance of our boards & commissions, Mayor Bellamy noted that she is making sure that all applicable agenda items are thoroughly reviewed by the appropriate board/commission prior to coming to the full Council.

City Council Agenda Scheduling for City Council Members

Discussion surrounded the policy for City Council members to place an item on the agenda. Options available include the former policy of three or more members, one member of Council, and/or City Council Board Committee Chairs.

Mayor Bellamy noted that it is her goal to get a Council-requested item on the formal meeting agenda within 30 days.

Mayor Bellamy was concerned with the amount of time spent in discussing an agenda item. Each hour of the Council meeting is approximately $2,000, and it is her goal to reduce that cost. Councilman Mumpower noted that he is a minority representation and that he will continue to passionately and verbally defend his conservative position.

There was a brief discussion about the amount of time spent on the Consent Agenda items and the purpose of the Consent Agenda, which is to be adopted by a unanimous vote of the Council of the routine, non-controversial items. Mayor Bellamy suggested that members of Council are furnished with a copy of the tentative monthly agenda at the beginning of the month and perhaps any concerns regarding an item can be resolved prior to the meeting. In addition, the agenda item, in its entirety, is provided to Council at least three days prior to the formal meeting and suggested any questions be forwarded to the City Manager for response prior to the meeting.

Public Comment at Meetings

Mayor Bellamy asked for clarification as to whether Council will or will not allow public comment, under the Informal Discussion and Public Comment section, if the item was discussed on the agenda.

It was the consensus of Council that if Council receives the agenda item purely for information purposes only and no public comment was allowed at that time, that it would be appropriate for the public to comment on that item at the end of the meeting.

After a brief discussion regarding Council members speaking under informal discussion and public comment, Councilman Mumpower recalled that only 2-3 times he used that venue in that he felt he was being censured.

Councilman Newman felt that the public comment period is the time that Council has set aside to listen to the public.

It was reaffirmed that there will be no discussion on the agenda of personnel issues. If an item should arise, it will be referred to the City Manager.

It was the consensus of Council that when individuals speak under public comment and ask Council questions that the Mayor advise the person that the City Manager will meet with them after the meeting to set up a meeting time and time to discuss their concerns.

It was the consensus of Council for Mayor Bellamy to work with City staff to advise the public via a program on our Government Channel about Council meeting procedures.

Mayor Bellamy said that regardless of whether she is running for office or not, she will continue handling her responsibilities as Mayor of the City of Asheville until her term as Mayor ends.

Worksessions

Mayor Bellamy brought forward discussion about the Council worksessions. After a brief discussion regarding the value of Council Committees, it was the consensus of Council to hold only two formal meetings a month (2nd and 4th Tuesdays) at 5:00 p.m. in the Council Chamber and to amend the 2009 City Council meeting schedule to delete the 3rd Tuesday worksession (effective immediately). When worksessions are needed (budget, etc.), it was suggested that they be held either on the 3rd Tuesday of the month, or prior to the regularly scheduled formal meetings.

A brief discussion was held regarding meetings on the 5th Tuesday of any given month. It was the consensus of Council that (1) the 5th Tuesdays of any given month be blocked off for community meetings; however, the March 31, 2009, date be held for the Mission Hospital Board meeting, previously scheduled; and (2) that the June 30, 2009, date be a community meeting in the South Asheville area (not Shiloh, since Council has previously been there), at 6:00 p.m., at a place to be determined. It was also the consensus of Council to limit City staff attendance at the meetings to key departments and others who may be able to complement requests from that area.

Intergovernmental Relations

Mayor Bellamy briefly updated Council on the meeting with Henderson County representatives. It was pointed out that Henderson County does not want to buy the system from the City of Asheville, nor do they have the money to invest in to buy into the water system. They have no desire to be in the water business. They were also clear that they have until 2012 to decide if they will build a sewer treatment plant at Bent Creek. After 2010, they can transfer the property to the Metropolitan Sewerage District (MSD), who then has 10 years within which to build a sewer treatment plan. She has asked City Attorney Oast to prepare a letter asking what MSD's position is on that property. MSD will respond back to the City in writing. Since it could be 13 years before the City gets the 137 acres back, they proposed taking the amount offered by former Mayor Charles Worley, which was not a reasonable figure. In addition, Progress Energy would like to expand some of their power lines on the property, however, the City will need to get an appraisal to see the financial impact if they do expand their lines. Those power lines will, of course, impact the value of the land. Another meeting will be held in approximately 30 days and Progress Energy will update the group on this proposed expansion. At the next meeting, Henderson County will also provide some Best Practices information from other cities who have regional water service providers in the area, e.g., how are they governed and what do they look like.

Councilman Newman also noted that the existing water agreement needs to be amended so that it is clear on the responsibilities of both parties.

A discussion was held on the position City Council would like for the Mayor to represent at their next meeting. It was the consensus of Council that the language in the existing water authority with Henderson County be reviewed for amendment; to explore the potential for an early transfer of the 137 acres back to the City with a riverfront greenway and no payment up front to Henderson County. But, if there is real interest in selling the property, that a potential split (which would be negotiated) would be of interest to City Council, with details to be worked out. After the information is received from MSD, this matter, and the issue about an appraisal of the property, will be discussed further by Council.

A brief discussion was held whether the proceeds from the sale of the property would be rededicated to the water system to possibly prevent the need for a water tax increase, or used for other uses in the general fund.

Legislative Priorities

Vice-Mayor Davis said that research done by the Task Force for the Future of the Civic Center confirmed almost all arenas, conference, convention and performance centers throughout the state enjoy a percentage of hotel/motel room tax, either in the initial construction or through the life of the facility for capital improvement. The percentage varies from a half to three percent but an increment of room tax is consistently applied to the communities' public gathering places. Once again, Asheville is treated uniquely; other venues are not required to garner room nights as a condition to receive proceeds from room tax. He also remains firmly convinced that the Asheville Civic Center is directly responsible for many room nights and, at the very least, is a direct contributor to the vibrant downtown and the destination it has become. Our legislative agenda should include the request for a one percent dedication of hotel/motel tax revenue to be used for debt service on a near term upgrade of the Asheville Civic Center, consistent with the recommendation of the Task Force for the Future of the Civic Center. Should the one percent be beyond what Council is comfortable in asking, at least a half percent should be requested for the Civic Center Capital Improvement Program. It is a fair and normally dedicated tax that will help alleviate the burden of the local taxpayer as is done throughout the country, and, particularly, North Carolina. Recognizing the downturn in the economy, we may not be successful in this session but the request must be persistently included in our legislative agenda.

There was brief discussion about the regional nature of the Civic Center and the need for outside revenue to help renovate it. Councilman Miller felt the hotel tax money might be better spent on more advertising or on a new performing arts center where it could generate more hotel stays and sale tax revenue, which would spread the burden. He explained the three granting cycles of the Tourism Development Authority's Product Development Fund, and strongly suggested staff bring forward a strong proposal for those funds.

It was the consensus of City Council to include Vice-Mayor Davis' request on the Council's legislative agenda; and for staff to make application to the Tourism Development Authority's Product Development Fund for a Civic Center renovation project making the case how the Civic Center is a beneficial to tourism in our community.

Mayor Bellamy said that a vote will be taken on the legislative agenda at the January 27, 2009, meeting, at which time Council will review last year's requests and include any new ones. City Attorney Oast said that Council can continue to make legislative requests up until the deadline.

Mayor Bellamy said that a meeting with our state legislators will be set up to discuss Asheville's legislative agenda.

Upon inquiry of Councilman Newman, City Attorney Oast suggested City Council discuss the legal issues surrounding the water agreement in closed session with the policy issues being discussed in open session.

At 11:43 a.m., Councilman Russell moved to go into closed session pursuant to N.C. Gen. Stat. sec. 143-318.11(a)(3) to consult with the City Attorney on a matter with the respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: the City of Asheville, the State of North Carolina, and Buncombe County. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no". At this time, Councilman Mumpower left the meeting.

At 12:43 p.m., Councilman Russell moved to come out of closed session and return to the formal meeting. This motion was seconded by Vice-Mayor Davis and carried unanimously.

It was the consensus of Council to hold a worksession on annexation and the water agreement on Tuesday, January 27, 2009, at 3:00 p.m.-4:45 p.m., in the Council Chamber.

At 12:46 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – January 13, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "E", "H" and "I" were removed from the Consent Agenda for discussion and/or an individual vote.

At the request of City Manager Jackson, Consent Agenda Item "F" was removed from the Consent Agenda for a presentation and/or individual vote under New Business.

A. **APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON DECEMBER 9, 2008; AND THE SPECIAL MEETING HELD ON DECEMBER 12, 2008**

B. **RESOLUTION NO. 09-1 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT FOR GRANT FUNDS WITH THE N.C. PARKS AND RECREATION TRUST FUND FOR REIMBURSEMENT OF LAND ACQUISITION FOR THE BEAUCATCHER OVERLOOK PARK PROPERTY**

Summary: The consideration of a resolution authorizing the Mayor to apply for and (if awarded) enter into a grant agreement with the N.C. Parks and Recreation Trust Fund for the purchase of Beaucatcher Overlook Park property.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund (PARTF) to assist with the development of parks, recreational facilities, and greenways. The City of Asheville wishes to submit a grant application for $500,000. If awarded, grant funds will be used to offset the City's financial commitment of the existing lease-purchase agreement for the Beaucatcher Overlook Park property.

The grant application requires a dollar for dollar cash match valued at $500,000. The cash match is available through a combination of funds in partnership between the City of Asheville, Trust for Public Land and Buncombe County.

Creating a downtown overlook park is an idea that has been talked about for years in the Asheville area. In 1920, the City of Asheville established the first city plan authored by John Nolan, an early city planner, which identified the infrastructure needs for the growing city. The Nolan plan delineated a circle of parks surrounding Asheville, and major city parks in every neighborhood. The key component of the park system was an expansive overlook park along Beaucatcher Mountain, and open space connecting it to downtown Asheville and the surrounding neighborhoods.

The City's acquisition of the 30 acres of woodland covering the slope of Beaucatcher Mountain is serving as a catalyst to revive the overlook park vision, and is visible from nearly everywhere in downtown Asheville. The site is perfectly situated to be the centerpiece of a new vision for the area around Beaucatcher Mountain including Memorial Stadium, McCormick Field and White Fawn Reservoir.

The City is also in the process of finalizing a new Parks, Recreation, Greenways, and Cultural Arts master plan which will set the pace for capital projects for the next few years. The recommendations from the master plan will determine how the build out of the park fits into the overall vision.

This action complies with the *City Council Strategic Operating Plan* Focus Area: Green - Asheville will be the southeastern leader in energy and environmental sustainability while preserving and the city's natural beauty by contributing to developing the greenway master plan process, and pursuing opportunities to preserve open space.

This action complies with the Downtown Master Plan and the Parks, Recreation, Greenways, and Cultural Arts Master Plan (both pending City Council approval).

Pro:

- If awarded, the grant will reimburse the City for a portion of payments on Beaucatcher Overlook Park property.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

Award of the grant will reimburse the City of Asheville $500,000.

City staff recommends City Council to adopt a resolution authorizing the Mayor to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund for $500,000 for reimbursement of land acquisition costs for the Beaucatcher Overlook Park property.

RESOLUTION BOOK NO. 31 – PAGE 395

C. RESOLUTION NO. 09-2 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 10, 2009, TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED ALLEY OFF PATTON AVENUE

Summary: The consideration of a resolution of intent to close an unnamed alley off of Patton Avenue and request a public hearing for February 10, 2009, regarding this issue.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, property owner Western Carolina Rescue Ministries Inc. has requested the City of Asheville to permanently close an unnamed alley off of Patton Avenue.

The Greenway Commission met on Thursday, December 11, 2008, and approved closure of the unopened alley off of Patton Avenue.

Regarding the City Council Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for February 10, 2009, to close an unnamed alley off of Patton Avenue.

RESOLUTION BOOK NO. 31 – PAGE 396

D. RESOLUTION NO. 09-3 - RESOLUTION ACCEPTING COUNTRY MEADOWS DRIVE, BAITY DRIVE, NICHOLAS DRIVE AND BRANDI DRIVE AS CITY MAINTAINED STREETS

Summary: The consideration of a resolution to accept various developer constructed streets as city-maintained streets in the recently annexed area of the City of Asheville known as Sardis Road area that is described in the Annexation Services Plan dated May 22, 2007.

Ordinance # 7-15-1(f)(4)a requires that streets dedicated for public use by accepted by resolution of the City Council.

Country Meadows Drive from NC 112 to the end of maintenance is a developer constructed street that has an average width of 22 feet, a length of 0.32 mile, and a right-of-way width of 45 feet.

Baity Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width of 21 feet, a length of 0.09 mile, and a right-of-way width of 45 feet.

Nicholas Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width of 21 feet, a length of 0.08 mile, and a right-of-way width of 45 feet.

Brandi Drive from Country Meadows Drive to the end of maintenance is a developer constructed street that has an average width of 21 feet, a length of 0.07 mile, and a right-of-way width of 45 feet.

Transportation and Engineering Department staff and Public Works Department staff have inspected these streets and recommend their change of ownership from privately-maintained streets to city-maintained streets.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the annexation services plan for the Sardis Road Area that was approved by City Council on May 22, 2007. This action also complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to maintain the streets *(Total mileage = 0.56 mile)*.
- The streets provide access and connectivity in a residential setting.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to $6,326 per mile compared to the City's maintenance cost of $18,189 per mile.

Staff recommends that City Council accept the subject streets as city-maintained streets.

RESOLUTION BOOK NO. 31 – PAGE 397

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR RENEWAL OF THE TWO URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BUILDING GROUP FOR CLEANING THE VENTILATION HANDLING SYSTEMS

BUDGET AMENDMENT TO FUND CONTRACT FOR CLEANING THE VENTILATION HANDLING SYSTEMS

These items were removed from the Consent Agenda for a presentation and/or an individual vote.

G. RESOLUTION NO. 09-6 - RESOLUTION AMENDING THE 2009 CITY COUNCIL MEETING SCHEDULE TO DELETE ALL THIRD TUESDAY WORKSESSIONS

RESOLUTION BOOK NO. 31 – PAGE 403

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FIT COMMUNITY DESIGNATION IN COLLABORATION WITH HEALTHY BUNCOMBE, AND TO SERVE AS THE FISCAL AGENT FOR FIT COMMUNITY GRANT APPLICATION IN THE WEST END/CLINGMAN AVENUE AND THE SOUTH FRENCH BROAD NEIGHBORHOOD ASSOCIATIONS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO A SAFE ROUTES TO SCHOOL GRANT FOR PROPOSED PEDESTRIAN INFRASTRUCTURE IN HAW CREEK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. RESOLUTION NO. 09-4 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR RENEWAL OF THE TWO URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for renewal of the two Urban Progress Zones within the City of Asheville.

In July of 2006 the NC General Assembly passed legislation (House Bill 2170) that created a new business tax credit program, replacing the William S. Lee credits, which were repealed for business activities that occurred on or after January 1, 2007. The newer program is called Urban Progress Zones.

On July 24, 2007, Asheville City Council passed a resolution authorizing the City Manager to submit an application for state designation of Urban Progress Zones. The application was successful and two zones have been designated. Renewal of the designation, including an adopting resolution by City Council, is required annually.

Under the Urban Progress Zone program, businesses that add new jobs or invest in business property, and operate under specific NAICS codes, are eligible for state tax credits. To be eligible, the business must also:

- pay an average weekly wage for all full-time employees equal to or greater than 110% of the state average weekly wage,
- provide health insurance for full-time employees and pay 50% of premiums,
- have no significant environmental violations in the last five years,
- have no outstanding citations under OSHA and no serious violations within the last three years, and
- have no overdue taxes.

Regarding the Strategic Operating Plan, the Urban Progress Zone designation is compliant with the 2008-2009 Strategic Plan as the program:

- Supports efforts to hold the line on taxes and find areas for tax and fee relief
- Supports diversified job growth and small business development
- Supports a stronger river redevelopment partnership, (Zone 2 includes river district)

Pros:

- This action will allow us to provide incentives for business growth and investment within distressed Asheville communities.
- Eligible businesses are allowed to file for the tax credits as part of their NC corporate income tax, NC corporate franchise tax, or -in the case of insurance companies- the state premiums tax. No separate application process to redeem the credits is required.
- The Asheville-Buncombe Economic Development Committee has endorsed Urban Progress Zones.

Con:

- Must reapply or renew each year.

Urban Progress Zones do not require city investment beyond identification of eligible zones and application. Credits are applied only to state taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for renewal of two existing Urban Progress Zones within the City of Asheville.

Economic Development Director Sam Powers responded to Councilman Mumpower's question of what the zones are and what the productive value is of these initiatives.

Councilman Mumpower felt that with the state's budget deficit he sees no reason to ask for these special type arrangements, especially with such a broad and vague area.

In response to Vice-Mayor Davis, Mr. Powers said businesses have the opportunity to take credits as part of their state corporate income tax. He does receive approximately 15-20 calls a year from businesses asking us to help them verify that they are in the Urban Progress Zone. He felt this is a program that businesses in Asheville are taking advantage of.

Vice-Mayor Davis said that the zones are areas that have some difficulties with businesses originating and being sustainable. The zones include fairly large properties with small businesses and a lot of poor neighborhoods and he would support the zones.

Mayor Bellamy said that any person who does not have access to a computer but who would like to have the materials that are in front of City Council, should contact City Clerk Maggie Burleson at 259-5601.

Councilwoman Cape moved for the adoption of Resolution No. 09-4. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 399

H. RESOLUTION NO. 09-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FIT COMMUNITY DESIGNATION IN COLLABORATION WITH HEALTHY BUNCOMBE, AND TO SERVE AS THE FISCAL AGENT FOR FIT COMMUNITY GRANT APPLICATION IN THE WEST END/CLINGMAN AVENUE AND THE SOUTH FRENCH BROAD NEIGHBORHOOD ASSOCIATIONS

Summary: The consideration of a resolution authorizing the City Manager to apply for a Fit Community Designation in collaboration with Healthy Buncombe, and to serve as the fiscal agent for Fit Community grant application in the West End/Clingman Avenue and the South French Broad Neighborhood Associations.

The City of Asheville received a three-year Fit Community Designation in 2006 in partnership with Healthy Buncombe, a local coalition to program and promote both local and state initiatives to support healthy lifestyles in the Fit Together initiative. The Fit Community designation recognizes North Carolina municipalities that have exhibited a commitment to supporting healthy life styles in the areas of physical activity, healthy eating and youth tobacco use prevention. Fit Community is a program of Fit Together, an initiative of the North Carolina Health and Wellness Trust Fund. The City is now coming into the third year of the designation and wishes to reapply for a second three-year designation in collaboration with Healthy Buncombe.

The West End/Clingman Avenue and the South French Broad Neighborhood Associations wish to make a pre-application to be considered for the full application process for a $60,000 Fit Community grant application for programs at Aston Park. If invited to the next phase of the grant application, the City of Asheville will serve as the applicant and fiscal agent. If awarded the grant, the City will then serve as a pass through for grant funds and fiscal agent on behalf of the neighborhood associations.

This action does not comply with the City Council Strategic Operating Plan.

Pros:

- Fit Community designation sets the stage for community agencies to pursue future Fit Community grants
- Supports the West End/Clingman Avenue and the South French Broad Neighborhood Associations efforts to pursue a Fit Community grant for programs at Aston Park.

Con:

- None

With regard to the City Council Strategic Operating Plan, this grant will add playground equipment to the new playground that was just installed, and to develop programs in the park to entice the community to use Aston Park.

There is no fiscal impact on the receipt of the Fit Community Designation. In the event a Fit Community grant is awarded, the City will serve as the fiscal agent.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for the Fit Community Designation in collaboration with Healthy Buncombe, and to support the West End/Clingman Avenue and the South French Broad Neighborhood Associations efforts to pursue a Fit Community grant for programs at Aston Park.

Councilman Mumpower said that this money is coming out of the state budget with billions of dollars in deficits. He felt the help we need from the state is in our court system. Even though this is a good project, it's not necessary.

In response to Mayor Bellamy, Parks & Recreation Director Roderick Simmons said that the funding does not come from the state, but from a tobacco settlement.

Councilwoman Cape moved for the adoption of Resolution No. 09-7. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 404

I. **RESOLUTION NO. 09-8 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO A SAFE ROUTES TO SCHOOL GRANT FOR PROPOSED PEDESTRIAN INFRASTRUCTURE IN HAW CREEK**

Summary: The consideration of a resolution of support and administration for a Safe Routes to School grant application for proposed pedestrian infrastructure in Haw Creek, and authorization to accept the grant if awarded.

Safe Routes to School (SRTS) is a federally-funded grant reimbursement program providing an opportunity for communities to improve conditions for bicycling and walking to school. According to the SRTS program requirements the City Council must adopt a resolution of support and administration prior to submission of the grant application.

Evergreen Charter School is proposing a sidewalk along one side of Bell Road, which would connect New Haw Creek Road to the existing sidewalk at Ozark Springs Lane. This would allow their students a safer walking route from the Happy Valley area and from a proposed Asheville Transit System stop to the school. Evergreen has existing internal pedestrian pathways that allow connection to the sidewalk and is willing to continue to improve that on-site network with parent and community volunteers.

Regarding the Strategic Operating Plan, this application is the first step to obtaining Safe Routes to School grant funding, which fulfills a safety focus area element: "Support the Safe Routes to School program by implementing one school this year."

Pros:

- Allows up to $300,000 in additional pedestrian infrastructure investment with outside funds
- Extends existing sidewalk to a logical terminus
- Contributes to pedestrian safety
- Encourages active children
- Brings a share of already allocated federal funds to Asheville
- Requires no local matching funds.

Cons:

- The grant may not cover the entire project, so other funding would have to be sought
- The city will be responsible for project management and grant administration

The engineer's estimate for the project is $357,840. The grant limit is $300,000, leaving a gap of $57,840. The engineer's estimate includes $25,000 for contract administration, which would be done by city staff, leaving a cash gap of almost $23,000, which would have to be funded from other sources, by use of other in-house resources, or by modifications to the design.

City staff recommends City Council adopt the resolution, which expresses support for the grant application, ability to administer a Safe Routes to School grant, and authorizes the City Manager to accept the grant if awarded.

Councilman Mumpower feels that it's irresponsible for the City to participate in any efforts from the state or federal governments with their terrific deficits.

Councilwoman Cape moved for the adoption of Resolution No. 09-8. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 405

III. PRESENTATIONS & REPORTS:

A. AT&T GRANT FOR THE UNC-ASHEVILLE MATH TUTORING CERTIFICATION PROGRAM

Mr. LaVoy Spooner, WNC Regional Director for External Affairs for AT&T, announced that AT&T has awarded a grant of $25,000 to UNC-Asheville to be used to develop a Math Tutor Certification Program. He was pleased that this Council values public education and fully supports the efforts that may improve the academic performance and ultimately the graduation rate of the students in our community. AT&T shares this same commitment to education and creative solutions that will reduce the drop-out rate of secondary school students. He thanked Mayor Bellamy for the key role she played in bringing their attention to this funding opportunity to support the University's Math Tutor Certification Program. This program will train tutors who will work with low performing and/or low income students to improve their math skills and performance which should contribute to an improved overall academic success for those students. The program will create a cadre of math tutors skilled in educational practices, knowledgeable of school policies and familiar with the North Carolina standard curriculum. He then presented the check to UNC-Asheville Chancellor Anne Ponder.

On behalf of the UNC-Asheville, Chancellor Ponder thanked AT&T for the gift. She also thanked City Council for making this opportunity available to UNC-Asheville in order to receive this investment in education public. She explained UNC-Asheville's strategic plan and she felt this is a shining example of the University taking on its public responsibility. She felt this will enhance educational opportunities in Asheville where they are needed most.

Mayor Bellamy thanked Chancellor Ponder for partnering with the City to bridge the gap between Asheville and UNC-Asheville. To the math wizards, she appreciated them reaching out to the community to fill a gap when the Asheville-Buncombe Education Coalition closed their doors.

She also thanked Mr. Spooner and AT&T in recognizing the Charter School Teacher of the Year as well as Teacher of the Year for Asheville City Schools.

B. STATE OF THE AIRPORT UPDATE

Mr. David Edwards, Director of the Asheville Regional Airport, introduced Mr. Dave Hillier, Chairman of the Asheville Regional Airport Authority, and presented Council with the following state of the Asheville Regional Airport Authority. He provided Council with an Airport overview regarding the Fiscal Year 2008 traffic statistics, land, major uses; runway information, and passenger traffic growth, which from Fiscal Year 2003's 219,584 passengers to Fiscal Year's 2008 282,538 passengers

Regarding air service, he explained they have 26 daily non-stop flights to the following hub cities: Atlanta, Charlotte, Cincinnati, Detroit, Houston, Newark and Minneapolis/St. Paul. These flights are on 4 commercial air carriers – Continental (12%), Delta (40%), US Airways (35%) and Northwest (13%). New non-stop service opportunities include Boston, Chicago, Ft. Lauderdale/Miami, Tampa, and Washington, D.C.

Regarding community benefits, he explained that based on a 2007 economic impact study by Tom Tveidt, Director of Research for the EDC of Asheville-Buncombe County, the Airport provides the following total direct, indirect and induced impact for jobs of 2,410; for annual economic impact of $205,124,969; and for annual payroll of $61,625,669. It is estimated that each additional daily flight of a 50 seat passenger jet generates approximately $9,125,000 in annual economic impact.

He then reviewed the Airport's (1) revenue and expenses for Fiscal Year 2003 through 2008; net income for Fiscal Year 2003 through 2008; and the current budget for Fiscal Year 2008-09.

He briefed Council on the Airport Art Program; and discussed the following developments in the Airport: terminal complex development; terminal project – ticket counter; terminal project – baggage make-up; terminal project – baggage claim; new access control/security system; regional boarding ramps; upgraded airside concessions; guest service center; new terminal advertising program; new rental car maintenance facility; new corporate hangar; and new fixed base operator facility. He explained the 2008-09 Capital Improvement Programs of Runway Rehabilitation including lighting and shoulders – design; ARFF equipment purchase; pre-conditioned air project; aircraft lavatory cart facility and building automation – for a total cost of $1,694,104

Upcoming development projects include (1) rehabilitation of runway 16/34 ($7.5 Million); (2) rehabilitation of public parking ($3.0 Million); (3) reconstruction of General Aviation roadway infrastructure ($2.75 Million); and (4) installation of a Virtual Security Perimeter Control System (one of four airports nationwide selected by the Transportation Security Administration for a grant to fund the project). Proposed stimulus projects include (1) construction of the Westside parallel taxiway system ($36.75 Million); and (2) expansion of the General Aviation roadway system ($5.75 Million).

The Airport is working with Carolina Mountain Land Conservancy to submit a grant to place approximately 28 acres of Airport property located directly on the French Broad River into a permanent conservation easement status. City Council was originally briefed on this item on March 27, 2007. The application deadline is February 1, 2009. A conservation easement would allow for bike and walking trails that would connect to much of what has been discussed as a part of the Urban Trail down along the French Broad River. The final easement documents will be reviewed by the Airport Authority and brought back to City Council for their review and approval. This is a great opportunity to give back to the community. At this point Council is not committing to do anything, but they would like to know that they have Council's support in at least submitting the application.

He was pleased to invite City Council to the terminal improvement unveiling/ribbon cutting on February 26, 2009.

Councilman Mumpower questioned why we would want to restrict any Airport property when we don't have a clear sense of the future. Mr. Edwards explained the advantages of having a conservation easement. He said that the Airport can show good faith from an environmental standpoint to protect and give back to the community. This particular property is located right on the French Broad River (in the floodway) and commercially it is not developable. The conservation easement is all on the Airport property and it can be used for the benefit of walking and biking trails, etc. in an area not identified for any use.

In response to Councilman Miller, Mr. Edwards talked about increasing the size of our regional jets and which non-stop opportunities he would like to see happen.

Councilman Newman, member on the Airport Authority, explained that the decision by the Airport for a conservation easement is not significant, but when you look at a connected system of greenways all the way along the French Broad River, it is quite significant. The neighboring properties are also very interested in placing some of their property in a conservation easement as well for this endeavor.

On behalf of City Council, Mayor Bellamy thanked Mr. Edwards and Mr. Hillier for their work at the Airport.

IV. PUBLIC HEARINGS:

A. ORDINANCE NO. 3685 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING ANIMAL CEMETERIES AND ANIMAL CREMATORIES

Mayor Bellamy said that this public hearing was held on December 2, 2008, and continued to this date in order to give staff the opportunity to research some questions raised by City Council.

Urban Planner Julia Cogburn said that this is the consideration of amendments to the Unified Development Ordinance (UDO) concerning animal cemeteries and animal crematories.

The Planning and Development Department recently received an inquiry about the development of a pet cemetery and crematory. Presently, the UDO contains no reference to animal cemeteries or crematories. As a result, such uses would be allowed only in the River District, where all uses are permitted unless specifically prohibited. Staff feels that the ordinance should address such uses specifically, and, therefore, proposes the following amendment to the UDO to establish fair and reasonable standards for such uses in the City of Asheville's zoning jurisdiction. In drafting this ordinance, staff conducted research on animal cemetery and crematory operations and regulations and also looked at ordinances from other communities. The proposed ordinance changes:

- Establish definitions for "animal cemeteries" and "animal crematories."
- Allow animal cemeteries as a Use by Right Subject to Special Requirements in the CBI, CBII, Institutional, HB, RB, River, CBD, CI, and Industrial Districts. These are the same districts that allow cemeteries for humans with one exception. Human cemeteries are allowed in all residential districts. The special requirements would require that the cemetery be operated by a business entity, that arrangements (such as contracts and trust accounts) be in place to ensure perpetual care and appropriate closure procedures, and that no internment occur within ten (10) feet of a property line or within a required setback, whichever is greater.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the Institutional, HB, RB, and River Districts. The conditions would address emissions, other potential nuisances, and buffering, and would require that the use be accessory to an animal cemetery, veterinary clinic, or animal shelter.
- Allow animal crematories as a Use by Right Subject to Special Requirements in the CI and other Industrial Districts. The conditions would address compliance with applicable state and federal regulations.

On December 13, 2008, Asheville City Council first reviewed this proposed wording amendment and suggested three changes. The staff has revised the ordinance to address the following concerns:

- The definition of "animal cemeteries" should clearly indicate that these regulations do not apply to the private burial of family pets on private property.
- Change draft to delete allowance for animal cemeteries in residential districts.
- The requirements for animal cemeteries should include something that would require perpetual care.

This ordinance supports the *Asheville City Development Plan 2025* goal of reviewing and modifying development regulations to be responsive to technological and social changes and economic development in the community.

This ordinance was recommended for approval by a 6-0 vote of the Asheville Planning and Zoning Commission at their meeting on November 5, 2008. No one spoke on the matter.

Pros:

- Adds language to address uses not presently referenced in the UDO.
- Adds fair and reasonable standards for the establishment of animal cemeteries and crematories.

Con:

- Objections may be raised to allowing animal cemeteries and crematories in the City of Asheville.

City staff and the Asheville Planning and Zoning Commission recommend that City Council adopt the ordinance.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

After Mayor Bellamy asked for public comment and received none, Councilman Mumpower moved for the adoption of Ordinance No. 3685. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 138

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING REQUEST FOR THE PROJECT IDENTIFIED AS WEST CHESTNUT STREET APARTMENT BUILDING, LOCATED AT 132 WEST CHESTNUT STREET, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING, WITH AN EXCEPTIONAL DEVELOPMENT DENSITY BONUS, FOR THE DEVELOPMENT OF A 13-UNIT APARTMENT BUILDINGS

ORDINANCE NO. 3686 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS WEST CHESTNUT STREET APARTMENT BUILDING, LOCATED AT 132 WEST CHESTNUT STREET, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING, WITH AN EXCEPTIONAL DEVELOPMENT DENSITY BONUS, FOR THE DEVELOPMENT OF A 13-UNIT APARTMENT BUILDINGS

Mayor Bellamy opened the public hearing at 5:50 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as West Chestnut Street Apartment Building, located at 132 West Chestnut Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with an exceptional development density bonus, for the development of a 13-unit apartment building. This public hearing was advertised on January 2 and 9, 2009.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning from RM-8 (Residential Multi-family Medium Density District) to RM-16 (Residential Multi-family High Density District) with a density bonus pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO) to construct a 13-unit multi-family building.

The site consists of one parcel located at 132 West Chestnut Street, currently undeveloped and 0.37 acres in size (according to Buncombe County Tax Assessment). The parcel and surrounding area is zoned RM-8 and is in the Montford Historic District. The site formerly held a 12-unit apartment building that was destroyed by fire more than 10 years ago.

The applicant is proposing to construct a multi-family building with a total of 13 units with 20 parking spaces. Underlying zoning allows for three (3) units on the site and the RM-16 conditional zoning would allow for six (6) units. The density bonus, which requires 20% of the units to be offered at affordable rates, provides a 200% increase over base density – resulting in 13 units (3 affordable).

The structure is proposed at three (3) stories – 31'4" and the 13 units range in size from 760 to 1513 square feet. The design and materials have been approved by the Historic Resources Commission (HRC) as well as site standard modifications as listed below. The applicant is proposing to pay a fee-in-lieu for a portion of the required open space (fee-in-lieu money is directed into a fund dedicated to the acquisition of park space and greenways).

Access to the site is proposed from an existing alley, located immediately west of the parcel. The alley would be improved by the applicant to a width of eight feet. A total of 20 parking spaces are provided – seven spaces are enclosed under the building and the 13 remaining surface spaces are located to the rear (10) and west side (3) of the structure. A five and a half foot (5.5') sidewalk exists along West Chestnut Street and will remain.

The parcel is within the Montford Historic District and was required to undergo design review by the Historic Resources Commission (HRC). Pursuant to Section 7-11-7, the HRC is allowed to flex certain development standards and the following items were modified on September 10, 2008, at a formal hearing:

- Setback reductions (front from 15' to 10', east side from 39' to 15' 6", west side from 39' to 9'6")
- Parking encroachment into rear and west setback

The proposal was reviewed by the Technical Review Committee (TRC) on November 17, 2008, and was approved with the conditions. No members of the public spoke regarding this project.

The Planning & Zoning Commission approved the project by a unanimous vote of 6-0 on December 3, 2008. One member of the public spoke in opposition to the project because of on-street parking congestion on the block due to the high number of multi-family uses in the area and the potential for this proposal to add to the number of cars parked along West Chestnut. Staff explained that the provision in Section 7-11-2(c)(4) of the UDO which states that residential projects within one mile north of the CBD shall not be required to provide off-street parking if on-street parking is permitted on that street and there is transit to serve the project does apply in this situation. Although that provision means that the applicant is not required to provide any off-street parking at all, they have included 20 spaces which should result in the majority of residents parking off-street.

Exceptional Development - Incorporation of exceptional development practices into the site design allows for a project to seek alteration standards for density (to justify the 200% density bonus). For this project, the applicant has indicated they are providing:

- high quality building design (design and materials have been approved by the HRC);
- enhanced landscaping through the use of additional and/or larger plants (property line buffers included on two sides adjacent to SF uses – east and south – although not required by code);

- environmentally sensitive design that preserves existing vegetation and enhances other environmental features of the property beyond what is typically required (two mature trees being preserved at southern end of site & supplemental property line buffers);
- minimizing the number of access points by using existing curb cuts; and
- designating 20% of the units as affordable according to City standards.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural features and topography of the site. Although most of the existing vegetation will be removed, the site is not heavily vegetated to begin with. Also, the proposed landscaping is beyond what code requires and will offer additional screening from single-family properties to the east and south. Other site landscaping is fitting and compatible with the residential neighborhood. There are no significant topographic features on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development is not expected to injure the value of adjoining or abutting properties, especially given many of the exceptional development standards being incorporated into the design.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   This area is zoned RM-8 which is intended for a mix of single-family and multi-family development and does allow for development standard bonuses. The proposal for this 13-unit apartment building and site design has been designed to comply with the guidelines of the Montford Historic District and was not found to be incompatible with the scale, bulk, coverage and character of the area. While it is a large structure, there is an established pattern of larger and medium-sized single-family homes and apartments intermingled with smaller homes in the Montford area (see Exhibit C map). Also the site design is similar to the previous layout with the former apartment building which was destroyed by fire over a decade ago.

   The base zoning (RM-8) would allow only 3 units; this request incorporates a conditional zoning up to RM-16, which would allow 6.4 units. By incorporating exceptional development standards and affordable housing, the applicant is requesting a 200% density bonus, resulting in 13 units total (see above section detailing exceptional development). Staff does not believe that the additional units create an incompatible situation as it relates to surrounding density or character because of the careful design

consideration provided by the HRC. One-third of the parking spaces are enclosed beneath the building and any impact from the rear parking area should be mitigated by the landscaping plan and fencing along the east and rear property boundaries.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The *Asheville City Development Plan 2025* proposes a Smart Growth development pattern by encouraging higher density residential infill projects (pg. 31) and incentives for the construction of affordable housing (pg. 50). One way to accomplish this goal is to apply existing zoning tools to incentivize higher density residential infill development. This project utilizes the "Exceptional Development Standards" with altered site specifics and a 200% density bonus from incorporating 20% of the units as affordable.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposed development is located near major road facilities, interstate connections and along a City bus route (#11). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure because the anticipated traffic at full build-out conditions is expected to be less than 100 vehicles per hour (10 vehicles per hour during the morning peak hour and 25 vehicles per hour during the afternoon peak hour during a typical weekday).

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The project offers affordable housing units, aligning with City Council's goals.
- The proposed development and design as approved by the Historic Resources Commission will complement the existing residential fabric of the neighborhood.
- Higher density infill development furthers the goals and objective of the comprehensive plan.

Con:
- The project exceeds the density allowance under the current RM-8 zoning district unless the Conditional Zoning and density bonus is approved.

Based on the above findings and that the project appears to comply as Exceptional Development with affordable housing, staff recommends approval of the conditional zoning and approval of the density bonus as requested by the applicant.

Mr. Chris Cole, representing the development team, was present to answer questions.

Ms. Daisy Johanson, property owner at 124 W. Chestnut Street, did not support the conditional zoning request.

Ms. Cecilia Johnson, property owner of 127 and 131 W. Chestnut Street, showed Council pictures which illustrated her concerns of traffic and parking problems in the area. She said that if this project is allowed to be built, there would be 34 apartment units on this one block.

Mayor Bellamy closed the public hearing at 5:58 p.m.

City Attorney Oast explained the protest petition standard which is governed by the state statutes.

In response to Mayor Bellamy, Ms. Bernstein confirmed that this would be a net gain of one apartment unit from what was there prior to the fires.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3686, to conditionally zone the project identified as West Chestnut Street Apartment Building, located at 132 West Chestnut Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with approval of the density bonus for incorporation of exceptional development standards and 20% affordable units, for the development of a 13-unit apartment building, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application and as approved by the HRC. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The applicant will work with the City's Community Development staff on coordinating the affordable rental units. The three affordable units must be income qualified (at or below the Housing Trust Fund's Maximum Rent schedule) and a deed restriction must be placed on each affordable rental unit limiting any rental increase to no more than 4% per year for the first 10 years in a form approvable by the City Attorney (or the annual increase in the Consumer Price Index, whichever is greater for the term hereof). An annual rent certification form must be completed on December 31 of each year verifying the current rents of the affordable units throughout the duration of the affordability period. This motion was seconded by Councilman Miller and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTIES LOCATED ON SAND HILL ROAD AND SMOKY PARK HIGHWAY FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3687 - ORDINANCE TO REZONE PROPERTIES LOCATED ON SAND HILL ROAD AND SMOKY PARK HIGHWAY FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 6:04 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone properties located on Sand Hill Road and Smoky Park Highway from Industrial District to Commercial Industrial District. This public hearing was advertised on January 2 and 9, 2009.

Mr. Esselstyn said that the subject area is comprised of six parcels and a portion of a seventh, totaling about 178 acres, including a substantial fraction of the campus formerly occupied by American Enka and BASF operations and now partially used by Colbond, Inc. The entirety of the subject area is currently zoned Industrial. (The excluded portion of the seventh

parcel is currently zoned RS-2, and would not be affected.) Though the area has limited direct frontage on Sand Hill Road, it comes near that road at another point and has a long expanse across the railroad tracks from Smokey Park Highway. The applicant, representing three corporations owning the seven parcels, wishes to rezone to property to Commercial Industrial.

The boundaries of the subject parcels have recently been adjusted, with the result that six of the seven parcels straddle the City's corporate limits, and have at least a small portion in the extraterritorial jurisdiction area (ETJ). Staff has discussed with the applicant the preference of the City and Buncombe County for properties to fall within a single jurisdiction, and the applicant has expressed willingness to consider a variety of options, including annexation, to address this concern.

The area within City limits was annexed in 1994 and was initially zoned Heavy Industrial, then zoned Industrial with the adoption of the Unified Development Ordinance (UDO) in 1997. The remaining area came into the ETJ in 2001 and was zoned Industrial at that time.

According to the UDO's Article 8, the purpose of the Industrial District is to "reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees."

The applicant's request for Commercial Industrial zoning stems from a desire to be able to attract a wider range of possible tenants. In recent years, much of this industrial campus has been underutilized and interest in developing or occupying the site with an industrial use has been limited. The Industrial zoning district allows relatively few commercial uses, and does not include general retail sales, general office uses, medical clinics, or residential occupation by non-employees in the list of permitted uses. The applicant would like to offer the land for a mix of uses and proposes one option being a large planned development that could include retail, office, medical, and park space.

The stated purpose of the Commercial Industrial district (also known as CI) is "to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development." Further, "Assembly, packaging, processing, production and manufacturing" uses are permitted in CI, as in Industrial; the only industrial uses permitted in the Industrial district but not in CI are recycling plants and certain other types of recycling facilities.

While standard rezonings can not be based upon proposed site design options, there are elements which staff feels could be instructive as background information. A major issue at this location is how a large-scale development separated from the current industrial operations would be accessed through the existing relatively narrow connections to Sand Hill Road. The applicant has expressed strong interest in a design which would involve construction of a bridge from Smoky Park Highway over the railroad tracks to provide more direct traffic access to that larger thoroughfare.

Certain areas of the site would have to be redeveloped as brownfields. One section of the subject area, formerly used as a landfill, would have limited potential for construction, but the applicant has been in discussions with Buncombe County regarding possible dedication of that area for public ball fields. (This section is across Hominy Creek from the current Buncombe County Sports Park accessed from Sand Hill School Road.) Stretches along Hominy Creek also have limited development potential, due to flood hazards and deed restrictions, but they have

been noted for years for their potential as a greenway corridor in excess of a mile long. The applicant has stated an interest in creating an easement for a greenway, and has had preliminary meetings with staff regarding the process, although nothing has been resolved to date.

While the above options are of great interest, the staff emphasizes that the proposed rezoning should be considered independent of any park element, greenway, or bridge to Smoky Park Highway as there is no agreement to any of these elements at this time. With no binding written commitment of any such future action, and with this matter under consideration as a standard rezoning, neither the Planning and Zoning Commission nor the City Council have the authority to add such elements as a condition for approval of the rezoning. Staff felt an overview of these options that have been discussed could be a helpful means of considering how constraints of the site could be overcome and potentially used to public benefit. It is additionally worth noting that addition of these amenities is not strictly dependent on the rezoning and could occur under the existing zoning as well.

The Comprehensive Plan includes a policy stating that Industrially zoned land should be preserved for industrial uses. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area. However, there are recent precedents (detailed above), also in the Candler area, for City Council approval of similar zoning changes. Two 30+ acre areas were recently rezoned from Industrial to Residential zoning districts.

If the subject area is rezoned, there would still be three large adjacent areas zoned Industrial, measuring roughly 40, 60, and 84 acres in size, as well as other nearby Industrial zoning on the opposite side of Sand Hill Road. Furthermore, in 2005 an area of approximately 125 acres along Sardis Road ¼ mile southeast of the subject properties was rezoned from Community Business II to Commercial Industrial. Additionally, the CI district proposed in this rezoning does not preclude industrial use (as residential districts do), continuing the option of many types of industrial uses, and adding the potential for many other marketable uses. Although these new options increase the likelihood that the land will be occupied by non-industrial use, they also give more options for development to the property owner. Unfortunately, however, this 350+ acre contiguous industrially zoned site with rail spurs into its interior appears to be a one-of-a-kind situation in the City's jurisdiction, and opening it up for non-industrial development could close the door on a potential employer seeking just such an opportunity.

After recent rezonings of industrially-zoned land were approved despite the City's adopted policy, City Council felt that stakeholders should be consulted about their perspective on the policy given changing views about the future of this region's economy. Director of the Office of Economic Development Sam Powers attended these discussions, and, applying the findings to this case, states that "OED staff feels a case can be made for recommending approval for CI zoning of the referenced property."

Staff has received communications from three members of the public regarding this rezoning. Two nearby residents and one business owner called seeking more information. None expressed any opposition, and one of the residents wished to explicitly indicate her support.

At their December 3, 2008, meeting the Planning and Zoning Commission voted unanimously to recommend approval of the proposed rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Rezoning could encourage development and cleanup of a significant underutilized area.
- Subsequent to this site's initial zoning, 125 acres nearby have been rezoned to Commercial Industrial.

Cons:

- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.
- Site has unique characteristics that no other industrial site in Asheville can offer.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. Both the Planning and Zoning Commission and City Council have, however, supported similar rezoning in the recent past, and since 2006 stakeholders have not expressed significant concern about the rezoning of such land to Commercial Industrial. If the City Council wishes to consider this rezoning independent of the existing policies, staff feels a good case can be made for recommending approval.

Mr. Will Buie, representing the owners, gave a brief history of the site, noting that they have been developing Asheville Commerce Park which is an industrial park adjacent to this property. He explained how the site has its challenges, either for an industrial site or any other use. The applicant is going through the brownfields cleanup process now with the N.C. Dept. of Environment & Natural Resources. When BASF sold the property, the deed restricted everything on the upper side of Sand Hill Road so that no residential uses could take place on that property. On another portion of the property there is an old closed out landfill on the site. He explained why economic and environmental factors are reasons why they are not asking for a conditional zoning. One of the driving factors for a rezoning is that they have not been successful in some of the industrial development on the property; however, they believe there is a significant portion of the property that will be industrial. The flexibility that CI provides is important because the overall redevelopment of this property is going to be very costly. Even though this is a straight rezoning, he explained what their intentions are for the property, noting that they have a commitment from the N.C. Dept. of Transportation and Buncombe County to fund $1 Million towards construction of a road and bridge over the railroad to access the property from US 19-23. He urged the Council for their support of this rezoning request.

City Attorney reminded Council that if the property is rezoned, any use permitted in the Commercial Industrial District will be allowed on the property and no potential plans for the property can be considered in this action.

At 6:17 p.m., Mayor Bellamy closed the public hearing.

When Councilman Mumpower questioned the City's Comprehensive Plan against rezoning industrial land, City Attorney Oast said that the Plan should be treated as a guide, not a command. Councilman Mumpower felt that our continued investment in planning documents is applied with a sense of situational ethics.

In response to Vice-Mayor Davis, City Attorney Oast said the in the Commercial Industrial District, there is no structure size; however, the project would be governed by the Level III conditional use process.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3687. This motion was seconded by Councilman Russell and carried unanimously.

D. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON 1498 SAND HILL ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

At staff's request, Councilman Russell moved to continue this public hearing until January 27, 2009. This motion was seconded by Councilman Mumpower, and after Mayor Bellamy called for public comment, and received none, said motion carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. MOTION APPROVING THE W.C. REID COMMUNITY CENTER'S CONSTRUCTION PLAN

Parks & Recreation Director Roderick Simmons said that this is the consideration of a $2 million plan for the construction of the WC Reid Community Center for Creative Arts.

The City of Asheville is developing construction plan for the WC Reid Community Center, which has served the community first as an elementary school and then as a community center for over 80 years with modest facility improvements to enhance its basic services. For the facility to evolve into a more focused, multi-disciplinary program, the building and grounds require building code, functional and aesthetic improvements.

A plan was developed in 2006 to renovate the Reid Center into a cultural art center. PBC+L Architects was contracted to develop a plan using extensive community input and focus group sessions with various users of the facility. The final plan was estimated at $8 million but did not move forward to construction since it proved too costly as fundraising limitations were reassessed. In addition, staff revisited the purpose of the facility in light of community support that indicated its preference for a balance between the cultural arts, recreation activities and flexible programming space.

Staff then explored two options at $4 million per option: 1) renovate the existing building and 2) tear down existing facility and build new which was also developed by PBC+L. The intent was to measure the pros and cons of the two options to determine which was more feasible including but not limited to the best use of investing the dollars that will support the multiple use of recreation and cultural art programs for the community. The demolition of the current facility and replacing it with a new one seemed to be the best solution.

After input from the Reid Center Advisory Board and the Recreation Advisory Board, it was proposed to develop a $2 million construction plan which fits within the amount of funds on hand via previous fundraising. In light of the economy in which further fundraising is becoming more challenging and construction costs are escalating rapidly, this budget allows for a building that uses only funds that are already raised.

To help reduce construction cost in demolition and site preparation, and to allow for future development, an alternate site is being considered. Livingston Street Park will fulfill this vision by providing a larger and more level property, and also very visible within the heart of the Reid Center neighborhood creating a dynamic recreation complex that is located along major public transportation routes and closer to adjacent neighborhoods.

Livingston Street Park will accommodate the first phase of construction with space for a future phase. The first phase will focus on the required features that have been promised to the current funding sources including an auditorium, multipurpose class rooms, office space and restrooms. A future phase could eventually accommodate a new gymnasium, more parking and

a water feature to replace the deteriorated Walton Street swimming pool. The construction plan details the scope of work, layouts, timeline and costs with commentary for this option.

The Reid Center Advisory Board and the Recreation Advisory Board reviewed the preliminary concept in November 2008, and the construction plan in January 2009. Both boards support the plan.

This action complies with the *City Council Strategic Operating Plan* Focus Area Green by 1) making environmentally efficient capital improvement decisions and supporting energy efficient funding for facilities and operations, and 2) sustainable focus area by developing a long-term plan to address aging infrastructure including facilities and sidewalks.

Pros:

- Enhance the City's ability to provide unique, vital recreation and community services via this first phase of development on a site with more potential
- Investment in a new center will extend its useful life as a community center by an estimated 25 years
- Ability to implement the first phase of the project without additional funding
- The existing center will operate during the construction of the new facility

Cons:

- The work is extensive and costly to develop a new center
- The first phase of the project will not meet a number of programming needs for the community
- The current athletic programs at Livingston Street Park will be relocated to other athletic facilities
- Future construction phase of the center will require increased operating budget to support operations, programming and maintenance over time

The $2 million new construction option will not require additional capital funds or increased operating costs to operate and maintain the facility at this time, although additional funds will be required to support future phases of the project.

Staff is requesting the City Council approve of the W.C. Reid Community Center $2 million plan for new construction that will meet current grant obligations and build the new center on the Livingston Street Park site. He said that they will use the money they have to make the design work within the guidelines approved.

Mr. Chad Roberson with PBC+L Architects, reviewed with Council the construction design. The said the first phase of the construction will have dedicated space for a theater, four multi-purpose classroom spaces, and an office which will accommodate the cultural art programming component. A gymnasium and a water feature could eventually be added in a future phase which may accommodate additional programs such as sports, senior programs, after school, visual arts classes, dance classes, aerobics, yoga, board meetings, special events, other seasonal programs and additional parking. Since the existing center will not be closed during construction of a new facility, core services such as the after school program will continue. Tenants such as Partners Unlimited will be permanently relocated with assistance from the City to a location where they can continue to provide services to their core components.

In response to Councilman Miller, Mr. Roberson said that there is a 5% (approximately $77,000) contingency, noting that they have been very conservative in estimating the project.

In response to Councilwoman Cape, Mr. Simmons said that the Reid Center is a functional building, but it just does not function as a recreation community center for community programming.

In response to Councilwoman Cape, Mr. Simmons said that we do have other options for the adult softball programs.

In response to Councilman Russell, Mr. Simmons said that City's portion of this is the $500,000 Parks and Recreation Trust Fund match, which was from a prior year's Capital Improvement Plan allocation generated through the operating budget.

Councilman Mumpower could not support this action due to our current economy and our budget restrictions. He felt a bigger difference in the community would be to take the $500,000 and invest it in stopping the drug dealers who actively corrupt the community in various ways.

Mayor Bellamy thanked the Reid Center Advisory Board, the Recreation Board, the Junior League of Asheville, the Janirve Foundation and all others who helped with dollars and volunteer time in this fundraising effort. This addresses the community's need for a good place for their children to play. We must address the Capital Improvement Program and the needs of our community. She hoped we will look for ways to get the gymnasium built. She felt this is a creative way to address long-term needs.

When Mayor Bellamy asked for public comments, none were received.

Councilman Newman moved to approve the WC Reid Community Center $2 million plan for new construction that will meet current grant obligations and build the new center on the Livingston Street Park site. This motion was seconded by Councilwoman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

B. MOTION TO APPROVE LIGHTING PLAN FOR JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK

Parks & Recreation Director Roderick Simmons said that this is the consideration of an Asheville Buncombe Youth Soccer Association (ABYSA) and WNC Soccer Foundation (WNCSF) lighting plan and financing proposal to purchase and install lights on the four fields at the John B. Lewis Soccer complex at Azalea Park, and to fund the remaining balance on the soccer complex construction.

In 1999, WNCSF entered into an agreement with the City of Asheville to help fund and construct the John B. Lewis Soccer Complex at Azalea Park at a cost of $3.3 million. To date WNCSF, ABYSA and the City have raised all but $543,135 of construction funding.

When the soccer complex was built, electrical conduits were installed with the intent to add field lights at a later date. ABYSA is now proposing to provide funding for the purchase and installation of the Musco "Structure Green" lighting system for a total of $510,000.

Musco is a leader in the outdoor field lighting industry in energy efficiency and glare control. The system complies with the City's lighting standards for outdoor sport fields as stated in the Unified Development Ordinance as outlined below.

- The mounting height shall not exceed 80 feet from finished grade
- Fixtures are equipped with a glare control package and aimed so light beams are directed and fall within the primary playing area
- The hours of operation for the lighting system for any game will not exceed one hour after the end of the event.

ABYSA conducted extensive public input to the proposed lights via 1) conducted two public meetings, 2) canvassed the neighbors adjacent to Azalea Park to alert them to the lighting plan and to invite to the public meetings, 3) invited the neighbors who live on Gashes Creek Rd.,

and in the Viewpoint and Parkway Forest to the public meetings, and 4) consulted with the Blue Ridge Parkway. The majority of public response does not oppose the addition of lights on the field, although most residents sited the need for road improvements to Azalea Road to accommodate the increased traffic and parking that already occurs at Azalea Park.

The ABYSA funding plan for the lights include a grant proposal to the Tourism Product Development Fund (TPDF) in January 2009. The proposal is part of the City's evaluation of potential TPDF proposals that support city projects via the Recreation Advisory Board and the City Council sub-committee.

The Recreation Advisory Board reviewed ABYSA's proposal at its regular meeting on November 10, 2008 and it unanimously recommended the lighting plan assuming it meets all City lighting standards, conducive to public input and programming needs.

At its regular meeting on December 8, 2008, the Recreation Advisory Board reviewed and prioritized the two potential TPDF proposals associated with the Parks, Recreation & Cultural Arts Department. The board unanimously recommended priority one as the John B. Lewis Soccer Complex lights, and priority two as Beaucatcher Overlook Park development.

Staff supports ABYSA's application for a Tourism Product Development Fund grant for the project. However, the proposal contains a funding plan that still needs to be refined and worked out with City staff.

The project complies with the City Council Strategic Operating Plan Focus Area: Green - Asheville will be the southeastern leader in energy and environmental sustainability while preserving and the city's natural beauty by making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

Pro:

- Expand soccer programming time for youth and adult soccer players, and expand programming time for other adult and youth sports such as football and Lacrosse.

Con:

- Increase the City's soccer complex annual facility maintenance and operating cost by approximately $10,500 per year due to expanded programming time.

- The addition of lights via the donation accomplishes a master plan recommendation and an identified CIP goal.
- Adding lights will increase the City's soccer complex annual facility maintenance and operating cost by $10,500 per year.

Staff recommends City Council approve a motion allowing placement of lights on the four fields at the John B. Lewis Soccer Complex at Azalea Park contingent upon ABYSA and WNCSF fund the remaining balance on the soccer complex construction.

Mr. Mike Rottjakob, Executive Director of the Asheville-Buncombe Youth Soccer Association, said that the Western North Carolina Soccer Foundation (1) was established as a 501 (c) (3) in 1994, the WNCSF's sole mission is to support efforts to develop soccer facilities for use by Asheville and Buncombe County area youth and adult soccer players; (2) has a proven track record as a fundraising partner with the City of Asheville in the development of the John B. Lewis Soccer (JBL) Complex; and (3) has produced $1.2 Million in private fundraising for the construction of the JBL.

For over 25 years, the ABYSA has been dedicated to providing soccer programming to families that is age appropriate and provide in a physically and emotionally safe environment. We current employ 10 fulltime staff, 15 part-time coaches, and utilize over 43,000 volunteer hours in

serving 4,400 youth and adult participants through partnerships with the City of Asheville and Buncombe County. We strive to make programming broadly available to the entire community and administer a robust financial aid program to address financial obstacles to participation for families. In 2008, we began an effort to greatly expand our outreach to provide soccer programming in Asheville Housing Authority neighborhoods, free of charge, to address transportation and other barriers. ABYSA is a financially strong 501 (c) (3) not for profit organization with a proven track record as a fundraising partner with the WNCSF and the City.

Regarding the tourism economy, ABYSA hosts state-wide and regional soccer tournaments, and state-wide league play, that brings significant numbers of out of town visitors in Asheville. In 2008, ABYSA hosted 6 weekend tournament events This represents documented use of nearly 5,000 hotel room nights and an economic impact of over $2 Million as calculated by the Asheville Area Convention and Visitors Bureau. Over 220 North Carolina Youth Soccer Association Classic League games were hosted in Asheville in 2008, bringing 6,600 additional out of town visitors. While unable to count hotel room use for these games, it is significant and many of these visitors shop, eat and pay sales tax in Asheville, even when their visit does not require an overnight stay. Growth in ABYSA programming has provided for incremental increases in hotel room use and economic impact over the last 3 years.

Why field lights? Without lights, the all-weather artificial turf is used at only 50% of its capacity. Current programming fills all available field time and during many months availability does not meet the need. An additional investment of $500,000 to the $3.3 Million already invested will increase use by 68% and more than double use during 4 of the busiest soccer programming months. The addition of lights will add capacity for more than 1400 hotel room nights to existing tournaments, and an additional $575,000 in economic impact each year.

JBL capacity and utilization (1) current utilization, and potential utilization with the addition of lights, can also be expressed in terms of user hours; (2) when a "user hour" unit represents one person playing for one hour. Current programming provides 126,000 user hours of play at JBL. With the addition of lights, 211,000 user hours would be used for programming. This represents 85,000 additional user hours, or hours of exercise if you will, a 68% increase in programming for our vast soccer playing community.

The public input process includes (1) public input was gathered during door to door visits in the immediate neighborhood of the park and during two public meetings with WNCSF, ABYSA and City representation; (2) feedback from these visits and meetings revealed very little concern about the addition of field lighting to the park; and (3) park neighbors did express concern about the need for improvements to Azalea Road and parking on the road during weekends.

Regarding the City of Asheville input, the ABYSA and WNCSF conducted a focus group meeting the City staff representing Finance; Transportation & Engineering; Planning; Public Works; and Parks, Recreation and Cultural Arts to review the proposal and offer comments on key issues. The following concerns were addressed: floodway issues; Azalea Road safety; parking on Azalea Road; lighting standards; and on-going energy, maintenance and park staffing expenses.

Musco's "Structure Green" lighting system is the industry leader in energy efficiency, light spill and glare reduction. It is the most environmentally friendly product on the market and is endorsed by the National Park Service.

The lighting plan for JBL field lighting project addresses three components: (1) resolves the outstanding fundraising balance for the soccer complex construction of $543,135; (2) describes a funding plan to support the addition of lights only after the funding has been secured and requires no City financing for the project; and (3) addresses issues of long term maintenance of the lighting system, utility costs, and costs associated with increased park staffing.

He then reviewed the finance plan. Regarding the outstanding fundraising balance (1) ABYSA will assume responsibility for $400,000 of the $543,135 outstanding fundraising balance by increasing its annual contribution through the WNCSF by $40,000 each year for ten years; (2) the remaining $143,135 will be secured through the sale of sponsorship; and (3) the field lighting project will add incentive and re-vitalize fundraising for the construction of JBL.

Regarding the lighting system finance (1) construction and installation of lights will begin only after ABYSA and WNCSF have secured funding for the entire project. The City will not be asked to assume any financing; (2) ABYSA has set aside some cash reserves to kick off the fundraising campaign; and (3) the project is a strong match for Buncombe County Tourism Development Fund investment goals

Regarding operations cost (1) Musco's "Structure Green" lighting system comes with a 25-year warranty that covers re-lamping after 5,000 hours of use and is included in the purchase and installation price; (2) ABYSA will pay for the electricity it consumes for use of the lights; and (3) the addition of field lights, and the resulting increase in park maintenance and staffing expense, is estimated to be $10,500 per year.

The proposal summary is (1) there is a compelling need for field lighting at the John B. Lewis Soccer Complex and a great benefit to be realized by our large soccer playing community and the local tourism industry; (2) care has been taken to involve as many stakeholders as possible in the development of our proposal; and (3) our plan provides a finance strategy that allows for enhancement of a great city resource at little cost to taxpayers.

In response to Councilman Miller's potential conflict of interest regarding Tourism Product Development fund, City Attorney Oast said that Tourism Product Development Fund does provide financing for this, as the City does, but he did not feel that is a disqualifying conflict. It is his opinion that there is no conflict of interest for Councilman Miller.

In response to Councilman Mumpower, Mr. Rottjakob assured Council that he has worked with the budget office and has clearly outlined the individual roles regarding funding.

When Vice-Mayor Davis expressed concerns over Azalea Road, City Manager Jackson said that it is a top priority for road projects when we have discretionary funds. Since we are not able to fund the road improvements ourselves in this economic climate, it will be the first thing the Public Works Director and the Parks & Recreation Director will recommend when capital funds are allocated from the general fund budget for roads.

In response to Councilwoman Cape, Mr. Simmons said that this does comply with the City's new lighting standards.

Mayor Bellamy thanked the WNC Soccer Foundation for their commitment to this project. She also thanked the 6th grade class at Carolina Day School for keeping an eye on this project.

When Mayor Bellamy asked for any public comment and none was received, Councilman Mumpower moved to approve placement of lights on the four fields at the John B. Lewis Soccer Complex at Azalea Park contingent upon ABYSA and WNCSF fund the remaining balance on the soccer complex construction. This motion was seconded by Councilman Russell and carried unanimously.

C. ITEM F FROM THE CONSENT AGENDA

RESOLUTION NO. 09-5 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BUILDING GROUP FOR CLEANING THE VENTILATION HANDLING SYSTEMS

ORDINANCE NO. 3684 - BUDGET AMENDMENT TO FUND CONTRACT FOR CLEANING THE VENTILATION HANDLING SYSTEMS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Building Group to complete cleaning and sanitizing of the City Hall ventilation system floors 1 – 6, including the basement; and a budget amendment in the amount of $119,013 to fund the contract.

In September 2008 the City began a process of analyzing air quality and maintenance of the air handling system at City Hall. During this time, the Risk Management Division was notified of several employee complaints regarding air quality and mold issues in City Hall. An OSHA complaint was subsequently filed with the State of North Carolina. At that point, staff contacted a certified consultant (Art Martin & Associates) to evaluate the condition of the ventilation systems in City Hall. The results of the consultant's evaluation showed that the City Hall air handling systems did contain air contaminants, but that the contaminates were not airborne and findings did validate that employees are not at risk. Additionally, comparisons of the indoor air samplings do not exceed contaminate levels found in outdoor air samplings. The consultant recommended that the air handling system be cleaned and sanitized to remediate the existing mold growth and prevent future airborne contamination in regard to floors 1 – 6, including the basement.

With growing awareness of the negative impacts of indoor air pollution, the City is dedicated to addressing the cleanliness of City Hall's ventilation system. With Council approval, the City will begin a process of cleaning the ventilation and air handling system later this month. The cleaning process will take place on weekends which will limit employee access to the building at these times.

Remediation for floors 7 and 8 are more extensive and will require identifying and correcting water access points. This process requires the expertise of a building engineer, which will develop protocol for repointing bricks and window replacement. Once the water infiltration has been identified and corrected, remediation of floors 7 and 8 can begin. The engineering evaluation process is scheduled to begin in Spring of 2009. Depending on the engineering report, it is projected that remediation for floor 7 and 8 will begin Summer 2009.

This action complies with the City of Asheville's strategic plan in that is supports a sustainable city government through a strong commitment to infrastructure maintenance by ensuring that our buildings support a sustainable healthy and safe work environment.

Pros:

- Avoid OSHA fines.
- Reduce possible health hazard risk related to mold and air contaminants.

Cons:

- Continuing contamination of the air handling system and the air quality at City Hall.
- Increased complaints from employees and OSHA.
- Requires use of fund balance.

The total amount of the contract is $119,012.83. Funding for this unanticipated expense was not included in the Fiscal Year 2008-09 budget; therefore an appropriation from fund balance is required. It is estimated that at the end of Fiscal Year 2008-09, available fund balance will equal 19.4% of General Fund expenses.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with The Building Group to clean the air handling system at City Hall floors 1 – 6, and basement, and a budget amendment in the amount of $119,013 to fund the contract.

When Mayor Bellamy asked for public comment, none was received.

Ms. Coulter responded to various questions/comments from Council, some being, but are not limited to: since mold spores common to most ventilation systems, why are we making this investment in City Hall; will there be an on-going maintenance plan; explanation of the OSHA fines; any idea of what percentage of the larger structures in Asheville have ventilation systems with the same mold spores; are mold spores common;

Councilman Mumpower could not support these actions until there is a more scientific basis for taking action.

In response to Councilman Newman, Ms. Coulter said that we have looked informally at our other buildings. City Hall is being addressed now due to the tremendous number of employees and citizens in the building on a regular day to day basis.

Councilwoman Cape moved for the adoption of Resolution No. 09-5. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting no.

RESOLUTION BOOK NO. 31 – PAGE 402

Councilwoman Cape moved for the adoption of Ordinance No. 3684. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 136

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 5-18, 2008: Patricia Macrae (Parks & Recreation), Pam Wild (Water), AT&T (Water), Charter Communications – 4 claims (Water), and Dean Gowan (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The following Complaint was received by the City of Asheville on December 23, 2008: Larry Roland v. City of Asheville. The nature of the proceeding is a complaint for personal injury from fall at the golf course. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy praised staff, volunteers and members of the community for the Burton Street Center Grand Re-opening event on Monday, January 12, 2009.

Mr. Gene Hampton spoke about the need for quality education in Asheville, North Carolina.

Mr. Brian Festa proposed a new curriculum to be integrated in our public education systems to address long term needs, e.g., teacher training and teaching teachers how to teach, integration of arts and music education. Per Mr. Festa's request, Mayor Bellamy said that City Manager Jackson would meet with him after the meeting regarding his request for information on the School Board's budget.

Mayor Bellamy adjourned the meeting at 7:27 p.m.

Magdalen Bouleson
CITY CLERK

Jerry W Bellamy
MAYOR

Tuesday – January 27, 2009 – 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Annexation

Urban Planner Julia Cogburn said that reviewed with Council some basic information about annexation. Annexation in North Carolina can take place via 3 mechanisms: (1) legislative annexation; (2) voluntary; or (3) statutory or involuntary annexation. North Carolina is one of handful of states that allows for involuntary annexation. Many government and financial scholars feel that the North Carolina statutes play a vital role in health of North Carolina cities and, therefore, the state itself. Annexation is based on the principal that it is good public policy to make that which is urban in nature (and meets certain qualifications) should be municipal for steady, orderly growth of our cities. Also, those on the edge who benefit from the services and amenities offered by a City should contribute to its operation.

Using a map, she showed the growth of Asheville over time. For the most part, in recent history, the City has proposed annexation at in a conservative fashion at least biennially. The characteristics of this approach have been: (1) To undertake annexation of properties that are clearly urban in nature, attempting to avoid the annexation of vacant land or sparsely developed properties; (2) To annex areas carefully defined from a service provision standpoint (the City has generally not looked at annexing areas that are difficult or complicated to serve); (3) To annex areas that enhance our ability to provide efficient and effective municipal service "gaps" such as property along a road corridor that has corporate jurisdiction on either side; (4) To look for areas that can benefit from enhance urban services (such as Enka Village where the City replaced a severely deteriorated sidewalk); (5) To annex areas in different quadrants of the City; and (6) To avoid, per direction of City Council, the annexation of industrial areas, primarily the southern part of Buncombe County west of Hendersonville Road.

Involuntary annexation is perhaps more important to Asheville as a growth management tool that other cities because we lack the incentives other cities have to ensure steady growth. The Sullivan Acts restrict ability to grow with water line extension and to charge differential rates. Asheville taxpayers absorb operation cost deficits for water customers not within the City.

Every other year, since 2002, the Asheville City Council has approved a Resolution of Consideration showing broadly areas that may be considered for annexation in the near future. State law provides that such a resolution, and accompanying map, may be adopted by cities as a preliminary step in the annexation process. The recent maps approved by the City of Asheville have been very expansive in scope, including areas that may not experience enough urban development in the near future to qualify for annexation, or are topographically or geographically illogical for annexation. Because of this, last year the Council asked staff to propose amendments to the map of consideration to make it more practical for the public and for the City as a tool for consideration of annexations. Using a map, she showed the existing area of consideration of about 66.5 square miles in size. Staff is proposing removal of about 23 square miles from the area of consideration. These are primarily areas that are not likely to urbanize in the near future, as they are substantially rural and have little immediate development potential due to their location or to topographic or geographic constraints. Council may wish to ask staff to

look at these areas and suggest a new Map of Consideration. Staff can be prepared to bring to Council in the coming months a new map for consideration.

If Council directs, staff is prepared to begin looking at future annexations in line with recent history or simply cleanup. Using the Map, she said that based on a very preliminary review some of the areas that might be considered are portions of the Royal Pines area, the Emma Road area, the Bent Creek area and the Charlotte Highway area. She noted that most of those areas have water service but not all of them have sewer service. There are also some minor cleanup annexations in the north, around the UNC-Asheville campus.

Annexations that remain in litigation include (1) Ridgefield Business Park (annexation ordinance passed in 2005 – Superior Court and North Carolina Court of Appeals have ruled in favor of the City of Asheville; (2) Airport Road (annexation ordinance passed in 2005 – Superior Court and North Carolina Court of Appeals have ruled in favor of the City of Asheville); and (3) Biltmore Lake (annexation ordinance passed in 2007 – depositions and discovery underway for upcoming trial).

She suggested Council give staff direction on if they wish to reconsider its direction concerning the annexation of industrial properties, especially those that are no longer in industrial use. In general, annexation by itself should not represent anything more than a marginal increase in the cost of doing business. However, as other costs rise, industrial property owners will continue to evaluate whether operations can be conducted in a more cost-effective manner at other locations.

When City Manager Jackson asked if the City were to get the application of conditioning water service based upon voluntary annexation, where and when would that be triggered by the development patterns. Ms. Cogburn responded it would be 15-20 years because so much of the areas outside the City limits already have water service.

Councilman Newman explained that for developments that are located in areas where it is not logical or cost-effective to provide city services, cities may sign an annexation agreement with the developer, which would allow them access to city infrastructure now in return for the city being able to voluntary incorporate the development into the municipality once the city has grown enough that it is cost-effective to provide services to that area.

City Attorney Oast said that he is aware of several situations where that occurs. He understands the way it works is if you are a development that is seeking service, but the city (for whatever reason) cannot or does not wish to have you voluntarily annex at the time, that the developer (who owns all the property) will sign an annexation agreement. And, as a condition of receiving service, and at such time as the city grows out in that direction such that voluntary annexation does not present service delivery issues, the city can invoke that agreement and the area comes into the city. In fact, the said the City has used that process in the past with the Town Center at Biltmore Park.

Upon inquiry of Mayor Bellamy, City Attorney Oast updated Council on the series of meetings held regarding annexation in Raleigh. Basically, he said that the Joint Legislative Committee voted in favor to recommend a moratorium on city-initiated annexations and if the laws are changed, voted to recommend that the people in the area to be annexed get to vote on whether they want to be annexed or not. He said he would provide Council a summary sheet.

Throughout discussion, Ms. Cogburn responded to various questions/comments (and for those she could not respond to, would be forthcoming to Council), some being, but are not limited to: does the City traditionally spend a lot of money in campaigning the positive side of annexation; is it true that if we were to annex everything in the Map of Consideration area it would be at least 25-30 years; and historically, how has Asheville annexed; is Asheville conservative or liberal with it's annexation.

Mayor Bellamy suggested that we meet with other municipalities to see how we can utilize the spheres of influence, similar to Charlotte/Mecklenburg, as a tool for our growth. After a brief discussion about the spheres of influence purpose, it was the consensus of Council to form a small Council committee to work with principles of other municipalities in our area, County Commissioners and legislators to consider moving the spheres of influence forward.

Councilman Mumpower pointed out how Asheville is treated differently than any other city in North Carolina. Our own legislators are responsible for creating this difference. He encouraged Council to (1) be bolder and honest with the community about the fact that Asheville is not being treated fairly; (2) develop a policy that for a 3-year period of time that Council will not annex industrial areas; (3) consolidate to avoid the duplication of services; (4) suspend action on forced annexation for one year; and (5) continue to fight the Sullivan Acts to make sure that Asheville is treated like other cities.

Councilman Newman reiterated his support of Council to reach a settlement with the County and our legislators on the water dispute. He felt that if there is a way to settle the questions outside of the judicial process, it would be in our best interest to find a solution. He then presented Council with the following proposal to settle the Sullivan Act dispute. The City of Asheville agrees that there sill be no differential rates charged for water customers inside and outside the City limits. The Sullivan Acts will be modified to allow Asheville to operate under the voluntary annexation policies that apply to all other cities in North Carolina. Asheville will not be allowed to divert Water Funds to the General Fund. However, up to 5% of Water Funds may be used for infrastructure improvement projects directly related to water line replacement (such as improving streets or sidewalks torn up during the line replacement process). Legal challenges to the constitutionality of the Sullivan Acts will be withdrawn. The proposed settlement represents a compromise – neither party gets everything they wish. However, it does address the core concerns identified by the City, County and legislators over the past several years. The benefits of the settlement to Asheville would be (1) the water system will be managed by the City, which has demonstrated good stewardship of the system over the past several years, investing tens of millions in long overdue water infrastructure repairs; (2) voluntary annexation will allow the City's tax base to grow as the area urbanizes; (3) the City will have additional funds to upgrade streets and sidewalks as part of the process for replacing old water lines; and (4) no additional expenses to carry out litigation associated with the Sullivan Acts. The benefits of settlement to non-City residents include (1) assurance that water rates will be no higher for non-City customers than for those who live in Asheville; (2) assurance that for all existing customers, water cannot be used as a condition for annexation into the City; (3) assurance that payments made for water services cannot be delivered to the City's General Fund; and (4) no more tax monies will need to be used in litigation associated with the Sullivan Acts. The benefit to the water system will be the assurance that the infrastructure will be fixed as funds cannot be diverted to non-water system programs. He said that under the previous agreement, the County paid for the management of the Nature Center, Golf Course and the baseball facilities, which together cost approximately $600,000 a year. The County also reimbursed Asheville for $1.7 Million for payments City taxpayers make for patrol and investigation services that are only provided outside the City limits. The total value of these tax equity arrangements was about $2.3 Million. There are a variety of opportunities for future partnerships between Asheville and Buncombe County to assure a fair plan for financing of facilities and services that benefit all taxpayers in the region. He then explained the importance of voluntary annexation.

Vice-Mayor Davis supported agreed with the majority of the proposal presented by Councilman Newman, if we have the ability to receive tax equity. He suggested the meeting with the group regarding the spheres of influence could include discussion about the tax equity, which may be in the form of consolidation of services.

Mayor Bellamy felt we should meet with the County soon to see if there is something in downtown Asheville that will meet their needs and help us financially, since they are considering

taking the Biltmore Square Mall off the tax rolls and moving their offices (approximately 600-700 people) from our downtown area. We need to be creative in what we bring to the table. She also felt that in order to resolve the issue with Henderson and Buncombe counties, we need to look at the results from the Land-of-Sky Regional Council study on water. She suggested putting a regional planning board in place – not an independent authority, but a group to see where growth is occurring and how we can work together as a region with water. We also need to educate the City taxpayers on how the sales tax works and about how much they pay and where their tax dollars are distributed, e.g., Asheville residents are not just paying for the cleaning of Asheville, but for the tourists and Buncombe County residents who come into Asheville.

In response to Councilman Russell, Mayor Bellamy said that approximately 130,000 people are served on the City's water system, of which 57,200 are Buncombe County residents.

Councilman Russell said that no one wants to be unfair, but phasing in a small differential rate would result in significant monetary gains to the City.

Councilman Mumpower could not support Councilman Newman's proposal in that it still treats Asheville citizens unfairly. He would not be opposed in taking 5, 10 or 15 years to implement a fair deal, but was opposed to Asheville being treated unfairly.

Councilwoman Cape pointed out that Asheville has an engaged citizenry in Asheville and suggested a bullet-point understanding of the issues so they can talk with our legislators too.

Councilman Newman suggested an analysis be performed of over the last 20 years of how many millions of dollars would Asheville have now and what our population would be if the developments that occurred in Buncombe County within close proximity to the City limits had been required to annex. He also wondered what our growth forecast will be (1) the ability for Asheville to grow; and (2) no ability for Asheville to grow. He explained that even if we prevail in court, the legislature does have the ability to grant cities or restrict cities annexation authority. We are not going to solve rate differential issue except through persuading the County Commissioners and legislators that we should have that right.

Councilman Miller agreed that while we wait for the court's decision, we obtain more information on the tax data while at the same time meet with our legislators and County Commissioners on a possible settlement.

Mayor Bellamy said that staff is also preparing information on the reality of water differential rates across North Carolina. She felt it was important for everyone to have clear and accurate data.

Mayor Bellamy believed that a subcommittee was identified at the retreat consisting of herself, Vice-Mayor Davis and Councilman Newman regarding water issues.

When Councilman Newman asked for clarification on a proposed settlement, Mayor Bellamy said that staff will be providing some additional information on questions raised so then Council as a whole can give direction to the subcommittee on if we are flexible on anything and if so, what are those areas we will be willing to reach middle ground. Per City Manager Jackson, staff could be prepared to provide an information update in 30 days or possibly at the February 10 meeting. He will meet with Mayor Bellamy to get it scheduled for another worksession.

Mayor Bellamy felt it was clear that our water system will be managed by the City. She reiterated that the total population served through our water system is 130,000, with 57,200 being County residents. There are 22,900 water meters in the County. Our current water system value is $1.3 Billion. She believed water is the gold of the 21st Century and having an independent non-elected authority to oversee that asset is a mistake.

In response to Councilwoman Cape, City Attorney Oast explained that we could win the lawsuit, but still be prohibited from requiring annexation as a condition of the extension of service.

Mayor Bellamy explained that we need the water system to have a good business practice model that is fair to Asheville and requires developers to tap into water systems that they are close to. Councilman Newman said that the spheres of influence model will assist in this issue.

In response to Councilman Mumpower about a policy not annexing industries for the next three years, City Attorney Oast said that he would have to research information on constitutional limits on differential taxation of industries. If Council develops a policy of this type, Planning & Development Director Judy Daniel asked for guidance on properties that are industrial and in business vs. industrially zoned properties that are no longer in manufacturing. Mayor Bellamy suggested this topic come back to Council for future discussion as Planning staff is taking an amendment forward to the Planning & Zoning Commission, and then onto Council, a proposed ordinance that responds to the current economic climate which will assist businesses and development proposals to open and operate more easily, while still meeting the technical Unified Development Ordinance standards along with City adopted goals.

Councilwoman Cape asked staff to provide Council with economic incentives for annexation.

City Manager Jackson said that the discussions coming before Council will include (1) looking at the development regulations; (2) discussing annexation policies; (3) formal consideration of the Map of Consideration; and (3) review of economic incentives for annexation.

At 4:50 p.m., Mayor Bellamy recessed the meeting for 10 minutes.

Tuesday – January 27, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 30, 2009, AS "ASHEVILLE LYRIC OPERA DAY"

Mayor Bellamy proclaimed January 30, 2009, as "Asheville Lyric Opera Day" in the City of Asheville. She presented the proclamation to Mr. David Starkey, General and Artistic Director of Asheville Lyric Opera, who briefed Council on some activities taking place that day.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", "E", "F" and "G" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 9-10, 2009; AND THE REGULAR MEETING HELD ON JANUARY 13, 2009

At the request of Councilman Miller, he asked that the January 9-10, 2009, retreat minutes be amended on page 11 to read: "Councilman Miller felt the hotel tax money might be better spent on more advertising or on a new performing arts center where it could generate more hotel stays and sale tax revenue, which would spread the burden."

B. RESOLUTION NO. 09-9 - RESOLUTION NAMING THE NEW CITY PARK ON MAPLE DRIVE IN THE HAW CREEK COMMUNITY IN HONOR OF HAZEL AND RORY MASTERS

Summary: The consideration of a resolution to name the new city park on Maple Drive in the Haw Creek community as Masters Park in honor of Hazel and Rory Masters.

The City of Asheville took ownership of a nine-acre property located on Maple Drive in the Haw Creek community shortly after City Council approved the acquisition for use as a future municipal park in November 2007. The action occurred as a result of a proposal from the Haw Creek Community Association (HCCA) to partner with HCCA and Buncombe County to acquire the land for the City. HCCA now proposes naming the future park Masters Park in honor of Hazel and Rory Masters to recognize their contributions to the Haw Creek community.

Rory Masters lived in the Haw Creek community for over 90 years, and he and his wife were the former owners of the park land before it transferred to their daughter. The Masters were dedicated community servants in Haw Creek highlighted by their contributions to the Haw Creek Volunteer Fire Department. They donated the land for the fire facility and donated the funds to establish the department, followed by leading a fundraising campaign to build the facility and acquire the fire equipment. Rory served as the volunteer fire department fire chief and Hazel headed the women's auxiliary. The Masters cared for their neighbors and over the years helped many who were in need.

Hazel Masters passed away in 1993, followed Rory Masters in 1998. Their daughter Chalene Noblett, continues to live in Haw Creek on the family homestead and continues her parents' giving spirit to the community.

This action complies with the City of Asheville's park facility naming policy. The Recreation Advisory Board considered the proposal at its December 8, 2008, meeting and unanimously recommended naming the park in honor of the Masters.

Pro:

- Naming the park in honor of Hazel and Rory Masters complies with the City of Asheville park facility naming policy in that 1) it commemorates an individual(s) for specific services as made evident by their contribution through community service, and 2) naming a park for a deceased individual(s) cannot occur for at least one year after passing.

Con:

- None

The Recreation Advisory Board recommends City Council to adopt a resolution naming the park on Maple Drive in the Haw Creek community as Masters Park in honor of Hazel and Rory Masters.

RESOLUTION BOOK NO. 31 – PAGE 407

C. BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES, TO INCREASE THE BUDGET FOR CARRIER PARK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING, FOR THE SENIOR OPPORTUNITY CENTER

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING, FOR THE HARVEST HOUSE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION TO INCREASE THE BUDGET FOR THE WEST RIVERSIDE GUN VIOLENCE PROJECT IN ASHEVILLE'S WEED & SEE TARGETED AREA

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A MATCHING GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY, FEDERAL MANAGEMENT AGENCY, FOR PROCUREMENT OF WILDLAND FIRE SUPPRESSION AND PERSONAL PROTECTION EQUIPMENT FOR THE ASHEVILLE FIRE & RESCUE DEPARTMENT

BUDGET AMENDMENT FROM THE U.S. DEPT. OF HOMELAND SECURITY, FEDERAL MANAGEMENT AGENCY, FOR PROCUREMENT OF WILDLAND FIRE SUPPRESSION AND PERSONAL PROTECTION EQUIPMENT FOR THE ASHEVILLE FIRE & RESCUE DEPARTMENT

These items were removed from the Consent Agenda for discussion and/or an individual votes.

H. RESOLUTION NO. 09-11 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WYATT & BOWMAN WASTE CONTAINER LLC TO PROVIDE BULK CONTAINER

REFUSE/CARDBOARD COLLECTION SERVICES FOR VARIOUS CITY OF ASHEVILLE FACILITIES

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Wyatt & Bowman Waste Container LLC to provide bulk container refuse/cardboard collection services for various City of Asheville facilities.

In December 2008 the City's current annual contract for bulk container refuse/cardboard collection services was approaching its end. The City began an informal bid process to obtain competitive bids from service providers including minority business participants. At the close of the bid process and after review of bids, City staff determined that Wyatt & Bowman Waste Container LLC was the lowest responsive and responsible bidder. The bid process was performed to obtain the lowest competitive bid for an annual contract price and would be in effect for three years with renewal options. The lowest bid was for $46,289.83 annually and would result in a total three year commitment of $138,869.49

Wyatt & Bowman Waste Container LLC	$ 46,289.83	annual bid
G D S	$ 52,539.22	annual bid
Daugherty Waste Management	$ 66,740.00	annual bid
Consolidated Waste Services	$ 70,741.81	annual bid

This action complies with the City of Asheville's strategic plan in that it supports a sustainable city government through a strong commitment to infrastructure maintenance by ensuring that the City facilities support a sustainable healthy work, program and clean facility environment.

Pros:

- Reduce possible health hazard and fire risk related to waste and cardboard accumulation
- Promotes City of Asheville recycling efforts for cardboard/wastepaper refuse

Con:

- Accumulation of waste and cardboard products promote a health and fire risk

The total amount of the annual contract is $ 46,289.83. Funding for this annual bulk container refuse/cardboard collection service is included in the current Fiscal Year 2008-2009 operating budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Wyatt & Bowman Waste Container LLC to provide bulk container refuse/cardboard collection services.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda, with the January 9-10, 2009, amendment to the minutes. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. ORDINANCE NO. 3688 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES, TO INCREASE THE BUDGET FOR CARRIER PARK

Summary: The consideration of a budget amendment, in the amount of $30,000, from a grant from the N.C. Dept. of Environmental and Natural Resources, Division of Water Resources (DWR) to increase the budget for Carrier Park.

In 2006 Buncombe County applied to DWR and was awarded a $30,000 grant to implement water quality features at Carrier Park. Once the project was complete in 2007, the County reimbursed the City for cost of the project although a budget amendment was not completed at that time. This action will complete the budget amendment process.

This action complies with the City Council Strategic Operating Plan in that it furthers the development of the Greenway Master Plan. It also complies with the Carrier Park Master Plan and the Greenway Master Plan in that it creates an educational opportunity for water quality along the French Broad Greenway Corridor.

Pros:

- Reimburses the City for construction cost at Carrier Park

Cons:

- None

The Carrier Park capital improvement budget will increase by $30,000. There is no impact on the City's General Fund budget.

Staff recommends City Council adopt a budget amendment, in the amount of $30,000, to increase the Carrier Park budget to account for a grant from the North Carolina Department of Environmental and Natural Resources, Division of Water Resources.

Councilman Mumpower spoke against the action in he felt that during our economic times, it is short-sighted of Council to be putting their monies into things that are nice, but not necessary.

Councilman Newman moved for the adoption of Ordinance No. 3688. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 150

D. ORDINANCE NO. 3689 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING, FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of budget amendments in the amount of $13,090 for Senior Opportunity Center and $13,090 for Harvest House for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) purchase portable room dividers for the multi-purpose activity room, 2) purchase and install computer station and computers, 3) replace chairs and tables, 4) purchase ice machine and lectern, 5) provide sewing

machine maintenance. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

Funds will be used at Harvest House to 1) purchase portable room dividers for the multi-purpose activity room, 2) replace chairs and chair carts, and 3) purchase band saw for woodshop. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

This action complies with the 2015 Parks and Recreation Master Plan in that it will enhance the level of program services at senior centers.

Pros:

- Room dividers will create a multipurpose use of large activity rooms thereby expanding program space
- Computer center will enhance the customer experience and expand program opportunities
- Woodshop equipment will enhance customer experience and safety
- Replace old and worn equipment

Con:

- None

Funds will supplement current operating budgets for Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services. There is no impact on the City's General Fund budget.

City staff recommends City Council to approve the budget amendment authorizing the City Manager to establish 1) a budget in the amount of $13,090 for Senior Opportunity Center, and 2) to establish a budget in the amount of $13,090 for Harvest House for purchase, replacement and installation of equipment.

Councilman Mumpower felt that with our budgetary constraints and the reality of our economic picture, he could not support this action. He felt the state's money would be better spent on something that will really make a difference and that is the court system.

Councilman Newman moved for the adoption of Ordinance No. 3689. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 152

E. ORDINANCE NO. 3690 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING, FOR THE HARVEST HOUSE

Summary: See Consent Agenda "D" above.

Councilman Mumpower felt that with our budgetary constraints and the reality of our economic picture, he could not support this action. He felt the state's money would be better spent on something that will really make a difference and that is the court system.

Councilman Newman moved for the adoption of Ordinance No. 3690. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 154

F. ORDINANCE NO. 3691 - BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION TO INCREASE THE BUDGET FOR THE WEST RIVERSIDE GUN VIOLENCE PROJECT IN ASHEVILLE'S WEED & SEE TARGETED AREA

Summary: The consideration of a budget amendment, in the amount of $5,000, from the North Carolina's Governor's Crime Commission (GCC) to increase the budget for the West Riverside Gun Violence Prevention Project in Asheville's Weed & Seed targeted area.

The original budget for the West Riverside Gun Violence Prevention Project in the amount of $15,000 was approved by City Council on October 28, 2008, and required a $5,000 match. Since then the funder revised the requirement as no match and increased the grant award to by $5,000.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents of the target area, and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Weed & Seed sites are required to leverage additional funds to carry out their respective goals and objectives. This grant award will address the community driven Weed and Seed goals of: 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, and 4) increasing parent involvement in education and after-school activities.

The additional $5,000 will enhance the funds already assigned for Asheville Police officer investigative overtime and FICA in the Weed and Seed area with a concentration on crimes related to gun violence and gang activity, and for gang suppression unit detective supplies and equipment. The project also provides a prevention element in which gang detectives will teach the "Gang Resistance Education and Training Families" (GREAT) curriculum in the Weed and Seed area. This will enhance the GREAT curriculum currently being taught at Randolph Learning Center. The GREAT curriculum is also being taught at Asheville Middle School as classes become available. No additional City funding will be required to support this grant.

This action complies with the City Council Strategic Operating Plan in that it supports the following goals in the Safe Focus Area: 1) expand community policing initiatives, 2) reaffirm commitment to eliminate open air drug market in Asheville, and 3) support recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Reduce gun crimes and gang activity in an area of Asheville that has high crime activity.
- Enhance the Weed and Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the target area.
- Mobilize community residents to take an active role in gun violence and gang prevention.
- Provide resources for residents as a means of personal growth and development.
- Multi-agency collaboration to address gun violence and gang prevention in the targeted area.

- Leverage resources to sustain the GREAT Families program which can be replicated in other areas of the city.

Con:
- Some resistance to change by the residents who live in the target area.

The fiscal impact will be the grant revenue of $5,000 for overtime for Gang Suppression Officers and the facilitation of Gang Resistance Education and Training Families program at no additional cost to the City.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to increase this project budget in the amount of $5,000 for the Project Safe Neighborhoods Gun Violence Prevention Project for the Weed & Seed area.

Councilman Mumpower felt that with our budgetary constraints and the reality of our economic picture, he could not support this action. He felt the state's money would be better spent on something that will really make a difference and that is the court system.

Councilman Newman moved for the adoption of Ordinance No. 3691. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 156

G. RESOLUTION NO. 09-10 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A MATCHING GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY, FEDERAL MANAGEMENT AGENCY, FOR PROCUREMENT OF WILDLAND FIRE SUPPRESSION AND PERSONAL PROTECTION EQUIPMENT FOR THE ASHEVILLE FIRE & RESCUE DEPARTMENT

ORDINANCE NO. 3692 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF HOMELAND SECURITY, FEDERAL MANAGEMENT AGENCY, FOR PROCUREMENT OF WILDLAND FIRE SUPPRESSION AND PERSONAL PROTECTION EQUIPMENT FOR THE ASHEVILLE FIRE & RESCUE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept a matching grant from the U.S. Dept. of Homeland Security, Federal Emergency Management Agency, and an associated budget amendment, in the amount of $70,197, for procurement of wildland fire suppression and personal protection equipment for the Asheville Fire & Rescue Department.

The U.S. Department of Homeland Security (DHS) and the Federal Emergency Management Agency has made funds available through Assistance to Firefighters Grant Number: EMW-2008-FG-11916 to enhance Asheville Fire and Rescue's (AFR) ability to protect the public and fire service personnel from fire and related hazards. Since 2001, The Assistance to Firefighters Grant Program has helped firefighters and other first responders to obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel.

DHS has recognized that fire departments throughout the country have a wildland fire hazard and need specialized equipment to minimize losses. Departments that service not only their jurisdiction but also service their region for wildland response have received grant awards. AFR responds to such emergencies within Asheville but also in our region through mutual aid. With our region's growing urban interface, the threat of wildfire is a continuing concern for

Asheville and western North Carolina. AFR is working to address the emergency response needs by enhancing our wildland firefighting capabilities.

This grant will be utilized to purchase equipment to enhance the effectiveness and safety of AFR's firefighters while combating grass, woods and brush fires. The equipment includes fire suppression tools and appliances. Personal protective equipment for the department's members will provide superior protection while decreasing heat stress.

This equipment is needed with or without the grant. The grant enables AFR to accelerate the purchase of this equipment so that more firefighters can be equipped and protected this fiscal year than if we had not received the grant. The required match for the grant will come from the department's already designated FY 08-09 appropriated funds for this purpose. The equipment provided through this grant will become the property of Asheville City Government.

This action complies with the Strategic Operating Plan as follows: (1) Safe - By the equipping the department with upgraded wildland fire suppression and personal protective equipment, this grant will assist in making Asheville the safest city in America based on approved metrics for similarly sized cities; and (2) Fiscally Responsible – This grant allows the department to have the equipment that is needed to help protect firefighters and recognizes that AFR provides services to the region, thereby reducing the expenses of city taxpayers.

This item has been reviewed by the Council's Public Safety Committee and has received the committee's endorsement.

Pros:

- This grant will enable AFR to accelerate our procurement of this equipment beyond what our appropriated budget will currently allow.
- This equipment can be used both in our city and in our region.
- The city's match for this grant at 20% or $14,039 will come from the department's FY 08-09 budget.
- The Department of Homeland Security, Federal Emergency Management Agency, will provide $56,158 or 80% of the grant amount in matching funds for the purchase of wildland fire suppression and personal protection equipment.
- The equipment will increase the department's wildland firefighting capabilities.
- Firefighter and citizen safety will be enhanced.
- This equipment is immediately available to Asheville residents and businesses.

Con:

- None identified at this time.

There is no adverse fiscal impact associated with this grant. Accepting this grant will relieve the cost of this needed equipment from the upcoming Fiscal Year 2009-10 budget. The Fire Department will utilize funds already included in its Fiscal Year 2008-09 small capital budget to fund the $14,039 City match.

City staff recommends that City Council (1) authorize the City Manager to accept the matching grant from the Department of Homeland Security, Federal Emergency Management Agency to enhance the safety of our firefighters, community and region; and (2) adopt the associated budget amendment.

Councilman Mumpower felt that with our budgetary constraints and the reality of our economic picture, he could not support these actions. He understood the need of procurement of wildland fire suppression and personal protection equipment for the Asheville Fire & Rescue Department, but felt Asheville should pay for those things themselves and let the state spend their money on the court system, which will benefit everyone.

Councilman Newman moved for the adoption of Resolution No. 09-10. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Newman moved for the adoption of Ordinance No. 3692. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 158

III. PRESENTATIONS & REPORTS:

A. N.C. DEPT. OF TRANSPORTATION FUNDING POOLS

Assistant Director of Transportation and Engineering Ken Putnam said that during Council's consideration of a resolution supporting the proposed improvements to Victoria Road in the immediate area of Mission Health System as part of the hospital's overall master plan at the October 28, 2008, City Council meeting, there was discussion about the N.C. Dept. of Transportation (NCDOT) funding in general and a request was made to identify the "funding pools" and determine how they could benefit the greater community. As a side note, *the NCDOT Board of Transportation approved a total of $1,000,000 for Mission Health System on January 8, 2009.*

Typically, there are three "funding pools" that fall outside the Transportation Improvement Program (TIP) process and are controlled by the local Division office *(Board of Transportation member)* and/or the Secretary of Transportation in Raleigh. The subject "funding pools" include Divisionwide Small Construction Funds, Statewide Contingency Funds, and Public Access Funds. A fourth "funding pool" includes SB 622 Economic Development Funds; however, current funding has **not** been extended.

Divisionwide Small Construction Funds are intended for small to medium size projects that would improve traffic flow and/or public safety. Typical projects include providing turn lanes, medians, curb and gutter, resurfacing, traffic signals, and warning flashers. The work must be done on state-maintained streets and there is an annual cap of $250,000 for each specific project. See below:

DIVISIONWIDE SMALL CONSTRUCTION FUNDS

- Annual cap of $250,000 per specific project.
- Controlled by the Board of Transportation (BOT) member - $2,000,000 per year.
- Work must be on state-maintained streets.
- Typical projects include *(based on Board of Transportation meeting minutes)*
    1. Left-turn lanes
    2. Right-turn lanes
    3. Curb and gutter
    4. Medians/Directional Left-Overs
    5. Sidewalks *(not typically in Division 13)*
    6. Resurfacing *(including milling)*
    7. Traffic signals *(new installations and upgrading existing)*
    8. Warning flashers *(including solar powered)*

9. Traffic studies and preliminary engineering *(not typical)*
10. Corridor access management plans *(not typical)*

Statewide Contingency Funds are also intended for small to medium size projects that would improve traffic flow and/or public safety. Typical projects include providing turn lanes, medians, curb and gutter, resurfacing, drainage improvements, traffic signals, and warning flashers. These projects typically have an annual cap of $100,000 for each specific project *(higher caps can be approved on a case-by-case basis)* and the funds are administered by the State Senate, State House, and the Secretary of Transportation. See below:

STATEWIDE CONTINGENCY FUNDS

- Typical annual cap of $100,000 per specific project *(higher caps can be approved on a case-by-case basis)*
- Administration is shared by the President Pro Tempore of the Senate, the Speaker of the House and the Secretary of Transportation - $10,000,000
- Projects are recommended by the President Pro Tempore of the Senate, the Speaker of the House, and the Secretary of Transportation
- Typical projects include
    1. Access streets
    2. Left-turn lanes
    3. Right-turn lanes
    4. Medians/Directional Left-Overs
    5. Pedestrian walkways
    6. Resurfacing *(including milling)*
    7. Drainage improvements
    8. Traffic signals *(new installations and upgrading existing)*
    9. Warning flashers *(including solar powered)*
    10. Volunteer Fire Department Paving *(driveways and parking areas)*
    11. Protective dunes *(coast)*

Public Access Funds are intended to be used for providing school bus drives, drives to fire truck bays for volunteer fire departments, and access to new industry entities. Requests for these funds are made directly to the NCDOT by schools, volunteer fire departments, and various industry entities. See below:

PUBLIC ACCESS FUNDS

- Requests for funding typically come from schools, volunteer fire departments, and industrial entities. Written requests should be submitted to the appropriate Division Engineer.
- Industrial requests are for industries creating new jobs and are typically funded at $1000/job, with a maximum of $150,000 per project.
- Schools are funded for bus drives only and are limited to $50,000 per school.
- Rural volunteer fire departments can receive funds for providing drives to the bays for fire trucks and are limited to $25,000 per fire department.

- The appropriate Division Engineer reviews school and volunteer fire department requests and the Chief Engineer approves them. The Access Review Committee reviews and approves all public access requests.

With a new governor beginning her first term and the current economic climate, there is no guarantee that the subject funds will stay intact. He will continue to work closely with the local NCDOT staff in trying to identify appropriate projects within the City limits of Asheville that we could pursue.

Councilman Newman questioned how we can effectively implement the projects we want funded over the next five years with our transportation infrastructure plan. City Manager Jackson felt the increased interaction between our Metropolitan Planning Organization (MPO) representatives and City staff is very beneficial and he encouraged Council to continue that as staff develops an action plan. He said that it is the City's goal to be more strategic in putting our interests at the table by educating the MPO representatives and then seeking Council endorsement of the action plan.

Mayor Bellamy noted the changes in dynamics since there is new leadership at the NCDOT. She felt it was important to point out that even with the MPO being one step, the bigger fight is working with the Board and the new Secretary of Transportation to ensure that our projects do move forward. She said the downfalls in our area is that outside the Transportation Improvement Plan, we don't have any long-term plans for major roadways in the community. She felt it should be a priority for our two MPO representatives to look at where we're going, how do we get there, and how we can use the multi-modal system because it's imperative for our growth.

Vice-Mayor Davis said in Henderson County, all the cities and towns in Henderson County get together as a Henderson County MPO before they come to the main MPO meeting. He feels that is a great model and they may try to do something similar to that in Buncombe County.

Mayor Bellamy felt supported the Henderson County model for our area in that it's imperative that when we advocate to NCDOT, it's with one voice with one vision that they can stand behind.

In response to Councilman Mumpower, Mr. Putnam explained what funds were used for the $1 Million Mission Hospitals project, which decision was not filtered through the MPO.

Even though Councilman Mumpower felt the Mission Hospitals project is a good project, he felt it was reprehensible for them to sidestep the MPO process, which is the filtering body for decisions about regional roadways. He felt Council should take a formal position against these kind of activities.

Councilman Newman said the funding pools from NCDOT are not secret in that there are other ways to get projects funded. It's not currently structured that all projects get approved by the MPO; however, he would support that. He did feel that the MPO needs to be doing a good job effectively with the decisions they are currently charged with making. In addition the MPO needs to engage with the Secretary of Transportation and our Board members because, as it is currently constructed, they are important decision-makers in what projects get funded.

Mayor Bellamy said that Council's two MPO representatives will keep Council informed.

IV. PUBLIC HEARINGS:

A. RESOLUTION TO PERMANENTLY CLOSE A PORTION OF WALLACK STREET

Mayor Bellamy said that this public hearing was held on December 2, 2008, and continued to this date in order to give the Greenway Commission an opportunity for further evaluation of the request with the petitioners being given an opportunity to be heard at the meeting.

Councilman Mumpower said that there appears to be a potential for compromise on this issue and as such, he moved to continue this public hearing until February 10, 2009. This motion was seconded by Vice-Mayor Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 22 SULPHUR SPRINGS ROAD, FOR THE PROJECT IDENTIFIED AS SULPHUR SPRINGS CONDOMINIUMS, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO URBAN RESIDENTIAL DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED USE BUILDING INCLUDING 27 RESIDENTIAL UNITS AND UP TO 2577 SQUARE FEET OF OFFICE AND COMMERCIAL SPACE, WITH TWO LANDSCAPE MODIFICATIONS AND DESIGN VARIANCE STANDARDS REQUESTED

ORDINANCE NO. 3693 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 22 SULPHUR SPRINGS ROAD, FOR THE PROJECT IDENTIFIED AS SULPHUR SPRINGS CONDOMINIUMS, FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO URBAN RESIDENTIAL DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED USE BUILDING INCLUDING 27 RESIDENTIAL UNITS AND UP TO 2577 SQUARE FEET OF OFFICE AND COMMERCIAL SPACE

Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located on 22 Sulphur Springs Road, for the project identified as Sulphur Springs Condominiums, from RM-8 Residential Multi-Family Medium Density District and Community Business II District to Urban Residential District/ Conditional Zoning for the development of a mixed use building, including 27 residential units and up to 3577 square feet of office and commercial space, with two landscape modifications and design variance standards requested. This public hearing was advertised on January 16 and 25, 2009.

Ms. Cogburn said that the subject property, currently owned by Buncombe Realty, consists of .84 acres located at 22 Sulphur Springs Road approximately .1 miles off of Haywood Road in West Asheville. Approximately 3/5ths of the property (to the west) is zoned RM-8 (Residential Multi-Family Medium Density District) with the remaining 2/5ths (to the east) zoned CBII (Community Business II District). The property contains an abandoned dwelling unit and miscellaneous outbuildings. It is fenced on all sides.

The property is surrounded by parcels zoned in various ways and containing varied uses. To the north, the property is zoned CBII, Institutional, and RM-8 and contains offices, church uses, and single-family homes. The property to the west and south is zoned RM-8 and contains single-family homes. To the east is CBII zoned property containing a duplex and offices.

The applicant is requesting conditional zoning to URDCZ (Urban Residential Conditional Zoning District) to allow for the development of a mixed use building. It is proposed that the building will contain 5 one-bedroom, 10 two-bedroom, 6 three-bedroom, and 6 four-bedroom dwelling units (24,541 square feet); 2,165 square feet of commercial space on the northeast side of the first floor; and, 1,412 square feet of office space in the basement level on the western side

of the building. Without the rezoning, 9 dwelling units could be constructed on the property. The development of 27 units is a density of 32 units per acre (the maximum in URD). The proposed building height is 30 feet (three stories), in conformance with the proposed URD zone. The building footprint is 9,872 square feet with an additional 1,051 square feet in exterior walkways.

Access to the parking for the development will be off of Sulphur Springs Road at the northeastern corner of the property. Parking to serve the development is located underneath the buildings, in a surface area to the rear of the buildings, and on the street. Thirty-nine spaces are provided. It is proposed that the sidewalk along Sulphur Springs Road (in front of the property) will be reconstructed during the development of the on-street parking. Per an arrangement between the applicant and the City Traffic Engineer, the on-street parking will be primarily constructed on the applicant's property, with 2 feet of the on-street parking width coming from the existing roadway.

The developer is proposing at least 5 affordable units (18%) and will meet the standards for Healthy Built certification. Four neighborhood meetings have been held to introduce this project to the residents of the area.

The developer has requested 2 modifications and 2 design variances for the project. The modifications to standards, which must be approved by Asheville City Council, are:

1. A modification to the buffer on the west side of the building to allow for placement of balconies on the first and second floors of the building. The intrusion into the required 20 foot buffer is 6 feet. The balconies will be 18 feet above the ground at the lowest point, providing adequate room for the planting of shrubs under the balcony. The full compliment of plantings will be provided in the buffer. Staff is supportive of this modification as it provides an interesting architectural element to this side of the façade and due to the fact that some plantings will occur within this area. An additional condition that evergreens required for this buffer be concentrated between the balcony and the property line was added by the Asheville Planning & Zoning Commission at the request of the adjoining property owner.

2. A modification to the required driveway width of 24 feet. The proposed driveway width is 20 feet. The building is predominately residential, but due to the provision of 3,577 square feet of office and commercial space the requirement is for a driveway 24 feet wide. The developer is requesting the modification because providing extra width would require either encroaching into the buffer on the west side of the property or removing the sidewalk located between the driveway and the building. The developer has worked with the City's Traffic Engineer to limit one of the parallel parking spaces in front of the building to a restricted loading space for the commercial and office uses. By doing so, the number of large vehicles entering the parking lot is limited and, therefore, staff is supportive of this modification.

The variances, which were approved by the Planning and Zoning Commission following a quasi-judicial hearing on December 3, 2008, are:

1. A variance to the requirement (Section 7-8-25(f)(12)b.) that pedestrian entrances be provided every 45 feet along the primary building façade. The proposed plans show 4 entrances along Sulphur Springs Road (two residential and one on each end for the commercial and office uses). The distance between the northeast commercial end of the building and the northeast entrance to the residential courtyard is 50 feet; the distance between the residential courtyard entrances is 115 feet; and the distance between the northwest office entrance and the northwestern residential entrance is 50 feet. The staff is supportive of this request due to the residential nature of this project. This URD standard anticipates more commercial activity along the first floor at street level.

2. A variance to the requirement (Section 7-8-25(f)(12)d.) that windows make up at least 60% of the area of the street facing first story façade. The proposed design provides for 38% openings in the first floor façade. Staff is supportive of this variance again, because of the residential nature of this project and also because the design of the project, with the courtyard openings, provides the pedestrian interest that is the purpose of this requirement.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet all the technical standards set forth in the City's UDO and Standards and Specifications manual. The developer has been closely working with staff to ensure compliance and has recently revised the site plans to meet and correct many of the Technical Review Committee's conditions.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The developer, in designing a URD project has worked to create a project compatible with the surrounding area. The project should serve as a transition between the Haywood Road mixed use area and the single family home neighborhoods to the south.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The project is designed to serve as an appropriate transition between the Haywood Road commercial /office corridor and the single-family neighborhood to the south of the property. The property is currently in a derelict state and the redevelopment of this property as a transition, higher density property should increase, but definitely not injure the values of surrounding properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   Although the project presents a greater density than development to the south, it is in an area that transitions from commercial/office to single-family. It is an ideal location for a small, mixed-use project that transitions between the higher intensity uses along Haywood Road and the single-family neighborhoods to the south of the project.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed use supports the 2025 goals and vision as follows: (1) Providing affordable housing; (2) Promoting compatible, mixed-use infill development; (3) Permitting and encouraging transit supportive density (8-16 units per acre minimum) at transit nodes; and (4) Supporting green building.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed use is located .1 miles off of a major corridor in the City. Infrastructure and services are available to serve this development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The project offers affordable units, aligning with City Council's goals.
- The proposed development provides housing in a transit-served area.
- Higher density infill development furthers the goals and objectives of the comprehensive plan.
- The project will be designed to qualify for Healthy Built Homes certification or LEED certification.

Con:

- The project presents a density that is greater than that found in the immediate residential areas.

This conditional zoning request was recommended for approval by a 5-1 vote of the Asheville Planning & Zoning Commission. Three people spoke at the meeting – all were opposed to the development mostly due to traffic concerns.

She received an e-mail from a neighbor concerned about lighting in the area from the project. The standard condition on the project is they must meet the City's lighting plan. They will have to submit a detailed lighting plan to address that.

Mr. Gerald Green, representing the developer, explained the specifics of the project. He explained that several members of the development team have been involved with a number of projects in west Asheville. For this site, some of their eco concepts development's goals include (1) beautiful design; (2) context sensitive design; (3) pedestrian and transit oriented; (4) build community; (5) affordability; (6) accessible for all ages; (7) Healthy Built certified; (8) Energy Star Certified; and (9) sustainable design and construction. They held four community meetings beginning in August to ensure that all concerns were addressed. He said they tried to incorporate as many of the community's desires into the project. They also asked for concerns, some being (1) the building itself; (2) buffers; (3) scale with the neighborhood; and (4) site location. Some were concerned with speeding in Sulphur Springs Road and the need for traffic calming. They have worked with the City's Traffic Engineer with on-street parking and road width adjustment to help slow traffic down. He showed examples of the architectural design of the building in relationship to other homes in the area. He said they meet the following goals of the City's Comprehensive Plan (1) green building; (2) transit-oriented development; (3) pedestrian-oriented development; (4) mixed-use corridor development; (5) infill development; (6) affordable, mixed-income housing; (7) LID and BMP stormwater features; and (8) accessible design for all ages. Using a site plan, he showed the formation of the units. He then explained the unit mix and estimated pricing, noting that they are working with the City's Housing Trust Fund and other public subsidy money to try to reduce the pricing even further and get more affordable units. He explained the need for their modification and variance requests. He urged the Council to support this project that will be sustainable and serve the residents of west Asheville and the City of Asheville as a whole.

Mayor Bellamy closed the public hearing at 5:37 p.m.

There was a brief discussion, initiated by Councilwoman Cape, regarding a bike lane on Sulphur Springs Road. She suggested that a review of the Comprehensive Bicycle Plan be included in the Technical Review Committee's responsibilities.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3693 for the conditional zoning request for the project identified as Sulphur Springs Condominiums, located at 22 Sulphur Springs Road, with the modification to the buffer on the west side of the building and the modification to the driveway with, and subject to the following conditions recommended by City staff and the standard conditions: (1) Uses shall be limited to twenty-seven (27) dwelling units and commercial and office uses permitted in the Urban Residential District; (2) The project shall include a minimum of eighteen (18%) percent units complying with the City of Asheville's affordable housing standards. For dwelling units that are for sale, this requires that the units be sold at or below the City's price points for affordable units and be sold to income qualified individuals; (3) The project will be designed and constructed to meet Healthy Built Homes standards; (4) The project shall comply with all conditions outlined in the TRC staff report; (5) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (7) This project will undergo final review by the TRC prior to issuance of any required permits; and (8) The developer shall concentrate the required western buffer landscape evergreens into the area between the balcony and the western property line. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 160

C. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED AROUND 152 BLEACHERY BOULEVARD FROM URBAN VILLAGE DISTRICT AND RIVER DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3694 - ORDINANCE TO REZONE PROPERTIES LOCATED AROUND 152 BLEACHERY BOULEVARD FROM URBAN VILLAGE DISTRICT AND RIVER DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:56p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone properties located around 152 Bleachery Boulevard from Urban Village District and River District to Commercial Industrial District. This public hearing was advertised on January 16 and 25, 2009.

Ms. Cogburn said that this rezoning request is the consequence of a recent conditional zoning for the Altamont at Riverbend Village project, which rezoned more than 15 acres from Urban Village to RM16/Conditional Zoning. As a result, the remaining neighboring area of land zoned Urban Village totals less than four acres, and Section 7-8-23 of the Unified Development Ordinance (UDO) states that the minimum area for an Urban Village District shall be five acres. Six Oaks, LLC, the owner of the Altamont site as well as the subject property on the east side of Bleachery Boulevard, was informed during their application process that this rezoning request would be required to address the creation of a non-conforming situation.

Commercial Industrial (CI) was proposed as an alternative by staff due in part to the area of land southwest of the subject area already zoned CI. Staff considered a rezoning of the CI area and roadway to Urban Village to assemble an area adding up to more than five acres to achieve conformity, but the slope of the land on the west side of the road (around 25%), the location of the road dividing the area, and the presence of a detention pond on the east side indicate too little usable land for a viable urban village design.

The three LLCs that own the 1.3-acre parcel (part of which is zoned Urban Village) on the west side of Bleachery Boulevard are also a party to the rezoning request, and have indicated their support of staff's execution of the proposed rezoning.

The stated purpose of the Commercial Industrial district is "to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development."

The Urban Village (UV) District was "established to create mixed use development that is economically vital, pedestrian-oriented and contributes to the place-making character of the built environment. The Urban Village District offers the unique opportunity to provide quality and long lasting retail, office and residential uses in an organized layout that encourages the full range of access by patrons and users, and offers innovative high quality design of structures, public amenities and pedestrian facilities."

The recent conditional zoning decision effectively removed the possibility of an urban village development in this area. While the remaining area zoned UV does have development potential, it does not possess the physical characteristics needed for a successful urban village. The Commercial Industrial classification would allow for a varied mix of uses, consistent with the neighboring development on the roadway. And although the industrial uses permitted in CI would be unlikely choices on this corridor, the proposed zoning district could invite types of employment that are not available as permitted uses under the current zoning.

As of this writing, staff has received no communications from the public regarding this rezoning.

On January 7, 2009, the Planning & Zoning Commission voted unanimously to recommend approval.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Rezoning would achieve compliance with the UDO.
- Proposed Commercial Industrial zoning is compatible with the surrounding area.

Con: None noted.

Staff feels the proposed rezoning is appropriate for the situation and recommends approval.

Mayor Bellamy closed the public hearing at 5:59 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3694. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 166

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 131 OLD CHARLOTTE HIGHWAY TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3695 - ORDINANCE TO ZONE 131 OLD CHARLOTTE HIGHWAY TO COMMUNITY BUSINESS I DISTRICT

Mayor Bellamy opened the public hearing at 6:01 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to zone 131 Old Charlotte Highway to Community Business I District. This public hearing was advertised on January 16 and 25, 2009.

Ms. Cogburn said that the City of Asheville recently completed the voluntary annexation (effective December 31, 2008) of a .85 acre tract located at 131 Old Charlotte Highway in eastern Buncombe County (approximately 1.9 miles from the current City limits). A single-family home is located on the property which has been purchased by the Asheville ABC Board for the development of a new ABC store. The property is at the edge of the Olde Eastwood Village community.

The property, along with surrounding properties in the area, is zoned NS (Neighborhood Service) District by Buncombe County. Staff proposes a similar City zoning classification, CBI (Community Business I) District for this parcel.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- None noted.

This initial zoning was recommended for approval (7-0) by the Asheville Planning & Zoning Commission at their January 7, 2009, meeting. No one spoke at the meeting.

Based on the above findings and the analysis provided in the report, staff and the Planning & Zoning Commission recommend this initial zoning request to be reasonable.

Mr. Jack Sorrells, resident in the Reynolds High School area, questioned whether the location of this ABC store has met all the location requirements established by the State, e.g., avoidance near schools and churches. He said Old Charlotte Highway is a very narrow road with a small bridge. He said that Reynolds High and Reynolds Middle Schools are across the road and there are 3-4 churches in the area. He said that they are not opposed to an ABC store, but just this particular location.

Mayor Bellamy closed the public hearing at 6:04 p.m.

In response to Councilman Mumpower, Ms. Cogburn said that the City does not review the ABC store standards but only reviews City standards. City Attorney Oast said that review of ABC stores is a matter is governed by the State ABC Commission and he felt sure they could not open the store unless they complied with the law.

City Attorney Oast reminded Council that if this property is rezoned, any use allowed in the Community Business I District would be accepted on the property. In response to Councilman Mumpower, Ms. Cogburn noted other uses and limitations in the Community Business I District.

Since there was no representative of the petitioner to respond to questions raised, Councilman Mumpower was concerned about taking action.

Ms. Cogburn said that in discussions about several different stores that the local ABC Board is contemplating opening, she believed that this has received approval from the State, which would seem to her to indicate that they have met the state requirements.

Councilwoman Cape felt Council is being asked if we are going to continue the practice of allowing people who voluntarily annex into the City to petition us for what they think the best use is. Ms. Cogburn said that staff does ask the petitioners what zoning would work for them with regard to what their plans are and at that time they would indicate to them any concerns even before instituting a voluntary annexation. She said that this property was zoned by Buncombe County to Neighborhood Services which is very comparable to Community Business I District.

Councilwoman Cape felt that Asheville is so hungry to participate with people on voluntary annexations rather than involuntary annexations that it's hard pressed for the City to turn them away.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3695. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 25 – PAGE 168

E. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON 1498 SAND HILL ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Bellamy said that this public hearing was originally scheduled for January 13, 2009, but was continued to this date at staff's request. She then opened the public hearing at 6:13 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property located at 1498 Sand Hill Road from RM-16 Residential Multi-Family High Density District to Institutional District. This public hearing was advertised on January 2 and 9, 2009.

Ms. Cogburn said that the subject property is located off of Sand Hill Road (NC 112) just past the intersection with US 19/23. Access to the property is via a private road, Chapel of Faith Drive. The property is 38.8 acres in size and is used as a cemetery with related operations/ buildings. The property is currently zoned RM-16 (Residential Multi-Family High Density District) and is in the City of Asheville's extraterritorial jurisdiction. The petitioner seeks a rezoning to Institutional.

The property is bordered by various uses and zoning district designations. To the west is the Vulcan Quarry operation (zoned Industrial); to the north are a variety of commercial, residential and institutional operations (zoned CBII and RM-8); to the east is vacant property

zoned Urban Village for the proposed Main Street at Enka Village; and, to the south are multi-family dwellings (zoned RM-16).

The property is bordered by creeks and streams, although only one stream is located on the property at the northern property line. A rail line is located immediately north of the property between the northern property line and US19/23. The property is mostly flat.

Although the rezoning results in the loss of multi-family zoning, as there is presently a cemetery on the property, it is highly unlikely that any such development would be proposed. More intense uses than are present would be allowed under either zoning district. The rezoning does allow for additional development of the cemetery operations on site.

Pros:

- Allows for more intense development in an area off a major corridor.
- Conforms to the City's goal of allowing appropriate non-residential uses in suitable locations.

Con:

- None noted.

Based on the analysis provided in this report, staff and the Planning & Zoning Commission find this request to be reasonable. This rezoning was recommended for approval by a 5-0 vote by the Planning & Zoning Commission. One person (the property manager) spoke in favor of the rezoning. Since the Planning & Zoning meeting some concerns have been expressed by owners of the Urban Village District property adjoining this property.

Mr. Dan Funchess, representing from Forest Lawn Memorial Park, asked Council to support the rezoning to allow them greater flexibility on what they would like to do with the property. They acquired the property in 2003 and would like to clean it up.

Mr. Wes Rinehart, Director of Marking of FIRC Group, owners of Main Street at Enka Village, said that they own the 2 tracts of land (east and south) that adjoin the cemetery. They are opposed to the rezoning in that it will have a detrimental impact on the Main Street at Enka Village project. The rezoning will allow the cemetery to install and operate a pet crematorium within feet of their urban village. They find that use so close to the proximity of their development to be undesirable. Such use would negatively impact their tenants, residences and patrons. FIRC received Master Plan approval for their site which will encompass over 100,000 square feet of retail, 30,000 square feet of office and approximately 500 residential units. Their proposed development is deep in the design and planning stage and they are primarily concerned about the visibility of a crematorium structure and the emissions and by-products of such use. Using a map, he showed the general area of the proposed pet crematorium in relationship to their site plan. While he was sure that today's crematory technology is advanced with safety and efficiency, the fact is that it will generate by-products and particulate matter, and they are concerned about the operational failure of pollution and odor controls. When FIRC purchased the property in February of 2007, they did so after significant due diligence and the understanding that the cemetery was zoned RM-16. Furthermore, a rezoning to institutional could be a stepping stone to a human crematory or other impactable zoning uses. Such uses would negatively affect the value, character and quality of the life of their development.

Mr. Rick Jackson, counsel for the FIRC Group, spoke against the proposed pet crematory with it's proposed location next to a high density residential development. He said the owner has ample opportunity, within his existing land, to relocate, preferably closer to the existing industrially zoned land and further away from existing residential lands. The owner was unwilling to talk with them about relocating the crematory within his land or even a possible land-swap for the purpose of relocating the crematory further away from their development. The crematory is to sit in a modular home which could be easily relocated within the site. The owner has chosen to

locate the crematory in that corner mainly because it can't be seen from the human cemetery. Even to the extent to which that proposed crematory doesn't emit odor and there is no visible smoke, based on the manufacture's description of such equipment, it will emit particulate matter. The impact on this particulate matter on the residents in the adjoining development, based on its close proximity, is a real concern. The proposed location of the pet crematory will jeopardize the adjoining urban village development and respectfully requested Council deny the rezoning.

City Attorney Oast reminded Council that this is not a conditional zoning, even though Council has received information about the intended use from people on both sides of the issue. If the property is rezoned, then any use that is available within that District could be placed on that property and the particular location of the proposed pet crematory is not something that Council can attach as a condition in this rezoning.

In response to Councilman Russell, Ms. Cogburn said that a Unified Development Ordinance amendment was recently brought before Council concerning animal crematories and animal cemeteries. For a rezoning, staff looks at what zoning is good for the property as a whole, but does not examine anyone's particular plans.

Mayor Bellamy closed the public hearing at 6:23 p.m.

Councilman Russell supported the urban village district on a major corridor and he was concerned that the location of the proposed pet crematory would be right next to residential property.

In response to Councilman Mumpower, Mr. Funchess said that it was not uncommon that when a crematory is located within an area to have concern about emissions. Numerous studies have been done on emissions and noted that there is more particulate matter emitted by fireplaces or a flame broiled hamburger grill than there is a crematory.

Mr. Funchess said that they are trying to create a natural buffer between the human burial aspect of the cemetery and their pet care initiative, out of respect to families and in compliance with the Cemetery Commission. He said they have interacted with the FIRC Group who would have been willing to not oppose the location if the cemetery was willing to enter into an agreement to give up their right-of-way into the cemetery or do something different with their right-of-way. He said that if they had to relocate the pet crematorium, it would kill their project as they must build it on a periphery part of the cemetery with a dedicated access. He noted that in that location now is a vacated maintenance building which is far more unsightly than a nice modular building. He said they are a small business trying to find an initiative to create revenue for the City. He noted they do have the support of the Humane Society and other agencies. In addition, he noted that the crematory will only be run one day a week.

Councilman Newman said that this is one of the uses allowed in the Community Business I District and noted that these kind of crematories around the country are located in highly developed urbanized areas with no adverse affects on neighboring properties.

Vice-Mayor Davis would have preferred this come to Council as a conditional zoning request. He wondered if both parties couldn't meet and arrive at a win/win solution.

When Assistant Planning & Development Director Shannon Tuch said that we don't typically buffer with a straight rezoning between two high density uses, but we could with a conditional zoning request. Ms. Cogburn explained that the way our landscape ordinance works now is that buffering is between zones and not uses. Mayor Bellamy felt that should be addressed, as the uses have significant differences.

Mayor Bellamy felt she could support a conditional use request with additional landscaping and buffer requirements.

In response to Mayor Bellamy, Mr. Funchess said that to relocate the pet crematory in a different area on their property causes a problem with ingress and egress. Where the site is proposed is a perfect setting for a low impact type of development of a pet care area. The other areas of the cemetery offer more value for human development than pet care development. He said that they are willing to buffer, noting that the location is 45 yards from the point of the building in the housing development. In addition, he noted that the property swap mentioned by Mr. Jackson was to move the modular in a 100-year floodplain, which would inhibit their modular structure.

Councilwoman Cape was also interested in a conditional zoning request as we find that most problems are encountered when we are not sensitive to neighboring issues.

Upon inquiry of Mayor Bellamy, both property owners said that they would be willing to work on a compromise.

Councilman Mumpower moved to table this item indefinitely with the suggestion that the applicant work with the adjoining property owner and staff in order to refine their request. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Newman voting "no."

F. PUBLIC HEARING TO CONSIDER THE APPLICATION FOR NEIGHBORHOOD STABILIZATION PROGRAM FUNDS THROUGH THE N.C. DEPT. OF COMMERCE

RESOLUTION NO. 09-12 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR NEIGHBORHOOD STABILIZATION PROGRAM FUNDS THROUGH THE N.C. DEPT. OF COMMERCE

Mayor Bellamy opened the public hearing at 6:48 p.m.

Planning & Development Director Judy Daniel said that this is the consideration of a resolution authorizing the Mayor to approve the City's application for $3 Million of Neighborhood Stabilization Program (NSP) funds - a program initiated by the US Department of Housing and Urban Development and implemented by NC Division of Community Assistance. This public hearing was advertised on January 16 and 25, 2009.

On September 26, 2008, the U.S. Department of Housing and Urban Development (HUD) allocated $3.92 billion to all states and direct grants to particularly hard-hit areas trying to respond to the effects of high foreclosures and home abandonment. This Neighborhood Stabilization Program (NSP) is designed to provide targeted emergency assistance through HUD's Community Development Block Grant (CDBG) Program under the Housing and Economic Recovery Act of 2008 (HERA).

In conjunction with this program HUD allocated $52 million dollars of NSP funds to the North Carolina Division of Community Assistance (NC DCA) to be allocated to greatest needs areas of the state; and another $5 million as a direct entitlement to Mecklenburg County, reflecting an extraordinary need. According to NC DCA, these allocations were based on foreclosure statistic analysis by HUD. Buncombe County became eligible to apply for a portion of DCA's allocation as a result of DCA's need assessment that indicated that Buncombe was in one of the 23 qualifying counties.

In response to the NSP grant opportunity, staff has developed a proposal to utilize an estimated $3 million of grant funding to address the local foreclosure problem. This proposal seeks to strategically acquire foreclosed or abandoned properties that are demonstrating a negative impact to the surrounding neighborhood. Through the redevelopment for rental or

resale of these high impact properties, the goal is to foster market recovery of the greater neighborhood. Research performed via the NC Department of Commerce has illustrated that the 28806 zip code has a greater concentration of sub-prime mortgages and foreclosed properties; therefore staff intends to target strategic properties in this area.

She said that the resale or rental of the redeveloped properties will be targeted toward persons and families of low to moderate income levels. Mountain Housing Opportunities (MHO) and OnTrack Financial Education and Counseling have agreed to partner with the City to implement this program. MHO will serve as redeveloper for selected properties, as well as assisting with the financing options available to qualified homebuyers to include Down Payment Assistance that will also be funded through this program. OnTrack will provide the 8 hours of required Housing Counseling to these potential homebuyers. Within the designated scope of this grant, 70% of the grant funding must target an end-user beneficiaries group up to 120% area median income, while 30% of the grant funding must be used to serve those below 50% area median income.

This action complies with the Strategic Operating Plan in that applying for NSP funding shows that Council is proactively pursuing strategies supporting aspects of the comprehensive affordable housing plan to increase the supply of affordable workforce housing.

Pros:

- Asheville is awarded $3 Million by HUD to create affordable housing.
- Local non-profits with experience implementing programs with the use of CDBG funds have agreed to partner with the NSP. This greatly increases the likelihood of this program's success
- Administrative and staff costs for program provided by HUD as a part of grant award.
- Stabilizes and or improves public safety in neighborhoods already identified as having issues with crime.

Cons:

- Very competitive application process with other cities and non-profits in NC. Buncombe County has lower need than other areas of the state, therefore, funding award is questionable
- This is not a foreclosure prevention program, funds are only used post foreclosure

If awarded, positive impact that CDBG funds will increase by $3 Million.

Ms. Daniel said that this is a very competitive process. She said that City staff recommends City Council adopt a resolution authorizing the Mayor to approve the City's application for $3 Million of Neighborhood Stabilization Program funds; a program initiated by the US Housing and Urban Development Department and implemented by NC Division of Community Assistance.

Ms. Nikki Reid, the City's Real Estate Manager, said that the intent of this grant is to address neighborhood destabilization specifically as it relates to the foreclosure crisis. Within the given scope of the grant, staff has developed a proposal that seeks to strategically acquire properties that have been foreclosed or abandoned, resulting in a negative impact to the surrounding neighborhood. Through the redevelopment of these high impact properties, the goal is to foster stabilization of the greater neighborhood.

Research performed by the N.C. Dept of Commerce has illustrated that the 2006 zip code area has a greater concentration of sub-prime mortgages and foreclosed properties; therefore, staff intends to target strategic properties in this area.

The success of this application depends on the strength of our local partnerships. The City has partnered with MHO and OnTrack Financial Education and Counseling to implement this program. The City of Asheville, utilizing the CDBG program administration expertise, will function as stewards of the grant and also provide the administration and assist with site selection and approval. MHO will perform the property acquisition. Please note that the grant requires that the property be purchased at a 15% below appraised price. MHO will also provide for the redevelopment of the properties and the resale or rental of the properties, as well as work with potential homebuyers on financing. OnTrack will provide the 8 hours of required homebuyer counseling to these potential buyers.

As required by the grant guidelines, 30% of these funds must target an end user beneficiary group at 50% or below area median income. The remaining 70% of the funds should be targeted to an end user group from 51% up to 120%.

To realize the intent of this grant, the awarded funds must be obligated within 18 months of the award grant. The date of notification for those entities receiving funds is February 16, 2009. Therefore, she recommended authorization to submit this application.

Mayor Bellamy closed the public hearing at 6:52 p.m.

In response to Councilman Mumpower, Ms. Reid said that the grant allows for up to 5% over and above the requested award to be utilized toward administration costs, which is approximately $150,000.

Councilman Mumpower spoke against this action as this will be paid for by (1) borrowed dollars that our children or grandchildren will have to pay for; or (2) tax dollars. He felt for the City to participate in this initiative (which is appealing) at this stage in our economic dilemma is not appropriate.

Councilwoman Cape felt this is an approach to deal with the dramatic things going on in our country, and in the long run the foreclosures are impacting neighborhoods terribly. She felt if there is $52 Million going to the State of North Carolina and we have a need in our community of people who are losing their homes and those who need homes, we would not be fulfilling our duty if we didn't participate in this process. As difficult as things are, we have an obligation to invest in ourselves.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-12. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 31 – PAGE 410

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-13 - RESOLUTION ADOPTING THE CITY OF ASHEVILLE'S LEGISLATIVE PROGRAM FOR 2009 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast said that the 2009 legislature convenes on January 28. Usually, one of their first orders of business is to establish the deadlines for submission of local legislative requests; those deadlines are usually in early to mid March.

There was considerable discussion regarding the conflict of interest law, especially as it relates to Councilman Miller. City Attorney Oast said that City Council is very conscientious about recognizing potential conflicts and consulting him in advance. He said that conflict issues are often situational and fact specific. Each potential conflict is reviewed on a case by case basis. He has spoken with the School of Government and has met with Councilman Miller regarding his roles and responsibilities with regard to the Chamber of Commerce and the Buncombe County Tourism Development Authority. Regarding the particular issue of the hotel/motel tax, it was his opinion that Councilman Miller does not have a disqualifying conflict of interest. Mayor Bellamy was acutely aware of the conflict of interest provisions when she was employed with Mountain Housing Opportunities while serving on Council and as Mayor. She wanted to make sure that we are transparent for the public trust.

Discussion and voting results occurred on the following topics (prior to votes taken, Mayor Bellamy asked for public comment and received none):

a. A one percent dedication of hotel/motel tax revenue to be used for debt service on a near term upgrade of the Asheville Civic Center, consistent with the recommendation of the Task Force for the Future of the Civic Center. Should the one percent be beyond what Council is comfortable in asking, at least a half percent should be requested for the Civic Center Capital Improvement Program. It is a fair and normally dedicated tax that will help alleviate the burden of the local taxpayer as is done throughout the country, and, particularly, North Carolina. Recognizing the downturn in the economy, we may not be successful in this session but the request must be persistently included in our legislative agenda.

   After considerable thought, Councilman Miller suggested the following language, in lieu of Vice-Mayor Davis' language: "Actively engage Buncombe County tourism leaders and local delegation officials to develop possible taxable policy options designed to improve the overall health and awareness of the Asheville area grand experience."

   As Vice-Mayor Davis appreciated Councilman Miller's effort in crafting different language, he explained why he preferred his language be included in the State legislative package.

   Vice-Mayor Davis said that research done by the Task Force for the Future of the Civic Center confirmed almost all arenas, conference, convention and performance centers throughout the state enjoy a percentage of hotel/motel room tax, either in the initial construction or through the life of the facility for capital improvement. The percentage varies from a half to three percent but an increment of room tax is consistently applied to the communities' public gathering places. Once again, Asheville is treated uniquely; other venues are not required to garner room nights as a condition to receive proceeds from room tax. He also remains firmly convinced that the Asheville Civic Center is directly responsible for many room nights and, at the very least, is a direct contributor to the vibrant downtown and the destination it has become.

   Councilman Newman moved to adopt the language proposed by Vice-Mayor Davis above. This motion was seconded by Vice-Mayor Davis and carried on a 4-3 vote, with Councilman Miller, Councilman Mumpower and Councilman Russell voting "no."

b. Repeal of Sullivan Acts.

c. Renew request (last proposed in 2005) to facilitate voluntary annexation of properties near the airport (proximity to Fletcher issue).

d. Authorization and funding for "quality of life (nuisance court)" enforcement program, similar to other N.C. cities.

e. Address issue of municipal incorporation of rural areas (this may be done in connection with review of annexation law).

f. Provide / clarify authority to regulate vehicle towing from parking lots.

Councilwoman Cape moved for the adoption of letters b – f above. This motion was seconded by Councilman Mumpower and carried unanimously.

g. Legislation allowing for a broader range of implementation of local affordable housing programs.

Councilwoman Cape moved for adoption of letter g above. This motion died for lack of a second.

Councilman Newman asked City Attorney Oast to look into this broad issue regarding any legislation that has already been enacted.

h. Clarifying authority of City to place conditions on sale of certain property.

Councilwoman Cape moved for the adoption of letter h above. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

i. Strengthen local authority regarding illegal immigration.

Councilman Mumpower moved for the adoption of letter i above. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Cape voting "no."

j. Support creation by N.C. Utilities Commission of an organization to design and implement statewide plan for energy efficiency and conservation (NOTE: legislative action may not be needed).

City Attorney Oast said that more information on this item will be available soon and asked Council to delay action on this issue.

k. Asheville First will be voted on at a later date since Council does not have language on this.

City Attorney Oast said that since submitting that report, Council has specifically expressed interest, at the retreat and other occasions, in legislation regarding the hotel tax, towing regulation, enhanced "quality of life" ordinance enforcement support (graffiti, litter, noise, etc.).

Discussion and voting results occurred on the following issues (prior to votes taken, Mayor Bellamy asked for public comment and received none):

1. The initiative being pursued by some cities (notably Durham) to design and implement Statewide plans for energy efficiency and conservation will require legislation.

2. The recent vacancy on Council revealed the need to more closely align our charter provision with State law, or simply repeal it.

3. The N.C. League of Municipalities has adopted its legislative agenda for 2009.

Councilwoman Cape moved for the adoption of item 3 above. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

4. The Asheville Chamber of Commerce will soon be adopting its 2009 Legislative Agenda, and Council may wish to review it as well.

City Attorney Oast said that as always, we will continue to review legislation proposed or introduced, on behalf of other municipalities, and to explore ideas that may require legislative support, and bring those suggestions to you for consideration.

Mayor Bellamy said that if Council approves this today, Council reserves the right to see on-going legislation as its drafted and have an opportunity to take a position on those. She said that the last date Council can add or delete items will be early to mid-March.

At 7:50 p.m., Mayor Bellamy announced a short break.

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B. RESOLUTION NO. 09-14 - RESOLUTION ESTABLISHING THE CITY OF ASHEVILLE'S FEDERAL PRIORITIES AND FEDERAL FUNDING REQUESTS FOR FISCAL YEAR 2010-11

Economic Development Director Sam Powers said that this is the consideration of a resolution authorizing the City Manager to submit the City's priorities, appropriations requests and legislative requests to Asheville's congressional delegation and staff for consideration in the 111th Congress.

The 111th Congress convened on Jan 8th, 2009. Congressional staff usually wishes to receive any funding requests from municipalities in early February to allow time for research and placement.

Of note of existing priorities, the legislation that has adversely affected Asheville Transit funding has finally been amended in favor of the City and other similarly sized systems. The bill allows transit systems serving urbanized areas whose population went from under 200,000 to over 200,000 in population in the 2000 census to use a portion of their (Fiscal Year) 2008 and 2009 urbanized area formula grants for operating costs. Transit systems in these areas can use an amount equal to 50 percent of the urbanized area formula grants received in Fiscal Year 2002.

This action complies with the following City Council Strategic Operating Plan goals: (1) Ensure financial accountability by matching resources with strategic initiatives and creating meaningful performance measures; and (2) Proactively pursue funding opportunities with state and federal economic stimulus packages.

City staff recommends City Council adopt a resolution authorizing the City Manager to submit the City's priorities, appropriations requests and legislative requests to Asheville's congressional delegation and staff for consideration in the 111th Congress.

Below are the City Council's currently adopted federal funding priorities:

- W.C. REID CENTER

Extensive renovation to or rebuilding of both interior and exterior and utilities of the W.C. Reid Center for Creative Arts, a 37,000-square foot community center to support a full-service, community based recreation program and multi-disciplinary arts program with an emphasis on providing services to at-risk youth and their families.
Amount requested: $4 to $6 million.

- ENERGY CONSERVATION RETROFITS FOR CITY BUILDINGS
  The Building Energy Conservation Retrofits appropriations will allow the City of Asheville to install programmable thermostats, light occupancy sensors, high energy efficient lighting in all 51 city owned buildings after which a holistic social marketing campaign will be conducted to encourage employee behavior change. The retrofits will provide significant cost savings through utilities and decrease the carbon footprint of the city organization, while providing a strong foundation for a social marketing program to effectively create sustainability behavior change.
  Amount requested: $749,200.

- TRAFFIC SIGNAL PREEMPTION
  A Traffic Signal Preemption System is an electrical device(s) that allow a traffic control signal to respond by giving priority to approaching response vehicles that are outfitted with special equipment. Such systems are designed to increase the safety of the public and responders, reduce emergency response times, and enhance public transit operations.
  Amount requested: $495,000.

- REGIONAL PUBLIC SAFETY TRAINING FACILITY
  The Regional Public Safety Training facility is a partnership between WNC local governments, state government and AB Tech. The facility will include an emergency vehicle driving pad, burn building, and a rescue tower. The project is a modular project and can be done in phases.
  Amount requested: $4 million.

- BUS REPLACEMENT
  The project entails the purchasing of fifteen (15) 30-foot hybrid buses to replace 75% of the fleet which are reaching their life-cycle, with more than ten (10) years in operations. This is a multi-year project that intents to replace the fleet in a three year period. The City is recommending buying hybrid buses, or buses using other energy efficient technology, instead of diesel. The use of alternative fuels will help the City to achieve the carbon emission reduction goals adopted by City Council. The project will affect positively the Western North Carolina population that lives in Asheville, Weaverville and Black Mountain and depends on transit to perform the daily activities, providing a more reliable and comfortable service. At the same time will bring benefits to the environment, reducing pollution and improving the quality of life.
  Amount requested: $7,875,000 over three (3) years ($2,625,000/year).

Below are the federal legislative priorities:

- Senate Bill 1738 "Combating Child Exploitation Act of 2007" to improve the Internet Crimes Against Children Task Force to increase resources for regional computer forensic labs, and investigate and prosecute predators.

- HR 1692 "The Fighting Gangs and Empowering Youth Act of 2007" which contains many things that focus on making sure that our youth have alternatives from gangs as well as increase penalties for gang activity.

- Senate Bill 1745 "Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act, 2008" for support of our Weed and Seed program that is funded under this Act.

- "The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" (1) Sec. 9002 – extension of the highway-related taxes and trust fund; (2) Sec. 9003 – extension of tax benefits for alcohol fuels; (3) Sec. 9004 – private activity bonds for surface transportation infrastructure; and (4) Sec. 9005 – all alcohol fuel taxes transferred to highway trust fund.

- PL 110-140 "The Clean Energy Act of 2007" (HR 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy.

- S. 1675 "Local Community Radio Act of 2007" to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service.

- S. 234 "Wireless Innovation Act" to make broadband available to unconnected neighborhoods and communities – especially rural and mountainous areas – by exploiting unused frequencies in the broadcast spectrum known as "white spaces."

- Support to fund the expansion of the ERC broadband and fiber optic network in the region for education, medical and emergency service support.

- Lend support to the Land of Sky Regional Council of Government request for funding for a Comprehensive Economic Development Strategy – Regional Growth Management Planning Initiative for Western North Carolina.

- Support funding for energy efficiency and conservation block grants.

- Continued prioritization of the completion of I-26 components through Asheville.

- Accelerated use of Federal resources in local action on Asheville's drug distribution network.

- Enthusiastic Federal enforcement of existing laws affecting illegal immigration in Asheville.

Mayor Bellamy recommended the following items be removed from the federal package as both are moving forward: (1) W.C. Reid Center; and (2) Senate Bill 1738.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Davis moved to adopt Resolution No. 09-14, with all legislative items outlined by Mr. Powers excluding (1) W.C. Reid Center and (2) Senate Bill 1738. This motion was seconded by Councilman Miller.

Mr. Greg Borom, Director of Advocacy and Community Engagement for Children First, asked Council to (1) expand federal funding for child care subsidy programs; and (2) state child health insurance funding program.

Vice-Mayor Davis and Councilman Miller supported amending their motion to include the two items requested by Mr. Borom to the City's federal legislative agenda.

At Councilwoman Cape's request, Assistant Director of Transportation & Engineering updated Council on the status of the traffic signal preemption program.

In response to Councilwoman Cape, Vice-Mayor Davis, Chair of the Public Safety Committee, said that the regional public safety training facility is moving forward.

Councilman Mumpower felt that since all of these federal legislative items involve premium dollars, he could not support the motion.

The amended motion made by Vice-Mayor Davis and seconded by Councilman Miller carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

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VI. NEW BUSINESS:

A. RESOLUTION NO. 09-15 - RESOLUTION REGARDING RECOMMENDATIONS FOR ECONOMIC STIMULUS PACKAGE

Mayor Bellamy said that Ms. Julie White, Director of the N.C. Metropolitan Mayor's Coalition, suggested Council adopt the following resolution in support of cities playing a role in the federal stimulus package. Their efforts are to put forth a list of ready to go projects to demonstrate cities ability to spend stimulus dollars quickly on worthy public infrastructure projects that will create jobs. They plan to collect all signed resolutions and distribute them to our congressional delegation and state elected officials. read the following resolution: "WHEREAS, The United States economy entered into a recession in December 2007 and it is widely agreed that economic stimulus is critical; and WHEREAS, To stimulate the economy, President-elect Barack Obama is working closely with Congress to prepare an economic stimulus package of up to $1 trillion they hope to pass soon after the President-elect's inauguration; and WHEREAS, previous stimulus bills have proven most effective if legislation is enacted soon after the recession is identified, funds are spent quickly while unemployment is high and new jobs are created when needed; and WHEREAS, North Carolina's jobless rate soared in December to 7.9 percent, the highest in 25 years; and WHEREAS, on December 19th, the North Carolina Metropolitan Mayors Coalition, representing the 26 largest city mayors, released a $2.8 billion list of shovel-ready public infrastructure projects that will immediately put citizens to work in construction, public safety, office, and retail jobs; and WHEREAS, academic research indicates that the list of upgrades for roads, public buildings, water systems, and other essential infrastructure would create nearly 100,000 jobs; and WHEREAS, the most efficient way to distribute federal funding is through existing federal programs; and WHEREAS, economic stimulus legislation should allow for a substantial role for municipal government, making it as easy as possible for local funding recipients to access and spend stimulus funds. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT the City of Asheville recommends that Congress consider the following recommendations as it begins work on an economic stimulus package, to (1) Include Funding for The Economic Development Administration's Public Works and Infrastructure Program, and Economic Adjustment Assistance; (2) Include Funding for HUD's Community Development Block Grant Program (CDBG); (3) Include Funding for Energy Efficiency and Conservation Block Grant Program (EECBG); (4) Distribute State Revolving Loan Fund Dollars as Direct Grants; (5) Do Not Limit The Corps of Engineers' Ability to Spend Stimulus Funds; and (6) Distribute Transportation Stimulus Funds Through The Surface Transportation Program (STP). FURTHERMORE, BE IT RESOLVED THAT the City of Asheville recommends that the State of North Carolina strongly partner with cities when deploying these funds to spur our local economies and choose a wide range of local infrastructure projects that will create long-term positive benefits for our citizens."

Mayor Bellamy said that Council has been provided with information on some staff initiatives. She said this is not an issue Council will need to debate tonight as the federal government will spend time debating the merits or not. What is before Council tonight is a list of shovel-ready projects that could move forward. Since there has not been any grant or loan applications (which will be brought before Council), all Council is saying what can we use the shovel-ready money for. Staff compiled a list for Council review and if we want to participate, do we like what staff has put before us. She is asking if the City would like to participate in the economic stimulus package that is being put together.

Councilman Mumpower felt it was not the Mayor's place to instruct Council on how to debate an issue. There should have been a discussion on the policy question of whether the Mayor and City staff should have acknowledged the City's willingness to participate for $122 Million in special interest projects or sent out any list. He felt to distribute this list without public illumination was wrong.

Mayor Bellamy said Council can talk about the direction they would like to take and if this something they would like to pursue if, and when, that comes forward. Staff can then be prepared to put together grant applications for shovel-ready projects. We cannot deny the City of Asheville has a lot of capital needs. We have an aging water and transportation system. If we put together all the capital needs we have, the number would be staggering. To act like we don't have shovel-ready projects or a list of capital improvement projects is wrong. She noted that every year our Capital Improvement Plan is deliberated throughout the budget discussions.

Councilman Newman moved to give direction to City Manager Jackson to work with staff to identify capital projects that could be eligible for the types of infrastructure investments that will be forthcoming in the economic stimulus package developed by Congress and to share information with Council and our legislators about projects that may meet that criteria in Asheville; and, while City Council has the opportunity to disapprove any projects they don't want to fund, it is the intent for Asheville to participate in the infrastructure improvements that are likely to be forthcoming through the economic stimulus bill being developed by Congress. This motion was seconded by Councilwoman Cape.

Mr. Greg Borom, representing Children First Communities and Schools of Buncombe County, provided Council with their requests for inclusion in the economic stimulus bill: (1) improvement of our infrastructure and transportation services in lower income communities; (2) create job opportunities for people who live in lower income communities; (3) investment in transit; (4) encourage and partnership with Asheville GO and other job training programs to create a local green workforce; and (4) sidewalk on Louisiana Avenue to Emma Road.

Councilman Mumpower felt Council would be supporting a discredited idea and didn't believe the City should participate in it.

Councilman Newman said this is not an endorsement of any stimulus bill, but if there are investments forthcoming, we are directing the City Manager to make sure that any of our capital projects that may meet that criteria be reviewed for potential participation.

Councilman Miller felt that as a community Asheville needs to be at the table and ready to move forward.

When Mayor Bellamy asked for a friendly amendment to the motion to ask for an e-verify component to ensure that we are putting local people to work and being transparent as possible, Councilman Newman was not opposed to adding the language, however, he felt it was a different than the intent of his motion.

Mayor Bellamy said when she was in Washington meeting with mayors on this particular issue, they heard about the number of job losses on that particular day – 30,000 Americans lost their jobs. The Chief of Staff talked about making sure we employ Americans and that main street is impacted positively. It would be her hope that as we put together shovel-ready projects that we make the commitment to hire local people. If we created a list of all our capital needs, it would far exceed the $122 Million, e.g., infrastructure repairs; two floors in the City Hall building that aren't being used to their highest level because they need to be repaired; Council is working on the water system infrastructure (which is one of the oldest in the state); the Civic Center, etc. Every other year we elect congressmen, every six years we elect our senators and every four years we elect our president and that is the group of people who are deciding how they are going to direct our country. We need to see how we can work with them. We need to hold ourselves accountable and be transparent to our citizens.

After Mayor Bellamy asked for public comment and received none, the motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Bellamy felt that we needed an e-verify component in our applications and contracts that will verify the status of individuals who are working on our projects to make sure they are local people. City Attorney Oast said that the use of the e-verify system may be a condition of projects that are funded with federal grants.

Councilman Mumpower moved to direct the City Manager to employ e-verify for any projects that come to Asheville out of the economic stimulus package. This motion was seconded by Councilman Russell.

After Mayor Bellamy asked for public comment and received none, the motion made by Councilman Mumpower and seconded by Councilman Russell carried unanimously.

Councilman Miller moved to adopt Resolution No. 09-15, recommending that Congress consider the following recommendations as it begins work on an economic stimulus package, to (1) Include Funding for The Economic Development Administration's Public Works and Infrastructure Program, and Economic Adjustment Assistance; (2) Include Funding for HUD's Community Development Block Grant Program (CDBG); (3) Include Funding for Energy Efficiency and Conservation Block Grant Program (EECBG); (4) Distribute State Revolving Loan Fund Dollars as Direct Grants; (5) Do Not Limit The Corps of Engineers' Ability to Spend Stimulus Funds; (6) Distribute Transportation Stimulus Funds Through The Surface Transportation Program (STP); and (7) Funding Infrastructure Improvements to our Nation's Arts and Cultural Institutions. This motion was seconded by Vice-Mayor Davis.

Councilwoman Cape asked for a friendly amendment to add the appropriate language, that is located in the stimulus package, regarding infrastructure funding for public school systems and education. Councilman Miller and Vice-Mayor Davis accepted the friendly amendment.

The Co-Director of Asheville GO (Green Opportunities) supported job training in that we need to ensure that those individuals have the training they need to access the jobs.

Councilwoman Cape indicated she would like to add workforce development to the resolution.

Councilman Mumpower felt we are spending money that does not exist and felt adoption of this resolution was a mistake.

The amended motion made by Councilman Miller and seconded by Vice-Mayor Davis carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Upon inquiry of Vice-Mayor Davis, City Manager Jackson said that the Azalea Road project will be reviewed to see if it meets the criteria for the final list for Council approval.

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B. BOARDS & COMMISSIONS

Regarding the Board of Adjustment, Councilwoman Cape moved to (1) reappoint Robert Middlemas as a Regular Member; (2) reappoint James Sheeler as an Alternate Member; and (3) appoint Janet Whitworth as a Regular Member. This motion was seconded by Mayor Bellamy and carried unanimously. It was the consensus of Council to interview Phillip Hardin, Juma Jackson and Eugene Britton for two alternate positions.

Regarding the Community Relations Council, Councilwoman Cape moved to reappoint Jill Fromewick. This motion was seconded by Mayor Bellamy and carried unanimously. It was the consensus of Council to interview Marvin Kent Purser and William Moore.

Regarding the Downtown Commission, Councilman Newman moved to (1) reappoint Brad Galbraith and Kitty Love; and (2) reappoint Pat Whalen's term to expire April 1, 2009. This motion was seconded by Councilman Mumpower and carried unanimously.

Regarding the Sustainable Advisory Committee on Energy & the Environment, Councilman Mumpower moved to (1) reappoint Ashley Featherstone; and (2) appoint Matthew Raker. This motion was seconded by Councilman Newman and carried unanimously.

Regarding the Firemen's Relief Fund, Councilman Newman moved to reappoint Leesa Gibbs. This motion was seconded by Councilwoman Cape and carried unanimously.

Regarding the Greenway Commission, Councilwoman Cape moved to reappoint Marc Hunt. This motion was seconded by Councilman Russell and carried unanimously.

Regarding the Metropolitan Sewerage District Board, Councilman Newman moved to reappoint Councilman Russell. This motion was seconded by Councilman Mumpower and carried unanimously.

Regarding the Tree Commission, Councilwoman Cape moved to (1) reappoint Starr Silvis and Bob Gale. This motion was seconded by Councilman Miller and carried unanimously. In addition, Councilwoman Cape moved to appoint Brandee Boggs. This motion was seconded by Councilman Newman and carried unanimously.

Regarding the School Board, Councilwoman Cape moved to reappoint Gene Bell and Al Whitesides to the Asheville School Board. City Clerk Burleson was instructed to place this item on the next City Council meeting agenda. It was the consensus of Council to send the questions from the prior School Board process to eligible candidates for response.

Regarding the vacancies left by former-Councilwoman Holly Jones, it was the consensus of Council (1) that Councilman Mumpower be the liaison to the Firemen's Relief Fund; (2) that Councilman Miller be the liaison to the Greenway Commission; (3) that Councilman Mumpower be the ex-officio non-voting member to the Buncombe County Tourism Development Authority; and (4) that the member to the Pack Place Board of Trustees be discussed at the next City Council Boards & Commissions Committee meeting.

It was the consensus of Council that the City Council Public Safety Committee's make-up be: Vice-Mayor Davis (Chair), Mayor Bellamy and Councilman Newman. It was noted that the Public Safety Committee would be moving their regular date and time to the 3rd Tuesday of each

month at 3:30 p.m. in the 4th Floor Training Room of the Municipal Building. This date and time change will be confirmed by City staff.

It was the consensus of Council that the City Council Boards & Commissions Committee will change to the 2nd Tuesday of each month at 4:15 p.m., in Room 209 of the City Hall Building, however, the February 10, 2009, time will change, due to interviews.

It was the consensus of Council that the City Council Finance Committee's make-up be: Councilman Russell (Chair), Mayor Bellamy and Councilman Miller.

VII. OTHER BUSINESS:

Miscellaneous

Councilwoman Cape announced there is only one more night to submit an application for the 33rd Year Building Bridges Program in our community.

Councilman Miller reminded the public that the best stimulus package we can provide is to shop and eat locally. Mayor Bellamy urged the public to buy locally.

Councilman Russell thanked Mayor Bellamy and Vice-Mayor Davis in lobbying a group that is looking at relocating their convention to Asheville.

Claims

The following claims were received by the City of Asheville during the period of December 9, 2008, through January 22, 2009: AT&T (Water), Arleen Holliday (Traffic Engineering), Paul Presley (Water), Progress Energy (Parks & Recreation), Ann E. Wilder (Water), and AT&T (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to Council about the need for quality education, as quality education and quality government equals quality of life for all.

Mr. Brian Festa spoke to Council about the need for a conscious evolution in the way we teach in the public school system.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:25 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – February 10, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2009 AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2009, as "Black History Month" in the City of Asheville. She presented the proclamation to Ms. Pat Griffin, Outgoing President of the Stephens-Lee Alumni Association, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION RECOGNIZING THE 100TH ANNIVERSARY OF THE NAACP

Mayor Bellamy read the proclamation recognizing the 100th Anniversary of the NAACP. She presented the proclamation to Mr. John Hayes, President of the Asheville NAACP, who briefed City Council on some activities taking place during the celebration.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "C", "D", "E", "H", "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "T" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JANUARY 27, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. BUDGET AMENDMENT FROM COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO SET UP THE PROJECT BUDGET FOR THREE SHELTERS IN HIGH DEMAND SPOTS SERVING LOW OR EMPLOYMENT AREAS ALONG THE MAIN CORRIDORS SERVED BY THE TRANSIT SYSTEM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ECON CONSTRUCTION TO CONSTRUCT THE VETERANS MEMORIAL AT MEMORIAL STADIUM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT TWO CONSERVATION EASEMENTS FOR TWO PROPOSED PROJECTS TO RESTORE STREAM BANKS IN MALVERN HILLS PARK AND WEST ASHEVILLE PARK AS PART OF AN AGREEMENT WITH RIVERLINK INC.

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. ORDINANCE NO. 3697 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND BUDGET TO REFLECT UPDATED FISCAL YEAR 2008-09 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the Civic Center Fund budget by $136,000 to reflect updated Fiscal Year 2008-09 revenue and expenditure projections.

Primarily due to two two-night concerts last fall, concessions revenues are up significantly. At the same time, concessions expense budgets are running low. Civic Center Fund revenues and expenditures are expected to exceed budget by the end of Fiscal Year 2008-09. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the second half of the current fiscal year, staff is recommending that the Civic Center Fund expenditure budget be increased by $136,000. The additional revenue generated by concessions will cover the cost of the budget amendment; therefore no additional transfer from the General Fund is required. Staff is estimating that the year-end operating deficit for the Civic Center will be slightly less than the budgeted deficit.

This action complies with the City Council Strategic Operating Plan in that it supports the Civic Center as a regional entertainment destination and improves the Civic Center customer experience.

This item has been reviewed by the Civic Center Commission and, at its meeting on February 3, 2009, members unanimously recommended approval.

Pro:

- Provides sufficient budget authorization for anticipated expenditures in the Civic Center Fund without increasing the General Fund subsidy.

Con:

- None

Year-end operating deficit for the Civic Center is projected to be less than budgeted. This amendment is funded with Civic Center operating revenue; therefore no additional transfer from the General Fund is required.

City staff and Civic Center Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by $136,000 to reflect updated Fiscal Year 2008-09 revenue and expenditure projections.

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G. RESOLUTION NO. 09-19 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THREE-YEAR CONTRACT WITH MAIL MANAGEMENT SERVICES TO PROVIDE MAIL SERVICES FOR THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into a three-year contract with Mail Management Services to provide mail services for the City of Asheville for an amount not to exceed the total approved budget for postage and contracted mail services each fiscal year.

City Council approved $537,417 to pay for postage and mail services for the City of Asheville general operations and enterprise funds as part of the Fiscal Year 2008-09 budget.

The City provides municipal services to more than 60,000 accounts. The billing data for this customer base is developed primarily from water meters, business license, permits and general correspondence to citizens and visitors in Asheville. The customer base is divided into multiple billing cycles and by general information correspondence each month. All water, sewer and storm water accounts are billed monthly, with the expectation of a payment being received from each monthly billing.

The City issued a Request for Proposals to contract with a service provider to provide mail services. The lowest, responsible bid was received from Mail Management Services, LLC, 88 Roberts Street, Asheville, N.C., for pricing based on volume and services to the City for a cost not to exceed the approved budget for postage and contracted services. Therefore, the total cost of the service in FY 08/09, including the postage that Mail Management Services, LLC will pay on behalf of the City, will be $537,417. Postage and service costs will vary from year to year based on postage rate, volume, type of service provided.

This action complies with the City Council Strategic Operating Plan in that it provides for greater fiscal responsibility by controlling costs.

Pros:

- Provide more predictable pricing for mail services
- Lower costs for mailing city bills and correspondence

Con:

- None

Funding for postage and mail services for the City of Asheville as appropriated in the Fiscal Year 2008/09 budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with Mail Management Services, LLC to provide mail services to the City of Asheville for the amount of the approved budget for postage and contracted services.

RESOLUTION BOOK NO. 31 – PAGE 422

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HUMAN SERVICES' INTERAGENCY COUNCIL ON COORDINATING HOMELESS PROGRAMS TO FUND HOMELESS INITIATIVE DATA COLLECTION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. BUDGET AMENDMENT FROM THE BUNCOMBE COUNTY BOARD OF ELECTIONS FOR THE SENIOR OPPORTUNITY CENTER

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JLS COMPANY, LLC TO CONSTRUCT THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

This item was removed from the Consent Agenda for discussion and/or an individual vote.

K. ORDINANCE NO. 3699 - BUDGET AMENDMENT FOR THE PARKER AVENUE WATER LINE RELOCATION PROJECT

Summary: The consideration of a budget amendment, in the amount of $40,000, for the installation of new water service lines and meters on Parker and Wood Avenues.

While installing a new waterline as part of the revenue bond project, the Water Resources Department identified approximately 23 service lines and meters along Parker and Wood Avenue which are connected to existing waterlines of insufficient size and condition. These services must be reconnected to the new waterlines in order to provide reliable water service to these existing water customers. This project will be set up as a separate capital project from the water system improvement projects and will not be funded with revenue bond funds. It will be funded with surplus funds from completed capital projects.

Three quotes were received for this project as part of an informal bidding process:

1.	S E Stewart & Son Plumbing	$29,970
2.	Wolfpen and Associates	$68,400
3.	Pipeline Utilities	$99,450

These quotes have been reviewed by the Water Resources Department and the City's Office of Economic Development (Minority Business Plan Compliance) with both of these offices recommending approval and award to the lowest bidder, S E Stewart & Son Plumbing, 314 Riverside Drive, Asheville, N.C.

The Water Resources Department has added a construction contingency of $10,030 to the lowest quote of $29,970 for a total project budget of $40,000. A construction contingency will allow for unexpected expenses related to this project. Even with an adequate construction contingency added, S E Stewart & Son Plumbing is still the lowest bidder on the project.

This project is part of the City Council strategic plan to improve City infrastructure.

Pro:

- The new water service lines and meters will replace old water service lines and meters, will coincide with planned street improvements and will provide more reliable service for the approximately 23 residential customers.

Con:

- Failure to approve the contract will result in old and undersized waterlines and meters remaining in place, which will result in water service for these specific connections to be of a lesser service level, meaning more frequent outages and low water pressures.

Cost of the Parker Avenue Water Service Line Project is estimated at $40,000. The lowest quote from S E Stewart & Son Plumbing is $29,970 but a contingency of $10,030 has been added to account for unexpected expenses for a total project budget of $40,000. These funds are available in the Water Resources Capital Projects Fund.

City staff recommends City Council approve a budget amendment, in the amount of $40,000, for the installation of new water service lines and meters on Parker and Wood Avenues.

ORDINANCE BOOK NO. 25 - PAGE 176

L. RESOLUTION NO. 09-22 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Summary: The consideration of a resolution reappointing members to the Asheville School Board.

The terms of Allison Jordan, Al Whitesides and Gene Bell, as members on the Asheville School Board, expire on April 1, 2009. Ms. Jordan is not interested in reappointment.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Mr. Whitesides and Mr. Bell to serve a three year term, term to expire April 1, 2013, or until their successors have been appointed.

The application deadline for Ms. Jordan's seat on the School Board is February 23, 2009, at 5:00 p.m.

RESOLUTION BOOK NO. 31 – PAGE 425

M. RESOLUTION NO. 09-23 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Summary: The terms of J. Patrick Whalen, Brad Galbraith and Kitty Love, as members on the Asheville Downtown Commission, expired on December 31, 2008.

On January 27, 2009, it was the consensus of Council to (1) extend Mr. Whalen's term until April 1, 2009; and (2) reappoint Mr. Galbraith and Ms. Love to each serve a three year term respectively, terms to expire December 31, 2011. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 426

N. RESOLUTION NO. 09-24 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Summary: The consideration of a resolution appointing members to the Sustainable Advisory Committee on Energy & the Environment.

The terms of Ashley Featherstone and Margie Mears, as members of the Sustainable Advisory Committee on Energy & the Environment, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) reappoint Ashley Featherstone to serve a three year term, term to expire December 31, 2011; and (2) appoint Matthew Raker to serve a three year term, term to expire December 31, 2011. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE 427

O. RESOLUTION NO. 09-25- RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Leesa Gibbs, as a member of the Firemen's Relief Fund, expired on January 1, 2009.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Ms. Gibbs to serve an additional two year term, term to expire January 1, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 428

P. RESOLUTION NO. 09-26 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Summary: The term of Marc Hunt, as a member of the Asheville Greenway Commission, expired on December 31, 2008.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Mr. Hunt to serve a three year term, term to expire December 31, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 429

Q. RESOLUTION NO. 09-27 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Councilman Bill Russell, as a member on the Metropolitan Sewerage District Board of Directors, expired on January 19, 2009.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Councilman Russell to serve a three year term, term to expire January 19, 2012, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 31 – PAGE 430

R. RESOLUTION NO. 09-28 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Summary: The consideration of a resolution appointing members to the Tree Commission.

The terms of Starr Silvis, Bob Gale and Bill Jones, as members on the Asheville Tree Commission, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) reappoint Ms. Silvis and Mr. Gale to each serve a three year term, terms to expire December 31, 2011; and (2) appoint Brandee Boggs to serve a three year term, term to expire December 31, 2001. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 431

S. MOTION APPOINTING MEMBERS TO THE CIVIL SERVICE BOARD BLUE RIBBON COMMISSION

Summary: The Asheville City Council has expressed an interest in reviewing the effectiveness and necessity of the Asheville Civil Board and the Civil Service Law.

The City of Asheville is unique when it comes to the management of its human capital because we have a Civil Service law that governs some of our personnel practices. Only several other cities in North Carolina have Civil Service laws. Since the Asheville Civil Service Law was enacted in 1953, there has been significant state and federal personnel laws enacted. These laws are used to govern employer's personnel practices, to include the City of Asheville. This commission's work would include analysis to determine the usefulness of the local legislative act, given the city's local personnel policies, coupled with state and federal personnel law now in effect.

At the January 27, 2009, City Council Boards & Commissions Committee, the reviewed the proposed Blue Ribbon Commission membership (Lou Bissette, Gene Bell, Maria Roloff, Linda McDaniels and Bill Cook) and its scope of duties. They recommended approval to the full Council.

The recommendation is that City Council appoint the Blue Ribbon Commission to analyze the effectiveness of Asheville's Civil Service Board and Law, whose scope of authority is outlined through a 1953 local legislative act. The scope of this Study Commission would be to determine, through its analysis, the effectiveness of the Civil Service Law and to offer advice on future policy direction. The Commission would report back to the City Council within 60 days upon appointment with recommendations.

T. RESOLUTION REAPPOINTING JOHN P. MIALL JR. AS CHAIR TO THE CIVIL SERVICE BOARD

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-16 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

The American with Disabilities Act of 1990 (ADA) and the Federal Transit Administration (FTA) regulations require any fixed route system such as the Asheville Transit system to provide paratransit services.

Mountain Mobility has provided these services to Asheville Transit since the 1990's when the ADA requirements began to be promulgated. Mountain Mobility is a county operated rural transit system. Mountain Mobility works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler to extend transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the council on aging, Industries for the Blind, and the Buncombe County Health Department.

The latest contract with Mountain Mobility was signed in 2007, as requested by the FTA during the triennial review to include an enumeration of the federal requirements which pass through to any agency or contractor with whom Asheville Transit spends federal funds.

Mountain Mobility has updated the contract to reflect increases in fuel and labor costs which will allow them to continue providing the same level of service. The rate will increase from $1.20 to $1.25, representing a four percent increase per shared service mile during the day. In addition, Mountain Mobility added paratransit night service to comply with ADA regulations at a rate of $3.10 per shared service mile.

The contract sets the method for determining fares (by the mile) and adjust the rates according to increases or decreases based on the gallon of fuel, commits the county to purchasing, maintaining and operating equipment, providing services to qualify ADA customers and schedule trips according to ADA guidelines, and incorporates all Federal regulations.

Each party may cancel on thirty days notice.

The total cost of this project for Fiscal Year 2009 is $296,986 of which City of Asheville is reimbursed 80% of the annual total expense under Section 5307 of the annual federal allocation. The City contributes 20% as local match ($59,397) during the same period. These funds were already budgeted for this fiscal year. The City's share under the old rates was $57,021.

Regarding the Strategic Operating Plan, this program will support the affordable and sustainable focus areas, specifically developing a long-term plan to address the City's aging infrastructure and offering a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.

Pros:

- Allows the City to provide required paratransit service without a large capital investment.
- Provides a comparable standard of transportation for people with disabilities which will not allow them to ride the bus.
- Furthers intergovernmental cooperation to achieve a common goal of increasing mobility for all persons.
- Complies with Federal regulations.

Con:

- There are no disadvantages to the City of Asheville.

The project cost will be $296,986; 80% or $237,588 of this total will be reimbursed by Section 5307 and will require 20% or $59,397 local match by the City. The contribution under the

former rates would be $285,107, being $57,021 the local contribution. Funding for provision of paratransit services, including the City's match, is already a part of the FY 2008-09 Transit Fund budget.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

Councilman Mumpower was concerned using borrowed federal dollars under the current economic circumstances.

Councilman Newman moved for the adoption of Resolution No. 09-16. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 419

C. ORDINANCE NO. 3996 - BUDGET AMENDMENT FROM COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO SET UP THE PROJECT BUDGET FOR THREE SHELTERS IN HIGH DEMAND SPOTS SERVING LOW INCOME OR EMPLOYMENT AREAS ALONG THE MAIN CORRIDORS SERVED BY THE TRANSIT SYSTEM

Summary: The consideration of a budget amendment, in the amount of $25,000, from Community Development Block Grant funds, to set up the project budget for the Street Furniture Improvement project.

The street furniture improvement project seeks to install three (3) shelters in high demand spots serving low income or employment areas along the main corridors served by the transit system.

The Asheville Transit System (ATS) is a consolidated bus service that has been operating for more than 30 years. The fleet serves mainly transit dependant groups (low income levels represent 91% of the ridership) and in a lower scale attend other socio-economic levels; the service provides a geographic coverage of more than 75% in the City of Asheville (COA) boundaries and 40% in the entire urbanized area.

During the last years, the service has experienced a moderate growth in ridership (more than 20% in most of the routes) over the previous years. New routes have been developed and new bus stops have been installed to attend the growing demand along the routes. Most of the bus stops neither offer comfortable accommodation nor protection from the weather, affecting the riders that have to wait for the bus in an unfriendly environment. This project will help improving transit infrastructure and fulfilling some of our rider's needs.

The project will be financed with funds received from a Community Development Block Grant (CDBG) in the amount of $25,000 that was approved during April 2008. The project includes purchasing of three shelters, installation of concrete pads and accessible routes.

The shelters will be located as follows:

1 shelter - Patton Avenue and North Louisiana Ave. as part of the sidewalk project the City will be building later this year. This shelter will match the one that will be installed in the opposite corner with 2007 CDBG funds.
1 shelter – Hendersonville Rd. and Erwin St.
1 shelter – Downtown Asheville, College St. and Rankin Ave.

The installation is programmed to occur later this year after completion of the permit process with the North Carolina Department of Transportation and Building and Safety Department.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by supporting a strong commitment to infrastructure maintenance and capital improvements.

The Transit Commission has been supportive of the Street Furniture project and the use of CDBG monies to fund the shelter installation.

Pros:

- The subject project is attending the growing demand for public transit service.
- The street furniture project will provide protection and comfortable accommodation to Asheville Transit System riders.

Con:

- There are no disadvantages to the City of Asheville.

The total financial impact for the subject project is $25,000 financed with Community Development Block Grant funds. There is no impact on the City's FY 2008-09 operating budget.

Staff recommends that City Council adopt a budget amendment to set up the project budget for the Street Furniture Improvement project.

Councilman Newman moved for the adoption of Ordinance No. 3696. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 170

D. RESOLUTION NO. 09-17 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ECON CONSTRUCTION TO CONSTRUCT THE VETERANS MEMORIAL AT MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with ECON Construction to construct the Veterans Memorial at Memorial Stadium for an amount not to exceed $215,000.

This project was initiated in 2003 as part of a larger plan to renovate the entire Memorial Stadium. Due to the lack of funding and challenges to raise additional funds, City Council approved in 2007 to reduce the scope of work to include only the Veterans Memorial component that is fully funded by a grant by Housing and Urban Development grant.

The City issued a request for proposals for the project and the lowest, responsible bid was received from ECON Construction, 11709 Fruehauf Drive, Suite 222, Charlotte, N.C., that totaled $194,430 for the base bid and four alternates selected by staff. The Veterans Memorial project is scheduled for completion by Memorial Day of 2009.

Approximately $30,000 has already been expended on professional fees. The initial work will total $194,340 which includes the base bid amount of $173,450 and four alternates: 1) Alternate 2 - Demolish Existing Chain Link Fence and Install New Chain Link Fence ($5,000), 2) Alternate 4 – Brick Columns and Granite Band ($5,980), 3) Alternate 7 – Brick Banding and Mulch at Trees ($4,850), and 4) Alternate 10 – Donor Courtyard ($5,150).

Staff wishes to retain $20,660 the balance of the funds for contingency purposes. Should these not be expended in part or whole in the early stages of the project, staff seeks to implement four additional alternates: 1) Alternate 9 – Scatter Garden ($5,050), 2) Alternate 8 – Tree Planting ($5,250), 3) Alternate 6 – Irrigation and Landscaping ($4,950), and 4) Alternate 3 – Metal Benches ($5,000) which would total $20,250.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Sustainable Focus Area in that is addresses the city's aging infrastructure including facilities.

This action complies with the proposed Parks, Recreation, Cultural Arts and Greenway Master Plan in that it improves the design and theme of an existing park and improves an existing park to meet community standards.

At its regular meeting on August 11, 2008, the Recreation Advisory Board reviewed the project and recommended supporting the construction plan of the project.

Pros:

- Provide a meaningful memorial for the veterans of the region of Western North Carolina
- Fully funded by a Housing and Urban Development grant
- Enhance the entrance of Memorial Stadium

Con:

- The project will require maintenance resources

The contract is within the funds budgeted for the project by a $247,000 Housing and Urban Development grant.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with ECON Construction to construct the Veterans Memorial at Memorial Stadium for an amount not to exceed $215,000.

Councilman Mumpower said that the started and chaired the Memorial Stadium Restoration Committee about five years ago to restore the memorial component of that facility. Even though he had misgivings back then, on behalf of that Committee, he solicited former Congressman Taylor to assist us in raising monies for that effort. Former Congressman Taylor was successful in obtaining a grant for roughly $250,000. We now have modified smaller version of the Veterans Memorial. He spoke strongly against spending $250,000 on a memorial, when the VA Hospital could use that money to help veterans who don't have access to health care and who have lost their jobs. Even though a veteran's memorial is dear to his heart, this is not the time to spend federal dollars (borrowed monies). If Council votes against this action, he would be willing to pick up the responsibility to try to do this privately, but under no circumstances does he believe we should create a memorial out of these kinds of dollars and at this time in our economic climate.

In response to Councilwoman Cape, Parks & Recreation Director Roderick Simmons explained why he felt the Memorial Stadium Restoration Committee (although now inactive), would support moving forward with the contract for the Veterans Memorial.

Councilman Newman felt that this was largely an effort by Councilman Mumpower and since he recommends this not move forward, he felt Council should follow his direction.

Councilman Mumpower said that the Committee almost raised the funds, but Hurricane Katrina hit and construction costs rose by approximately 30% which stopped them. His commitment was not to ask for city government dollars and they honored that commitment. Over a period of time they did raise private funds. Personally, he was responsible for raising $75,000

in private funds. Any funds they did raise, with the exception from a grant from the State of N.C., came from active work by the members of this Committee. He would be hesitant about reconstituting the committee in that he feels it is the wrong thing to spend these borrowed dollars.

In response to Councilman Miller, Mr. Simmons said that this contract would employ approximately 25 people for approximately 4 months.

Mayor Bellamy did some research on how Americans have dealt with recessions. She discovered that our country bought bonds. She has, and encouraged others, to invest in our and our children's future by buying bonds. She talked with Congressman Shuler and said that if our community is willing to invest in our country, she needed him to direct dollars to Asheville. He made that commitment. She will also contact Senators Burr and Hagan and make that same request. Her goal is to provide leadership to our community.

Councilwoman Cape moved for the adoption of Resolution No. 09-17. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

RESOLUTION BOOK NO. 31 – PAGE 420

E. RESOLUTION NO. 09-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT TWO CONSERVATION EASEMENTS FOR TWO PROPOSED PROJECTS TO RESTORE STREAM BANKS IN MALVERN HILLS PARK AND WEST ASHEVILLE PARK AS PART OF AN AGREEMENT WITH RIVERLINK INC.

Summary: The consideration of a resolution authorizing the City Manager to grant two (2) conservation easements for two proposed projects to restore stream banks in Malvern Hills Park and West Asheville Park as part of an agreement with RiverLink, Inc.

RiverLink, Inc. has secured a grant from the North Carolina Clean Water Management Trust Fund to restore 1,000 feet of Buttermilk Creek to Hominy Creek as it flows through Malvern Hills Park, and to restore 800 feet of Rhododendron Creek as it flows through West Asheville Park. The grantor requires 1) a minimum 50-foot conservation easement along the creeks within the project area, and 2) a 50% match which is the value of the donated easement. Total conservation easement area is six acres. Total project cost as estimated by RiverLink, Inc., is $440,000.

This action complies with the City Council Strategic Operating Plan in the Green Focus Area by providing a valuable education component by placing interpretive signs that would explain restoration, water quality, and threats to our streams.

This action also complies with the City Council Strategic Operating Plan in the Safe Focus Area by providing stabilization throughout the reach of the project involving rock and log features placement in the streams, as well as native riparian plant species to prevent future stream bank erosion. Storm water cells will be positioned to catch runoff from parking lots in order to slow down the water before it enters the stream reducing future erosion and filtering out pollutants.

This action also complies with the Asheville City Development Plan 2025 by the following 1) Continue to coordinate with and support efforts by RiverLink, Land of Sky Regional Council, and state and federal agencies to improve water quality, 2) Encourage the use of conservation easements to preserve riparian areas, and 3) Develop appropriate riparian buffer requirements, as needed, to enhance the environmental function of streams, creeks and rivers.

At its regular meeting on March 12, 2007, the Recreation Advisory Board expressed their support for the proposed project to restore stream banks in Malvern Hills Park and West Asheville Park as part of RiverLink, Inc.'s application for the grant to the North Carolina Clean Water Management Trust Fund.

The conservation easements restrict the City's activities on or its use of, the easement area and any activity inconsistent with the purposes of the conservation easement are prohibited. For example, the following activities and uses are expressly prohibited within the Easement Area: 1) industrial and commercial activities and uses 2) agricultural, timber harvesting, grazing and horticultural uses 3) disturbance of natural features, plants or animals 4) construction of buildings 5) mineral use, excavation, and/or dredging 6) the alteration of water bodies or activities that are detrimental to water quality; and 7) dumping.

Pros:

- Expand opportunities for education on water quality, restoration and threats to streams.
- Improve safety in two parks by stabilizing the banks to prevent future erosion.
- Improve water quality and stream integrity in two creeks.

Cons:

- Additional maintenance costs to maintain the bank plantings.
- Restricts the City's use of the easement area.

Additional maintenance costs will be dependant on the planting plan. Staff estimate five hours of labor per month to maintain stream bank planting areas.

City staff recommends City Council adopt a resolution authorizing the City Manager to grant two (2) conservation easements for a proposed project to restore stream banks in Malvern Hills Park and West Asheville Park as part of RiverLink, Inc.'s grant from the North Carolina Clean Water Management Trust Fund, and execute said grants of easements, subject to the approval of the City Attorney.

Even though these are good projects, Councilman Mumpower was concerned using state and private dollars when we have a $3 Billion deficit.

Councilman Newman moved for the adoption of Resolution No. 09-18. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 421

H. RESOLUTION NO. 09-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HUMAN SERVICES' INTERAGENCY COUNCIL ON COORDINATING HOMELESS PROGRAMS TO FUND HOMELESS INITIATIVE DATA COLLECTION

Summary: The consideration of a resolution authorizing the City Manager City Manager to enter into an agreement with the N.C. Dept. of Human Services' Interagency Council on Coordinating Homeless Programs to fund Homeless Initiative data collection.

A maximum of $4,000 was offered to 10-Year Plan communities in North Carolina by the North Carolina Interagency Council on Coordinating Homeless Programs (NC ICCHP). RFA funds were designated to be spent on data collection only. The Homeless Initiative applied for funding support in four areas, and received the maximum award possible of $4,000. The four areas are:

1. Point in Time Count: This is a national count endorsed by the Department of Housing and Urban Development. Results from this count directly impact the approximately million dollars received by Asheville and Buncombe County through HUD's Continuum of Care Grant. In collaboration with the Homeless Coalition, The Homeless Initiative offers point in time count trainings, collects, analyzes, and reports out on data.

2. Aggregate, Unduplicated Count: The only accurate way to collect and aggregate, unduplicated count of people who experienced homelessness and accessed services over the past year is to use the Homeless Management Information System. The Homeless Initiative will work with community partners to strengthen data in HMIS so that a report can be pulled from the system.

3. Annual unduplicated count of children experiencing homelessness: The Homeless Initiative will work with school liaisons from City and County schools to collect an annual, unduplicated count of children experiencing homelessness.

4. 2008 Calendar Year Accomplishment Report: This report is completed by all 10-Year Plan communities in North Carolina. Participation by agencies is voluntary, so any data collected depends on local agency's willingness to provide necessary information. The Homeless Initiative will collect, analyze, and complete the Accomplishment report based on available data.

Regarding the Strategic Operating Plan, City Council has recently adopted the following four goals: *sustainable, affordable, green and safe.* An objective listed under the affordability goal states is to support initiatives to end homelessness. Accepting this grant will help the Homeless Initiative collect data that can be used by the City Council when evaluating initiatives designed to end homelessness.

Pro:

- In tight budget times, funds to further the work of the Homeless Initiative can enhance the services it offers to the community.

Con:

- No apparent cons.

This grant funding was included in the adopted Fiscal Year 2008-09 General Fund budget, so there is no additional fiscal impact associated with this agenda item.

City staff recommends City Council adopt a resolution authorizing the City Manager City Manager to enter into an agreement with the N.C. Dept. of Human Services' Interagency Council on Coordinating Homeless Programs to fund Homeless Initiative data collection.

Councilman Mumpower felt this was a frivolous use of money for an inexact process.

Councilman Newman moved for the adoption of Resolution No. 09-20. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 423

I. ORDINANCE NO. 3698 - BUDGET AMENDMENT FROM THE BUNCOMBE COUNTY BOARD OF ELECTIONS FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $6,000, from the Buncombe County Board of Elections, for the Senior Opportunity Center.

In 2008, the Buncombe County Board of Elections donated $6,000 to the City of Asheville to support senior programs and services at the Senior Opportunity Center in return for the use of the center as an early and regular voting site. Funds will be used to support general senior programs and services at the center.

This action complies with the 2015 Parks and Recreation Master Plan in that it will enhance the level of program services at senior centers.

This action complies with the Asheville City Development Plan 2025 in that it cooperates with public agencies and private individuals and organizations in an effort to make the provision of parks, recreation facilities and programs, and open space as effective and efficient as possible.

Pro:

- Provide funds to support senior programs and services at Senior Opportunity Center.

Con:

- None

Increase budget by $6,000 and supplement current operating funds budgets for Senior Opportunity Center. There is no impact to the City's operating budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget by $6,000 for Senior Opportunity Center.

Even though Councilman Mumpower stated he is not against our senior citizens, he felt we are being careless with our dollars.

Councilwoman Cape felt the Board of Elections is a big part of our community and we are in partnership with them to offer locations. If the Board of Elections has funds to make sure that their operations move forward and those funds can be adequately used, she felt that is a proper use of those funds.

Councilman Newman moved for the adoption of Ordinance No. 3698. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 174

J. RESOLUTION NO. 09-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JLS COMPANY, LLC TO CONSTRUCT THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with JLS Company, LLC to construct the Hominy Creek section of the French Broad River Greenway for an amount not to exceed $635,000.

The City of Asheville is preparing to construct the Hominy Creek section of the French Broad River Greenway, a 1.2-mile multi-use trail along the French Broad River that will connect Carrier Park to Hominy Creek Park.

The City issued a request for proposal for construction of the greenway and received a bid from JLS Company, LLC who was selected as the lowest, responsible bidder whose base bid was $535,802.60. Staff is including a contingency budget of $99,197.40 or about 18% due to the nature of the terrain. City Council approved the CIP budget for the project as part of the Fiscal

Year 2007/08 Capital Improvement Plan (CIP) budget via a $300,000 grant from North Carolina Department of Transportation, and $590,000 via the City of Asheville.

This action complies with City Council's Strategic Plan in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, and pursues opportunities to preserve open space.

This action complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan.

This action complies with the Greenway Master Plan and the proposed Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it extends an existing greenway by constructing a greenway that is currently funded.

Although the Greenway Commission did not take formal action on this project when it first began several years ago, it receives a regular project update at monthly board meetings. The Greenway Commission endorses the project.

Pros:

- Add 1.2 miles to French Broad River Greenway corridor extending it to a total 2.6 miles
- The contract amount is within the project budget

Con:

- The additional greenway mileage will require maintenance resources

Funds are currently funded in the City's CIP budget. The remaining CIP funds that will not be expended on this contract ($255,000) will be deposited into the Fund Balance in order to help address budget challenges.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with JLS Company, LLC to construct the Hominy Creek section of the French Broad River Greenway for an amount not to exceed $635,000.

Councilman Mumpower had no trouble with greenways, but was concerned with expending funds for a project that is nice, but not necessary.

Councilman Newman moved for the adoption of Resolution No. 09-21. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 424

T. RESOLUTION REAPPOINTING JOHN P. MIALL JR. AS CHAIR TO THE CIVIL SERVICE BOARD

Summary: The consideration of a resolution to reappoint Mr. John P. Miall Jr. as the Chair of the Asheville Civil Service Board, effective immediately and until February, 2010, or until his successor is duly appointed by the City Council, as provided by law.

Mayor Bellamy could not support a motion to reappoint Mr. Miall. She said that Mr. Miall is a wonderful person; however, we have had some issues on the Civil Service Board and thought to start a fresh prospective on this Board we should appoint a new Chair. We won a court case and the Board unanimously appointed a fifth member to the Board so it may not be a bad idea to have that person Chair it, for a fresh start.

Councilman Mumpower moved to reappoint Mr. Miall as Chair to the Civil Service Board. As liaison to that Board, it has been his experience that under very difficult circumstances Mr.

There will be no fiscal impact related to this closure.

In consideration of the impact to the Greenway Master Plan and the recommendation from the Greenway Commission including further detailed review by Commission members, City staff cannot support the request for the closing of a portion of Wallack Street.

City Attorney Oast said that at Council's January 27, 2009, meeting, Council continued the item regarding the petitioned closure of a portion of the unopened right-of-way of Wallack Street to allow for development of a possible compromise.

Using a map to illustrate his comments, City Attorney Oast further explained that in 1977 much of this area was part of the urban renewal project and the Housing Authority brought forward a request to close a lot of streets, one of which was a portion of Wallack Street. The closing was subject to the Housing Authority's commitment to provide access to the opened portion of Wallack Street. Those portions of Wallack Street that were closed are not affected by the action Council is being requested to close at this time.

He has spoken with the Chair of the Greenway Commission and representatives of the owners of the property abutting the portion of the right-of-way that is being requested for closure. As a starting point, the abutting owners desire a complete closure of the right-of-way; the Greenway Commission recommends not closing it so that it may remain available for use as a future greenway. However, a couple of options were discussed.

1. There is a paved driveway serving the rear of one of the buildings that abuts the right-of-way (ABCCM). One option that was discussed and that both ABCCM and the Greenway Commission would accept is to close only so much of the right-of-way as to allow that driveway area to become part of the adjacent property, with the City retaining some right of access across that closed portion. This option would leave the rest of the right-of-way unclosed, and does not satisfy the other abutting property owners, located to the north of ABCCM.

2. Another option that was discussed is closing the right-of-way, but taking back an easement that would make the right-of-way available for greenway purposes, if the City elected to install one. This was also acceptable to ABCCM, although it was a less desirable option. However, it was not acceptable to the other abutting property owners, primarily because it did not resolve many of the issues that prompted them to seek closure of the right-of-way in the first place, and because it continues the uncertainty on the future use of this area. Moreover, both the Chair of the Greenway Commission and the abutting property owners expressed some concern about the policing and maintenance responsibilities that would necessarily accompany an easement.

Since neither of the above options are acceptable to all parties, it appears that Council should proceed with its consideration of the petition for closure of the Wallack Street right-of-way, continued to this date.

City Attorney Oast responded to various Council questions surrounding easements, rights-of-way and public access.

Councilwoman Cape said that we do have a Greenway Master Plan and this section is on that Plan. Even though City doesn't own all the parcels for the greenway, we do own a part of it and like most greenways, the City will have to acquire some connecting parcels to complete the greenway. In addition, she was concerned about the precedent that will be set in that if someone encroaches onto City-owned property they can request the property be reverted to them. She believed that ABCCM is a valuable community partner, but strongly supported the Greenway Master Plan.

Due to a potential compromise, Mayor Bellamy re-opened the public hearing at 6:04 p.m.

Mr. Marc Hunt, Chair of the Greenway Commission, used a map showing the entire portion of the proposed greenway in that area. He hoped that the City will work with private land owners and the Housing Authority to gain the needed access for a greenway. This greenway corridor is listed at number 11 out of 26 greenways they studied in terms of importance. Even though the Greenway Commission and ABCCM were not able to come to an agreement, the following proposal is something he believed the ABCCM largely agrees with: "Only that portion of Wallack Street right-of-way that includes the fence and gate constructed by ABCCM (but only to the centerline of the Wallack Street right-of-way) be closed and thus come under the ownership of ABCCM. The closure would be conditioned; however, on the retention by the City of an acceptable easement on that closed portion that would allow for an unlimited public access easement for a future greenway or trail. Further, the terms of the easement would not preclude vehicular access similar to that which ABCCM now enjoys." He said that it has also been suggested that Council might grant the closure request and retain easements on the entire closed portion. The Greenway Commission strongly recommends against that as the diminished rights the City would have under an easement could prove challenging to maintain and ultimately inadequate in order to implement a greenway.

Mr. Michael Soule, representing Asheville on Bikes, explained how bicycle riding has a direct impact on the health of the community, and urged Council to support advancing our greenways.

Mayor Bellamy closed the public hearing at 6:14 p.m.

Councilwoman Cape moved to deny the closing of a portion of Wallack Street. This motion was seconded by Councilman Newman.

There was discussion on the compromise, noting that the compromise suggested by Mr. Hunt is acceptable to the City, the Greenway Commission and ABCCM; however, the other abutting property owners north of the ABCCM (who are not present) do not support the compromise. He understood they want their property line straightened out and they don't know the future of that property.

Councilwoman Cape amended her motion to close only that portion of Wallack Street right-of-way that includes the fence and gate constructed by ABCCM (but only to the centerline of the Wallack Street right-of-way) and thus come under the ownership of ABCCM. This closure is conditioned; however, on the retention by the City of an acceptable easement on that closed portion that would allow for an unlimited public access easement for a future greenway or trail. Further, the terms of the easement would not preclude vehicular access similar to that which ABCCM now enjoys. This amended motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy wanted to make sure that when the City has the opportunity to develop the greenway that we have no problems with the current property owners at that time. City Attorney Oast said that the resolution is recorded in the Buncombe County Register of Deed's Office.

RESOLUTION BOOK NO. 31 – PAGE 432

C. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED ALLEY OFF PATTON AVENUE

RESOLUTION NO. 09-30 - RESOLUTION PERMANENTLY CLOSING AN UNOPENED ALLEY OFF PATTON AVENUE

Miall has persistently tried to find a point of fairness and consideration to the problems and personality issues that have existed on this Board. He has crafted, with the help of others, a successful course that has brought us to a place where a brighter day is ahead.

Vice-Mayor Davis seconded the motion, adding that Mr. Miall has more than demonstrated over the years his ability to work with people. There have been difficulties on that Board and he felt that Mr. Miall is capable of being fair and equitable in getting that Board to a better place.

Councilwoman Cape felt this puts Council in a difficult position when they haven't had the opportunity to interview Mr. Miall, especially when some Council members have not had the opportunity to meet Mr. Miall.

Councilman Miller suggested this appointment be delayed until the next meeting in order to give Council the opportunity to interview Mr. Miall.

Mayor Bellamy said that in the past if there was a Council member concerned about the process and requested an opportunity for interview, that has happened. Therefore, she asked for Councilman Mumpower and Vice-Mayor Davis to withdraw their motion to allow Council the opportunity to interview Mr. Miall.

Councilman Mumpower and Vice-Mayor Davis withdrew their motion to reappoint Mr. Miall as Civil Service Board Chair.

Councilwoman Cape moved that any member of Council that wishes not to vote for the reappointment of someone that it be pulled from the Consent Agenda and the position be re-interviewed or remanded back to the Boards & Commissions Committee. This motion died for a lack of a second.

It was the consensus of Council to direct City Clerk Burleson to arrange an interview time for Mr. Miall. City Attorney Oast noted that Mr. Miall will continue to serve in the capacity as Chairman until Council acts.

III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF THE FISCAL YEAR 2007-08 ANNUAL AUDIT REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2008 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one instance of non-compliance in the administration of federal awards programs. They also noted some areas for improvement in the City's accounting function that they have communicated to management in a separate letter dated December 30, 2008.

There was a brief discussion, initiated by Councilman Mumpower, on whether the $505,989 of total assets shown on the summary financial statement included our water assets, which our engineers estimate to be $1.2 Billion. Mr. Broom asked that City staff provide them with further information and if there are unrecorded assets or infrastructure assets, those figures can be adjusted. City Manager Jackson said that he report the findings back to Council.

Mayor Bellamy thanked Mr. Durant, Budget Director Tony McDowell and their staff for providing a transparent budget.

IV. PUBLIC HEARINGS:

A. RESOLUTION TO PERMANENTLY CLOSE A PORTION OF WALLACK STREET

RESOLUTION NO. 09-29 – RESOLUTION CLOSING A PORTION OF WALLACK STREET

Mayor Bellamy said that this public hearing was held on December 2, 2008, and continued to January 27, 2009, in order to give the Greenway Commission an opportunity for further evaluation of the request with the petitioners being given an opportunity to be heard at the meeting.

On January 29, 2009, this public hearing was continued in order to explore a compromise on this issue.

Public Works Director Mark Combs said that this is the consideration of a resolution permanently closing a portion of Wallack Street. This public hearing was advertised on October 31, November 7, 14 and 21, 2008.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Patsy Brison, representing property owners Asheville-Buncombe Community Christian Ministry Inc. and Robert and Joan Ledford, have requested the City of Asheville to permanently close an unopened portion of Wallack Street.

On November 13, 2008, the Greenway Commission reviewed the proposed closure of the unopened portion of Wallack Street, and voted to recommend denial of approval of the Wallack Street closure as part of this section is on the Greenway Master Plan.

At the December 2, 2008, City Council meeting, the Greenway Commission was directed to further evaluate the closure with the petitioners to look at ways to find a solution mutually beneficial to both parties.

This process complies with the City's Strategic Operating Plan states: "Promote sustainable, high-density, infill growth that makes use of existing resources." This closure would facilitate maximum land use potential for further development.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties (in-fill and higher density)

Con:

- The closure will impact the Greenway Master Plan

Mayor Bellamy opened the public hearing at 6:29 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution permanently closing an unopened alley off Patton Avenue. This public hearing was advertised on January 16, 23, 30 and February 6, 2009.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners, Western Carolina Rescue Ministries Inc., have requested the City of Asheville permanently close an unopened portion of Shady Lane.

The Greenway Commission reviewed the requested closure at their meeting on August 14, 2008, and concluded there was no visible use for retaining this unopened parcel of Shady Lane

This action complies with the Strategic Operating Plan in that this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close an unnamed alley off Patton Avenue.

Mayor Bellamy closed the public hearing at 6:29 p.m.

In response to Councilwoman Cape, Mr. Combs explained the street closing review process of a street closing, which consists of sending documents to (1) all utilities to determine if there is any easement or infrastructure on the property, (2) other City departments for review, and (3) the Greenway Commission for their review. We also post notices in at least two places along the right-of-way and advertise the closing, all of which is paid by the petitioners.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-30. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 434

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE

ORDINANCE NO. 3700 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE

Mayor Bellamy opened the public hearing at 6:32 p.m.

Urban Planner Julia Cogburn said that this is consideration of an amendment to the Unified Development Ordinance (UDO) for the purpose of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance. This public hearing was advertised on January 30 and February 6, 2009.

Working with the UDO on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use. This set of proposed amendments addresses fifteen of those discovered issues.

She reviewed with Council the following description of each amendment as follows:

a. This amendment adds the language "and/or where the requirements are modified in accordance with Section 7-7-8(c)(6)" to clarify that modifications may be granted to standards and requirements of the general zoning districts in conditional zoning matters.

b. The addition of a new number (7.1) to the conditional zoning process simply puts in writing the practice of taking detailed plans back to TRC before a permit is issued.

c. This amendment adds Urban Place and Light Industrial to the zoning district list and places these along with URD, NCD, and Urban Village in a more appropriate place on the listing of "Highest" to "Lowest" use districts.

d. & e. These amendments change two subsections so that the prohibition of "drive through facilities" is handled in the same way in all districts where there is such a prohibition (Neighborhood Commercial and CBI). This places the term "drive through facilities" under the prohibited uses listing rather than in the design and operations standards where it often gets lost.

f. This amendment is a correction of a reference (from "chapter" to "article").

g. This amendment codifies a long standing interpretation (1/07) that handrails on steps, etc. are not included when figuring the height of such steps, etc. This is important as steps, terraces, patios, and uncovered decks can encroach up to ten feet in a required front setback so long as they do not have a height greater than 30 inches.

h. This amendment corrects a citation reference.

i. This amendment also corrects a citation reference.

j. This amendment codifies our recently adopted practice of requiring financial surety for a private drive in an alternative access ("four lot") subdivision if the developer wants to record the plat prior to completing the drive. Staff has dealt with a few instances where drives were not completed and lots were sold with the developer walking away from this responsibility.

k. This amendment simply calls the reader's attention to the section that lists the districts where tree save areas are not required.

l. This amendment is a renumbering to bring this section in line with the numbering system found throughout the UDO.

m. This amendment drops the words "and may be covered under one permit" from the last sentence of the section enumerating requirements for temporary storage containers in nonresidential districts. This phrase was dropped due to the fact that in another part of the same article, it is stated that permits are not required for temporary storage containers in nonresidential districts.

n. This amendment corrects an incorrect district listing (should be Urban Village and not Neighborhood Commercial District).

o. This amendment takes "group homes" out of the medium impact listings. "Group homes" were listed twice; in both the low and medium impact listings.

This action complies with the Strategic Operating Plan in that it supports the Council goal of bringing forward UDO amendments that improve clarity and address community goals.

At the Planning & Zoning Commission meeting on January 7, 2009, they unanimously approved the amendment (6-0) with no speakers on the issue.

Pros:

- Codifies past staff interpretations and practices on issues.
- Corrects incomplete or improper listings and citations.
- Adds or amends language for greater clarity.

Cons:

- None Noted.

City staff recommends approval of these wording amendments.

Mayor Bellamy closed the public hearing at 6:33 p.m.

There was a brief discussion about the housekeeping changes.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3700. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 178

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND STANDARDS RESTRICTING AND REGULATING DIGITAL BILLBOARDS

ORDINANCE NO. 3701 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND STANDARDS RESTRICTING AND REGULATING DIGITAL BILLBOARDS

Mayor Bellamy opened the public hearing at 6:38 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is consideration of an amendment to the Unified Development Ordinance to amend standards restricting and regulating digital billboards. This public hearing was advertised on January 30 and February 6, 2009.

In May 2008, the City Council reviewed and approved standards that allowed and regulated digital billboards along certain corridors within the City of Asheville corporate limits. The Asheville City Council subsequently reviewed and adopted the same standards. Since adoption, six separate digital billboards have been permitted along major thoroughfares including: Smoky Park Highway; Hendersonville Road; Long Shoals Road; Tunnel Road; and Sweeten Creek Road.

Asheville appears to be somewhat ahead of other municipalities in adopting standards to permit and regulate digital billboards. Those standards that were adopted, along with the existing restrictions to off-premise billboards, generally appear to appropriately address safety and land use concerns. Any new billboards must meet all applicable standards including those that accommodate the removal/relocation/reconstruction of existing non-conforming off-premise billboards. Commonly referred to as the "cap and replace" ordinance, these standards "cap" the total number of billboards in the city based on a former survey but allows the billboards to be relocated within certain road corridors. In some cases, the relocation of a billboard will result in a net reduction of structures if signs are consolidated and relocated. The digital billboard ordinance requires a conversion of three square feet of traditional sign face for every one square foot of digital sign face, resulting in a reduction of total square footage. As with traditional billboards, digital billboards can only be located within the permissible road corridors; those corridors include:

1. Patton Ave. – from the French Broad River to the outer limit of the extraterritorial jurisdiction area (ETJ) in Enka
2. Merrimon Ave. – from Chestnut St. north to Woodfin
3. Sweeten Creek Rd. – from Fairview Rd. to the outer limit of the ETJ
4. Hendersonville Rd. – from I-40 interchange to the outer limit of the ETJ
5. Tunnel Rd. – from the tunnel to the outer limit of the ETJ past Oteen
6. Brevard Rd. – from I-240 Interchange to the outer limit of the ETJ
7. Airport Rd. – Hendersonville Rd. to the boundary between Buncombe County and Henderson County, and
8. Long Shoals Rd. – from Hendersonville Rd. to the outer limit of the ETJ.

The characteristics of the eight road corridors vary to some degree but are all generally heavily travelled roads supporting an automobile oriented pattern of development. All eight roads are NCDOT managed roads with varying rights-of-way. In most cases, the right of way widths are well over 75 feet.

Recent applications have helped staff identify an unintended omission in the standards that regulate billboards where, presently, no setback is required from either the right-of-way or travel lane of the road. This is particularly concerning in respect to the digital billboards where the brightness levels and changing images have the potential to become hazards to motorists if placed too closely to the travel lanes. This amendment will attempt to correct this by requiring a minimum setback from the right-of-way to ensure that the signs will remain a reasonable distance from the roadways to minimize any potential hazards and/or nuisances. Due to the varying right-of-way widths, staff is proposing a setback of 10-feet for rights-of-way that are 75-feet or greater in width while proposing a setback of 20-feet for those less than 75-feet in width.

Additionally, due to concerns over sounds and other potential nuisances or hazards, staff is also proposing a separation of 50-feet from any residential structure to ensure a reasonable quality of life for residents, particularly for those who may have limited choices.

This action complies with the Strategic Operating Plan in that safety focus area in that it ensures that standards are in place that help to control or mitigate potentials hazards or nuisances to motorists and residents.

Pros:

- Protects the general public from potential hazards and/or nuisances.
- Maintains opportunity outdoor advertising.

Cons:

- Reduces the number of potential locations for new digital billboards.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Staff recommends approval of the amendment to the standards regulating digital billboards.

Mayor Bellamy closed the public hearing at 6:41 p.m.

In response to Councilwoman Cape, Ms. Tuch said that she has received less than five calls about the digital billboard ordinance and was not aware of any light trespass concerns.

Mayor Bellamy said that she has received several e-mails and phone calls from the south Asheville area about the billboards on Hendersonville Road and Long Shoals Road. Their concerns are about the size, height and lighting. She suggested City staff look at the billboard which is in the back yards of homes on Burton Street because there is no separation of trees or shrubs. She felt the ordinance needed to be reviewed in terms of size, lighting and separation of issues. Mayor Bellamy said she will ask the individuals who have contacted her to contact staff for their investigation of the concerns.

Councilwoman Cape supported the motion and urged staff to investigate any concerns to see if the ordinance can be better crafted.

In response to Councilman Newman, City Attorney Oast said the City's ability to regulate billboards on federal property is severely limited, but any located on City streets are under our control. He would research to see if the City has any ability to require a buffer between uses, but if the billboard is on the interstate, it's in a different class.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3701. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no".

ORDINANCE BOOK NO. 25 - PAGE 182

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-31 - RESOLUTION ADOPTING THE 2009 STRATEGIC OPERATING PLAN

City Manager Jackson said that this is the consideration of a resolution reaffirming City Council's Strategic Operating Plan and a related performance measurement and reporting system.

At its January 2009 retreat, City Council used feedback from a citizen survey conducted in summer 2008 to update its Strategic Operating Plan and the goals and objectives that correspond to the plan's key focus areas. During this process, City Council agreed that it was important to balance the strategic plan with the financial constraints of current economic conditions. As a result of these discussions, a new focus area was added called "Fiscal Responsibility."

In addition to updating the strategic goals, City Council also discussed systems for measuring and reporting progress associated with the Strategic Operating Plan. The plan serves as the guiding document for the city's strategic and operational priorities. Under the direction of the city manager, department business plans are annually aligned with the strategic plan to ensure Council's goals and priorities are implemented. The city manager and staff then provide City Council with quarterly management reports that include comprehensive updates regarding the Council's goals and related initiatives. At the January retreat, there was consensus among Council members to continue this system of management reporting.

Additionally, Council agreed to align City Council Committees with the focus areas outlined in the Strategic Operating Plan. Council Committees will receive updates on policy goals, metrics and major initiatives associated with their area of focus. Committee Chairs will then be responsible for providing progress updates to the entire City Council concurrent with the management reporting cycle. The committee assignments are noted with each focus area below.

City Council's strategic plan states that Asheville will be a city that is:

- **Affordable** -The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities. *Housing and Community Development Committee*

- **Fiscally Responsible** - The City of Asheville will create a stronger, more prosperous community with smart investments that accomplish real, lasting, tangible returns. *Finance Committee*

- **Green** - Asheville will be the southeastern leader in clean energy and environmental sustainability while preserving and enhancing the city's natural beauty. *Shared by the entire City Council with the Sustainability Advisory Committee on Energy & the Environment serving in an advisory role.*

- **Safe** - Asheville will be one of the safest and most secure communities when compared to similar cities. *Public Safety Committee*

- **Sustainable** - Asheville will support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning. *Planning & Economic Development Committee*

This item has been reviewed by the City Council and the Executive Management Team.

Pros:

- Provide Council and city staff with an overall direction and goals of the organization
- Provide Council and city staff with a measure of success

Con:

- None noted.

The Strategic Operating Plan provides guidance for funding priorities throughout the budget process.

City staff recommends City Council adopt a resolution affirming Council's 2009 Strategic Operating Plan.

Councilwoman Cape suggested we be consistent in our wording of "fiscal responsibility", "fiscally responsible" or "financially responsible." In that focus area, she suggested Council focusing a little more on our own responsibility as an organization – perhaps a bullet point of "The City of Asheville will operate its organization to the highest fiscal responsibility."

Councilman Newman felt the Plan as presented does capture our areas around fiscal responsibility.

Mayor Bellamy asked City staff to wordsmith the "fiscal responsibility" focus area to address Councilwoman Cape's suggestion and that language be revisited on February 24, when the budget is discussed.

In response to Councilman Mumpower's concern about not supporting some of the action items, City Attorney Oast said that Council can take a complex motion and divide it. That would be one way for a Council member to support the Strategic Operating Plan with some exceptions.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved to adopt Resolution No. 09-31. This motion was seconded by Councilwoman Cape and carried unanimously, with Councilwoman Cape opposing "explore potential of a zero tolerance policy"; and Councilman Mumpower opposing the following items: (1) continue support of Housing Trust Fund; (2) proactively pursue funding opportunities with state and federal economic stimulus packages; (3) achieve short term and long term energy goals and reduce city carbon emissions by 2% per year; and (4) continue community policing initiatives.

Councilman Mumpower, in conjunction with Mr. Gene Bell, Executive Director of the Asheville Housing Authority, reviewed with Council a Safe Place proposal – a partnership proposal directed to improving the safety of public housing residents in Asheville. It is a model, a possibility and a necessity. He and Mr. Bell will be at the Public Safety Committee meeting on February 17 to discuss this in more detail.

Current realities are (1) some of our public housing developments continue to be "hotspots" for drug sales and related criminal activity; (2) too many of our community's children, elderly, and vulnerable citizens live in unsafe circumstances; and (3) the downturn in the economy holds the potential to increase criminal activity in Asheville.

A Safe Place is an effort to focus on one public housing community to ensure that safety, health, and opportunity standards in that community equal or exceed that of other neighborhoods in Asheville.

Safe Place components consist of (1) resident involvement and leadership; (2) community/church/civic club participation; (3) zero tolerance for criminal activity; (4) increased security services; (5) dedicated and persistent police presence; (6) consistent rule enforcement; and (7) a standard to match other Asheville neighborhoods.

The urgency is (1) changes in our economy predict an increase in criminal activity in Asheville. It is in everyone's interest that we act proactively on behalf of those most at risk; and (2) it is crucial that we have a system in place to meet the warm weather challenges. Our target is 60 days.

What is needed from the City of Asheville is (1) continued dedication to eliminating Asheville's open air drug markets; (2) stepped up police enforcement in our first "A Safe Place" development; and (3) political support and a firm devotion to creating a safe place and keeping it that way forward.

At this meeting, he requested (1) a general commitment to help from the City; and (2) Council's suggestions and support going forward.

Together we have an opportunity to create another model of success in Asheville's public housing. In our rapidly changing social and economic reality, unified action is a necessity. We appreciate the opportunity to partner with the City of Asheville in making a difference that will touch every citizen in the City of Asheville.

It was the consensus of Council to support this effort and to refer this to the Public Safety Committee.

Councilwoman Cape explained the idea behind Asheville First is that we have great local goods and services produced in this area and when you buy local you support the local economy. Her interest is also in supporting the emerging green economy. There are other cities that have crafted policy directions to create a program that would benefit local businesses and/or green businesses within the context of it being fiscally sound. She said that organizationally, do we need a policy that looks at how our own generated waste impacts our fiscal bottom line.

Councilman Mumpower, working with Councilwoman Cape, presented the Asheville First mission of establishing a comprehensive "Asheville First/America First" program dedicated to encouraging our citizens to purchase American, Asheville, and regional goods and services as a local response to a growing international economic crisis.

The motivations would be (1) There are strong indications that the crisis in our economy will grow worse; (2) Asheville City is in a position to model and encourage local solutions; (3) Asheville and WNC have a wide range of locally produced goods and services that would benefit from local support; (4) "Buy American" is a legitimate means to supporting American manufacturing jobs, regionally produced green technologies, local produce, and area service providers; (5) Asheville and WNC have the potential to produce a national model; and (6) Local education and action are a positive means to gaining a sense of control in difficult times.

Marks include: (1) Asheville City government as a model of Asheville/America First; (2) Regional and domestic application as a broader agenda; and (3) Inclusion of other local governmental entities, associations, and private businesses.

The methods would be (1) within legal limits, establish city policies that give extra weight to local/domestic goods and services; (2) Filter future policy decisions toward the priority of supporting local and domestic job creation; (3) Staff the program using existing staff and/or volunteers; (4) Rely on modeling and education (our TV channel as a sample resource) as our primary tools; and (5) Create a direct tie with Council's "Go Green" initiatives – let Asheville lead the way.

Vice-Mayor Davis supports buying local, but he cautioned Council that we live in a global economy.

City Manager Jackson said there are some immediate minor things staff can do to shed some light on what we are doing in terms of promoting businesses, contracting and purchasing. For transparency, in the staff reports we have begun to provide Council with the addresses of our contractors we are doing business with. He asked for direction from Council on how they want to partner with the Asheville Downtown Association, Chamber of Commerce, local restaurants, etc.

in participating in public relations programs to support that kind of consumer behavior. We can also provide information on what we can reasonably do in terms of state law and local regulations. We have consistently placed an emphasis on that issue and included criteria in our call for professional services when it comes to commodities, supplies and purchase. However, we are very limited in following the state bidding process. He would be happy to supply that information to the Finance Committee or to the full Council.

Councilman Russell, Chair of the Finance Committee, supported buying from local businesses and felt it would be appropriate for the City Manager to provide that information to the Finance Committee for review.

Councilwoman Cape felt we need to keep our tax dollars at home and urged the public to make a conscious choice of buying local, opposed to over the internet or by 1-800 phone numbers.

Councilman Miller followed up by saying buying local builds community. When people purchase, we want them to purchase things in our area.

Councilman Newman moved to refer the Asheville First program to the Finance Committee. This motion was seconded by Councilman Miller and carried unanimously.

Councilman Mumpower, working with Councilman Russell and Councilman Miller, presented the Volunteer Corp proposal. Its mission would be to establish a comprehensive volunteer program dedicated to supporting the services of the City of Asheville.

Motivations include (1) In anticipation of impending economic difficulties, additional staff support needs are anticipated; (2) Asheville is blessed with strong pool of skilled, capable, and enthused retirees/other volunteer resources; and (3) Volunteers are a low cost means to supplementing/improving city services.

Marks include (1) All departments have the potential to benefit from volunteer resources; (2) Parks and Recreation, Asheville Police Department, Public Works, and Transit/Parking offer stand-out opportunities; (3) Expand volunteer corp. to explore on-site and from home opportunities; and (4) Provide opportunities/structures that uplift our volunteers as they uplift the city.

The methods would be (1) staff the program by expanding responsibilities of existing staff; (2) Pursue creative options that take us out of traditional comfort zones in volunteer utilization; (3) Explore models of volunteer utilization that are exceptional, expansive, cost effective, and dynamic; and (4) Have a positive and highly visible recognition program for our volunteers.

Mayor Bellamy said that expanding all non-salaried volunteer opportunities is an action item in our Strategic Operating Plan and staff has direction to begin working on this.

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VI. NEW BUSINESS:

A. RESOLUTION NO. 09-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE MODIFICATION OF TERMS FOR A HOUSING TRUST FUND PROJECT KNOWN AS BOSTIC PLACE

Ms. Judy Daniel, Planning & Development Director, said that this is the consideration of a resolution authorizing the City Manager to approve the modification of terms for a Housing Trust Fund (HTF) project known as Bostic Place, by agreeing to the sale of three project lots to Habitat

for Humanity, decreasing the total number of required affordable units from eleven (11) units to eight (8) units, and extending the maturity date for the first HTF lien to February 1, 2010, to allow for completion and sale of the final unit in Phase I.

Since 2005, the City has provided two Housing Trust Fund loans totaling $378,750 for the development and sale of 11 affordable units at Bostic Place in the Shiloh area. The first HTF loan was made in 2005 in the amount of $218,750 and required seven affordable units. The 2nd HTF loan was approved in 2008 and required four additional units. To date, $93,750 has been repaid and three of the promised units have been completed and sold.

The homes in Bostic Place were designated to be modular construction. The lots designated for sale to Habitat for Humanity will be completed with stick-built homes. It is anticipated; however, that the designs will be compatible and that the homes will conform well to the existing neighborhood.

The construction of the remaining units is currently behind schedule; but the developer anticipates that the project will be fully completed within the next 12 months. To help expedite this process, the developer has asked that he be allowed to sell three of the proposed lots to Habitat for Humanity for completion. Habitat will retain the affordability requirement for these lots so there will be no net loss to the community in terms of the total number of affordable units received under the original loan agreements. In exchange for agreeing to this transaction, the City would receive a release fee for each lot equal to 1/7th of the original loan amount for Phase I, plus accumulated interest. This would generate approximately $96,250 in program income that would be returned to the fund for reinvestment in other affordable projects.

If approved, in addition to the understanding that Habitat will retain the affordability provisions originally agreed to by the developer; the developer would only need to complete one (1) additional unit to satisfy the first HTF lien. An extension of the loan maturity date will be required to allow for completion and sale of the final unit in Phase I. The remaining four (4) units secured by the second HTF loan would be completed as originally agreed and released as they are sold.

The request for modification was presented to the Housing and Community Development Committee on January 28th and was unanimously approved.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

It also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Returns $96,250 to the Trust Fund for reinvestment in other worthy projects.
- Allows the developer to more quickly complete the project.
- Purchase by Habitat ensures that the homes are sold to income-qualified families as originally agreed.

Cons:

- The current maturity date on the first HTF loan will need to be extended to allow for completion and sale of the final unit.
- Once the lots are released, the City no longer has the ability to monitor affordability.
- The project has experienced construction delays, but appears ready to proceed.

Funding for the Housing Trust Fund has been previously appropriated. The receipt of release fees from the proposed sale will increase the balance in the Trust fund from $611,030 to approximately $707,280.

Staff recommends adoption of a resolution authorizing the City Manager to modify the terms of the Loan Agreement for Bostic Place Phase I.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-32. This motion was seconded by Councilman Russell and after the Mayor asked for public comments and received none, the motion carried unanimously.

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B. USE OF SPANISH IN DIRECTIONAL SIGNS

Councilman Mumpower said that the policy issue is that the City has placed directional signage containing English and Spanish in proximity to the City's police station. He asked for the opportunity to discuss policy on the appropriateness of dual language signage and the expenditure of City funds on such.

The impact is that the influx of illegal immigrants is unprecedented in our history. It is a personal belief that the U.S. and our community are unable to absorb this illegal influx without significant harms to our culture and economy.

He outlined the following concerns: (1) Dual language signs send a message of implicit acceptance of illegal immigration; (2) Dual language signs are expensive; (3) This action was initiated in response to Federal pressures versus local initiative; (4) The words for "Police Station" in English and Spanish are similar and thus redundant; (5) Enabling non-English speaking people to remain so inhibits assimilation at all levels; and (6) Energy invested in dual language signs is an unnecessary use of limited city resources.

His position is that all City signage should be in English.

Police Chief Bill Hogan said that language access for Limited English Proficiency (LEP) persons is a protection under Title VI of the Civil Rights Act of 1964, the Title VI regulations, and Presidential Executive Order 13166 issued in 2000 by President Clinton and affirmed by President Bush in a memorandum dated October 25, 2001, that requires all government or private entities receiving Federal assistance to provide meaningful access to LEP persons.

The basis for Executive Order 13166 is Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which provides that no person shall "on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 directs and authorizes Federal agencies to issue rules, regulations or orders of general applicability. 36 Federal agencies provide assistance to government and private agencies for many programs and activities to include the Department of Transportation that requires language access for public transportation riders, the Department of Housing and Urban Development requiring access for LEP clients accepting CDBG funding, the Department of Labor requires language access for job program participants, the Department of Health and Human Services requires language access for health care programs, the Department of Education for any education programs and the Department of Justice to name a few. Obviously many programs carried out by the City of Asheville use federal funds and are by law required to provide meaningful language access to LEP persons.

All Federal agencies provide assistance and are required to publish 'Guidance" and "Implementation" documents approved by the Department of Justice, Office of Civil Rights. Hence the DOJ, OCR attorney conducting the compliance review.

The APD is the subject of an (LEP) Compliance Review conducted by the United States Department of Justice, Office of Justice Programs, Office of Civil Rights, (DOJ, OJP, OCR) requiring the enactment of provisions to provide meaningful access to programs and activities for limited English proficiency persons. Charlotte and Greensboro were also selected for a Compliance Review around the same time period.

The APD was notified November 15, 2007 of selection for a LEP Compliance Review that began with set of 30 in depth questions requiring written responses addressing what steps have been taken to provide access and assistance to LEP individuals. LEP is defined as individuals who do not speak English as their primary language and have a limited ability to read, write, speak or understand English. Census, empirical and local community resources data reveal that APD LEP clients are primarily Spanish speaking with Slavic (Russian and Ukrainian) being secondary. The on site inspection was June 25 – 27, 2008, and was conducted by a DOJ, OJP, OCR staff attorney. The compliance review is pursuant to Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968. The final report was completed and delivered to the APD in December 2008. The scope of the review was narrowly related to APD's provisions of services to people with LEP. The report contains documentation of efforts to comply and deficiencies that must be corrected for taking steps to provide meaningful access to programs and activities for LEP persons. Implementation will include translation of vital forms and documents to include rights advisements and reports, oral and written translation access, signage at the Municipal Building and Community Resource Centers as well as tracking of all LEP contacts and assistance provided.

This action is Federal law and complies with City Council Strategic Operating Plan in that funding for programs under the focus area *Critical Services and Infrastructure* Goals 1 – 6 for APD programs are funded through DOJ, OJP financial assistance programs. The Weed and Seed program, drug suppression equipment and communication technologies are three examples.

The DOJ, OJP, OCR has submitted their findings and the APD is designing the implementation plan based on the findings according to law.

In response to Councilman Newman, Police Chief Hogan said we have also been asked to put signs in our police substations, with not only this is where it's located, but basic information on how they can get help. They also want to make sure that we have the capability of assisting any citizens that cannot speak English proficiently so that they are not deprived of services that should be rendered to them by the government.

In response to Councilman Mumpower if the City does not comply, City Attorney Oast said that he didn't know about the Limited English Proficiency compliance with this executive order, but in situations were communities have not complied with federal law, like the Fair Housing Amendments Act of 1988, there have been lawsuits brought by federal government that can result in significant fines. He felt there is a potential for the City to experience a loss of federal revenue and some fines.

Councilwoman Cape said we strive to be a community that is welcoming to people and when they need the police, they need to know they can find them and that it's a welcoming place for them. If they have a crime to report, they can walk in and not be automatically lost. This is a nation of immigrants who assimilate in different manners. Usually the older people often don't ever gain English as a full language, but they may be someone who had a crime acted upon them. Whether or not the federal government is using a heavy hand or not, she thinks they are

asking us to reach beyond our regional small mindedness and recognize that we are a large county that is expanding with people from all over the world.

When Mayor Bellamy called for a motion, she received none.

C. RESOLUTION NO. 09-33 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Board of Adjustment.

The terms of Richard Ford (Regular member), James Sheeler (Alternate member), Robert Middlemas (Regular member), and Janet Whitworth (Alternate member), as members on the Board of Adjustment, expired on January 21, 2009. In addition, there currently exists an Alternate member vacancy left by Lee McElrath, whose term will expire on January 21, 2010.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) appoint Janet Whitworth as a Regular member to serve a three year term, term to expire January 21, 2012, or until her successor has been appointed; (2) reappoint James Sheeler as an Alternate member, to serve an additional three year term, term to expire January 21, 2012; and (3) reappoint Robert Middlemas as a Regular member to serve an additional three year term, term to expire January 21, 2012, or until his successor has been appointed.

Also at the January 27, 2009, City Council meeting, it was the consensus of Council to interview Phillip Hardin, Juma Jackson and Eugene Britton IV for the Alternate positions.

After Council spoke highly of the candidates, Phillip Hardin received 5 votes, Juma Jackson received 7 votes and Eugene Britton IV received 2 votes. Therefore, (1) Mr. Jackson was appointed as an Alternate member to serve a three year term, term to expire January 21, 2012; and (2) Mr. Hardin was appointed as an Alternate to serve an unexpired term, term to expire January 21, 2010. In addition, (1) Janet Whitworth was appointed as a Regular member to serve a three year term, term to expire January 21, 2012; (2) James Sheeler was appointed as an Alternate member, to serve an additional three year term, term to expire January 21, 2012; and (3) Robert Middlemas was reappointed as a Regular member to serve an additional three year term, term to expire January 21, 2012. All appointments are made until their successors have been appointed.

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D. RESOLUTION NO. 09-34 - RESOLUTION APPOINTMENT MEMBERS TO THE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Davis said that this is the consideration of a resolution appointing members to the Asheville-Buncombe Community Relations Council.

The terms of Jill Fromewick and Michael Burkhead, as members of the Asheville-Buncombe Community Relations Council, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to reappoint Jill Fromewick to serve a three year term, term to expire December 31, 2011, or until her successor has been appointed.

Also at the January 27, 2009, City Council meeting, it was the consensus of Council to interview Kent Purser and William Moore.

After Council spoke highly of the candidates, it was the consensus of Council to appoint William Moore as a member to the Community Relations Council to serve a three-year term, term to expire December 31, 2011. In addition, Jill Fromewick was reappointed to serve a three year term, term to expire December 31, 2011. Both appointments are made until their successors have been appointed.

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E. BOARDS & COMMISSIONS

Due to the worksession scheduled at 3:00 p.m. on Tuesday, February 24, 2009, it was the consensus of Council that the board & commission interviews be held at 5:00 p.m. on Tuesday, February 17, 2009, in Room 209.

It was the consensus of Council to interview Tabatha Hamlin, Vanessa Penix, Daniel Collins and Richard Stiles for a vacancy on the HUB Community Economic Development Alliance.

It was the consensus of Council to interview Gerald Hixson, Gordon Smith, Crystal Williams, Stephen Bolden and Wanda J. Lanier for vacancies on the Homeless Initiative Advisory Committee. Vice-Mayor Davis noted that the Homeless Initiative Advisory Committee recommended Gerald Hixson, Gordon Smith and Stephen Bolden.

At Mayor Bellamy's request, Councilman Mumpower moved to appoint the City Manager or his designee to the Pack Place Board of Trustees to replace Mayor Bellamy. This motion was seconded by Mayor Bellamy and carried unanimously.

It was the consensus of Council to appoint Mayor Bellamy as the liaison to the Homeless Initiative Advisory Committee.

Vice-Mayor Davis said that Ms. Andrea Robel from the U.S. Census Bureau made a presentation to the Boards & Commissions Committee about the need for Asheville to establish a "Complete Count" Committee. When the City's committee is formed, they will appoint a City representative to Buncombe County's Complete Count Committee, per Ms. Robel's request. Mayor Bellamy moved to establish a Complete Count Committee and directed City Clerk Burleson to begin advertising for this short-term action committee. This motion was seconded by Councilman Mumpower and carried unanimously.

In response to Councilman Russell, City Clerk Burleson said that letters to all board and commission chairs defining liaison/member roles will be going out within the next couple of weeks.

Councilwoman Cape announced that the Planning & Economic Development Committee meeting scheduled for Wednesday, February 11, 2009, has been cancelled.

Councilwoman Cape thanked City staff for providing various adopted plans and the Code of Ordinances on City Council laptops.

Councilwoman Cape will be updating Council in the future on developing a National Coalition for Integrated Solutions to deal with some national challenges facing our community.

VII. OTHER BUSINESS:

A. LAWSUIT

The City received four Complaints on January 29, 2009, from Buckeye Construction Company. The four separate lawsuits involve water system improvement contracts at Brevard Road/Clayton Road, Hendersonville Road, Weston Road, and Beaucatcher Road, for breach of duty in the City's delay in issuing the Notice to Proceed resulting in material price increases, failure by the City to acquire necessary easement agreements, and costs associated with stop, start, demobilizing, move, remobilize, and restart work. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Brian Festa spoke to Council about the need for a conscious evolution in the way we teach in the public school system.

Mr. Gene Hampton spoke to Council about the need for quality education, as quality education and quality government equals quality of life for all.

Mr. Fred English commented on the economic stimulus package.

Mr. John Blackwell asked for direction on how to apply for a position on the URTV Inc. Board of Directors.

Closed Session

At 8:13 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; County of Buncombe; and City of Asheville - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent the disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C. Gen. Stat. sec. 143-318.11 (10) (e) - The statutory authority is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Newman and carried unanimously.

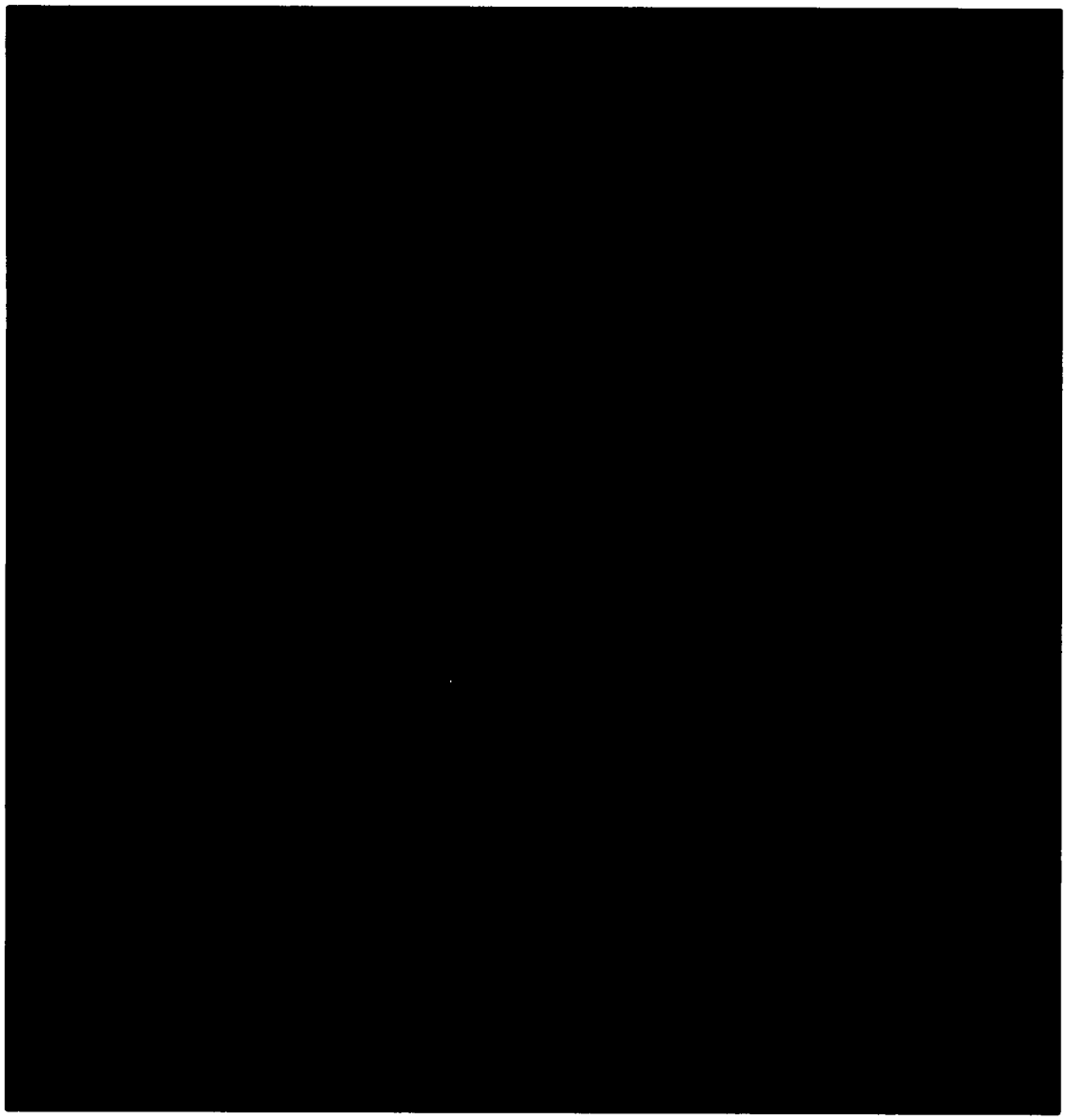
At 8:34 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:34 p.m.

Magdalen Burleson
CITY CLERK

MAYOR



BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 85

(FEBRUARY 24, 2009 – SEPTEMBER 8, 2009)

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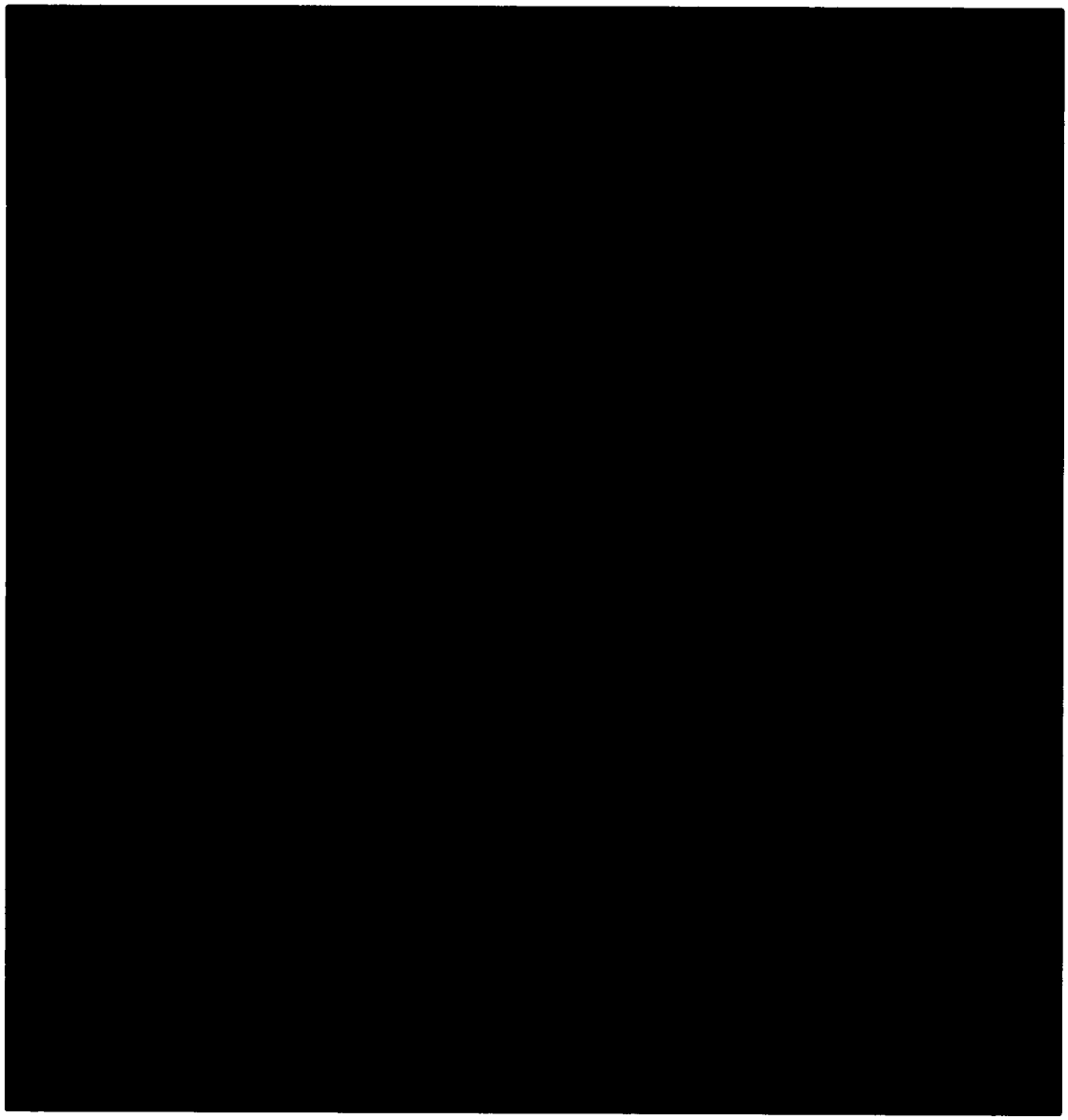

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Tuesday – February 24, 2009 – 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Budget

Chief Financial Officer Ben Durant briefed Council on the following overview: (1) second quarter results and current year budget trends show a $754,000 revenue shortfall; (2) short-term "stop-gap" measures have been implemented in the current year to close the gap; and (3) Fiscal Year (FY) 2009-10 budget numbers continue to indicate an imbalance between revenues and expenditures.

He then reviewed the current General Fund budget of $90,549,715.

General Fund revenue highlights include (1) property tax projections have improved (a) FY 2008-09 tax base grew 4.2% vs. 10-year average of 3.3%; and (b) revenue will exceed budget by $100,000; and (2) sales tax projections have been lowered (a) sales tax revenue through December down 3.1%; (b) revenue will fall short of budget by $1.5 Million; (c) one-time state utility payment of $300,000; and (d) overall General Fund revenue (a) initial projected shortfall of $1.0 Million; and (b) revised projected shortfall of $754,000.

General Fund expenditure reduction strategies include (1) selective hiring program - $250,000; (2) delay equipment and vehicle purchases until spring - $225,000 (3) divert Civic Center capital project savings - $100,000; and departmental line item reductions - $425,000. This would be a total savings of $1 Million.

He then reviewed the FY 2009 current year trends in Fund Balance, with the year-end estimate of 19.7%.

In response to Mayor Bellamy, City staff explained the General Fund budget amendments (expenses) adopted since the start of the fiscal year.

He provided Council with the FY 2008-09 Second Quarter Report. He reviewed the fall outlook for the initial General Fund gap. Initial budget assumptions include (1) 1.5% overall growth in revenue (a) property tax growth of 2.0% in FY 2008-09 and FY 2009-10; and (b) sales tax growth of 0% in both FY 2008-09 and FY 2009-10; and (2) expenditures (a) continue market-based pay adjustments and merit program; (b) 10% increase in health care budget; (c) 5% increase in operating costs due to inflation in key areas; and (d) no increase in debt service or capital outlay.

The current outlook regarding budget assumptions include (1) property tax projections have improved (a) FY 2008-09 tax base grew 4.2% vs. 10-year average of 3.3%; and (b) growth is expected to slow to 2.0% in FY 2009-10 due to recession; (2) sales tax projections have been lowered (a) sales tax revenue through December down 3.1%; (b) revenue will fall short of budget by $1.5 Million in current year; and (c) sales tax revenue likely to remain flat in FY 2009-10; (3) Airport Road and Ridgefield annexations (a) become a part of the City on March 31; (b) additional FY 2009-10 revenue of $900,000; (c) additional FY 2009-10 costs of $575,000 (ii) 3 firefighters and payments to rural departments; (ii) 2 police officers; (iii) Airport Road sewer installation; and

(iv) sanitation costs; (4) net revenue gain of $325,000; (5) suspend market adjustments - $1 Million; (6) eliminate merit pay (salary freeze) - $750,000; (7) reduce Housing Trust Fund transfer - $300,000; (8) reduce Transit Fund transfer - $500,000; (9) re-engineering, streamlining (a) 20 General Fund positions eliminated - $1 Million; (10) increase cost recovery from fees - $500,000; (11) reduce Fund Balance from 19% to 18% - $1 Million; (12) cost savings opportunities (a) shift to volunteers; (b) private sponsorships; (c) service level reductions, e.g., once vs. twice monthly brush collection - $500,000; and (13) Council strategic priorities (a) downtown cleanliness program; and (2) Pack Square Park operations - $250,000.

He then reviewed the current outlook of the General Fund budget gap of $375,000.

Regarding the budget forecast, Council policy direction is needed as follows (1) staff recommends Council review and consider current forecast assumptions; (2) is Council comfortable with current property tax, sales tax, and overall revenue assumptions; and (2) is Council comfortable with the budget balancing mix (a) cost controls; (b) re-engineering; (c) salary freeze; (d) Fund Balance usage; and (e) other expenditure assumptions.

Regarding the budget process, Council policy direction is needed as follows (1) staff recommends submittal of the Manager's Recommended Budget on May 12; (2) between now and April 14, staff recommends that the Council Finance Committee review major policy issues; (a) revenues/fees; (b) capital maintenance and improvement priorities; (c) outside agency contracts; and (d) service reduction and volunteer/sponsorship opportunities; and (3) Council may also wish to schedule a public input opportunity during a regular March meeting.

Throughout discussion, Council members voiced their suggestions for ways to cut the budget while Mr. Durant responded to various questions/comments from Council (noting that those he could not respond to would be furnished to Council in the near future). Some questions/comments include: how confident are we with the revenue picture; comments regarding the use of Fund Balance; how deep are we projecting to go into Fund Balance; what other monies are available for the Transit Fund and the Housing Trust Fund; information on the Fund Balance decline which was an accounting issue regarding health care; information on the use of Fund Balance when contracts are entered into prior to June 30, but bills are not received until after July 1; what has Fund Balanced been used for in the past few years; additional information on plans for personnel compensation regarding across the across the board freeze on salaries vs. considering some strategic areas that might suffer from that approach; additional information on what kinds of fee increases are proposed; how is the City meeting the standards regarding firefighter staffing on trucks (responded to by Fire Chief Greg Grayson); additional information requested on all the budget balancing mix presented by staff; does the proposed budget still maintain the current 401-K contribution for all employees; analysis of putting the 5% 401-K contribution in paychecks instead of the retirement system; additional information on the increase cost recovery from fees; and information on how this budget will make the City organization be healthier in the long run.

Councilman Russell, Chair of the Finance Committee, asked for Council's direction if they are comfortable with the general budget balancing mix of (a) cost controls; (b) re-engineering; (c) salary freeze; (d) Fund Balance usage; and (e) other expenditure assumptions. He encouraged Council to contact members of the Finance Committee on any issues they would like reviewed.

City Manager Jackson said that this budget has been a management team effort and they are prepared to list priorities for further reduction. He asked for Council direction on what sequence they would like for staff to bring the additional information forward - the Finance Committee and/or City Council. He didn't feel that any one meeting would allow for a complete review of the specific information requested. He suggested some follow-up effort by the Finance Committee to schedule the individual topics out and in what order.

After discussion, it was the consensus of Council to obtain all requested information in two weeks and then make a determination of the budget balancing mix.

At the request of the Finance Committee, it was the consensus of Council to move the outside agency requests from the Finance Committee responsibility to the Housing & Community Development Community.

Councilman Russell noted that the Finance Committee will be reviewing the fees and charges in the next 30 days so if Council has any specific interest, please contact a member of the Finance Committee.

Councilman Russell noted that in the assumptions, $3 Million out of the $5 Million is coming from the City's employee base.

City Manager Jackson said that we are making extra efforts to communicate with our employees and are inviting their input. In addition, he said that Mayor Bellamy has asked for continuing updates on the economic stimulus package at each of our Council meetings.

Mayor Bellamy said that it's imperative that we look at what makes Asheville work – its employees. We need to make sure that people have jobs so they can buy goods and services in our community. She will consider making cost cuts in other areas that are important to her in order to save someone's job. We need to make sure we have good staff and that they feel secure in their job.

City Attorney Oast said the adoption of the budget schedule will be considered by Council at their March 10, 2009, meeting.

At 4:30 p.m., Mayor Bellamy recessed the meeting for 30 minutes.

Tuesday – February 24, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis (left meeting at 9:58 p.m.); Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower (left meeting at 9:47 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Ms. Sue Ross, teacher, and students from the Odyssey School led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Miller gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2009 AS "AMERICAN HEART MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2009, as "American Heart Month" in the City of Asheville. She presented the proclamation to Dr. Caldwell, representing WNC Hypertension and Wellness Center, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING FEBRUARY 2009 AS "NATIONAL CHILDREN'S DENTAL HEALTH MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2009, as "National Children's Dental Health Month" in the City of Asheville. She presented the proclamation to Mr. Bill Murdock, representing the Eblen-Kimmell Charities, who briefed City Council on how the Children's Dental Health Program started and some of the activities taking place during the month.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda Items "D" and "J" were removed from Council's consideration.

At the request of Councilman Mumpower, Consent Agenda Items "C", "F", "G", and "H" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 10, 2009

B. ORDINANCE NO. 3702 - ORDINANCE DISSOLVING THE FILM COMMISSION

Summary: The consideration of an ordinance dissolving the Asheville Film Commission.

The Asheville Film Board was created in 1998 by Ordinance of the Asheville City Council. Since the years of its creation, the Board has undergone some changes including a name change in 2001 to the Asheville Film Commission (AFC). The AFC's mission, composed of 13 members, is to support the City as a "film friendly" town and to support media arts in the area. The AFC has had difficulty attracting and maintaining members. In reviewing its mission and the declining interest of its membership, the Commission at its June 18, 2008, meeting, determined that its mission would be more effectively delivered and expanded into media arts by transitioning into a stakeholder group with assistance from the Office of Economic Development, which has been endorsed by the City Council Boards and Commission Committee.

Pros:

- Greater access to additional digital and media arts stakeholders to support City of Asheville in its effort to be a "film friendly" town.
- Reduction in staff time with more flexibility in scheduling meetings
- Continued interest from former AFC members

Con: None.

There is no budgetary impact at this time. Staff time for meetings would be reallocated for other economic development activities.

City staff recommends that City Council adopt the ordinance dissolving the Asheville Film Commission.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WALKER PARKING CONSULTANTS FOR WALL STREET AND RANKIN AVENUE PARKING GARAGES RESTORATION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION APPOINTING A REPRESENTATIVE OF THE ASHEVILLE AREA ARTS COUNCIL TO THE PUBLIC ART BOARD

At staff's request, Vice-Mayor Davis moved to remove this item from Council consideration. This motion was seconded by Councilman Russell and carried unanimously.

E. RESOLUTION NO. 09-36 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXCHANGE SPECIALIZED FIRE APPARATUS WITH BRINDLEE MOUNTAIN FIRE APPARATUS LLC FOR THE ACQUISITION OF A CUSTOM HEAVY DUTY RESCUE TRUCK

Summary: The consideration of a resolution authorizing the City Manager to dispose of surplus and used specialized equipment used by the Asheville Fire and Rescue Department (AFR) in a no cost exchange for other specialized equipment to be used by AFR.

Typically city government uses publicsurplus.com or govdeals.com to dispose of worn out and surplus fire apparatus and equipment. Given city government's challenging budget situation and current economic conditions, AFR proposes to trade current surplus and used equipment for another piece of used equipment that will best meet the department's current needs, without having to incur any additional costs. Because we currently have several vehicles to dispose of, we can receive a much higher value by packaging the vehicles together for an even trade than we could by selling the vehicles individually. We are also reducing our overall fleet size and maintenance costs by using this disposal method.

North Carolina General Statute sec. 160A-271 allows city government to exchange property in order to acquire new property. An advertisement of the city's intent is required. This required advertisement has been properly posted for action at this Council meeting.

We have received appraisals of the vehicles to be disposed of. The following vehicles to be disposed of and their disposal value are as follows:

Property:	Value:
1999 International Tanker	$55,000
1994 Volvo/American Eagle Heavy Rescue	$12,000
1992 Grumman 102' Aerial	$20,000
1994 KME 55' Quint	$ 5,000
1992 KME 52' Snozzle	$10,000
1997 Freightliner 3D Hazmat	$35,000
1994 KME 75' Firestix Aerial	$22,000
1993 KME 75' Firestix Aerial	$17,000 *(not available until after 9-1-09)*
	$176,000

The following vehicle is proposed for exchange as an even trade for the above listed equipment: 1996 Pierce All Wheel Drive Heavy Duty Rescue Truck with a Fair Market Value of $176,000.

The above vehicle has been thoroughly evaluated by city staff and determined to be in sound mechanical condition with 30,000 miles. This vehicle is planned to serve as a reserve

rescue truck for AFR as well as a city hazmat truck. To purchase a similar vehicle as brand new would cost in excess of $500,000.

Regarding the Strategic Operating Plan, this action falls under the focus areas of (1) Safe - By providing appropriate reserve equipment for AFR, it will aid in making Asheville the safest city in America based on approved metrics for similarly sized cities; and (2) Fiscally Responsible – This action generates the highest value for the equipment that the city needs to dispose of. This is an even trade and taxpayers will not encumber additional costs to provide this piece of reserve equipment.

This item has been reviewed by the Council's Public Safety Committee and has received the Committee's endorsement.

Pros:

- This process will provide the highest value possible for the equipment that the department will dispose of – aiding our current budget situation.
- This is an even trade that will not cost taxpayers additional funds in order to procure the new to us equipment.
- This equipment will meet the department's current void for a reserve rescue and city hazmat truck.
- This new to us equipment will be immediately available to serve Asheville residents and businesses.

Con:

None identified at this time.

There is no adverse fiscal impact associated with this action. Value of similar vehicles using the typical disposal methods are much less than the value that we receive by packaging the equipment together for a trade.

City staff recommends that City Council adopt the resolution authorizing the manager to dispose of specialized equipment as an exchange.

RESOLUTION NO. 31 – PAGE 444

F. RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO CREATE A POLICY FOR AWARDING RETIRING POLICE OFFICERS THEIR SERVICE WEAPONS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED PROFESSIONAL SERVICES AGREEMENT WITH MCGILL & ASSOCIATES TO PREPARE ENGINEERING AND CONSTRUCTION DOCUMENTS FOR THE SANITARY SEWER INSTALLATION IN THE SARDIS ROAD AREA OF THE 2007 ANNEXATION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION FOR THE NORTH GENERAL AVIATION EXPANSION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION NO. 09-40 - RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT ACROSS CITY PROPERTY ON RESERVOIR ROAD – MCCAULEY DRIVE (WHITE PINE RESERVOIR)

Summary: The consideration of a resolution granting a utility easement over City property at White Fawn reservoir.

The City of Asheville owns the property known as White Fawn reservoir, as well as property coming down from the ridge on the west side. There are two towers on this property; these towers are used by various telecommunications service providers pursuant to licenses or lease agreements with the City. The towers receive electrical power from Progress Energy.

Progress Energy needs to upgrade its service to one of the towers (the western or lower one) from secondary to primary, and requires an easement for this purpose. Though this service line has been in place for many years, as far as we can determine, there is no recorded easement for it. This is not unusual in older areas of town.

The easement that is being requested would be 30 feet in width, and Progress Energy would be permitted to construct and maintain its line, including poles which would(increase from 30 to 40 feet in height), guy wires and anchors, and to keep the area cleared of trees and undergrowth. The location would be the same as the current service line. Progress Energy would be required to restore any area disturbed by its work to its previous condition. The lines and poles, even at the increased height, would not project higher than the tree line or ridge line, and would not intrude on the City's property any more than it currently does. The last 40 feet (from the supply line to the base of the tower) would be underground.

This area has been identified as having potential for future park or recreational use and the tower itself may be removed or relocated at some point. The line would not interfere with current use of the property, and in fact would improve service to the City's lessees and licensees, who in turn provide a needed service to many businesses and citizens. However, the degree of compatibility with future use is more difficult to gauge. With this in mind, the easement could be structured to permit the underground installation of the line at such time as the property is developed for recreation purposes. The cost of this could be included as part of the lease or license agreements.

The requested action complies with the City Council's Strategic Operating Plan in that it (a) supports a service that many businesses and individuals rely on to conduct their daily affairs; (b) provides critical infrastructure.

The requested action complies with the 2025 Plan and Parks Master Plan in that it does not interfere with any current recreational use of the property, and may facilitate such use by keeping path clear of undergrowth, and limiting conflicting uses.

Pros:

- Continues and improves existing telecommunications service to tenants / licensees of City facilities
- Formalizes a previously undocumented arrangement for use of City property

Cons:

- May require periodic trimming / removal of vegetation within easement area
- No use by City in a manner that interferes with easement
- Potential for incompatibility with future uses (but this can be addressed)

The fiscal impact is indirect; facilitates City's ability to continue leasing of towers.

If Council approves of the easement, City staff recommends adoption of the resolution authorizing the City Manager to execute the easement, subject to approval of the City Attorney.

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J. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SECOND ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT WITH BUNCOMBE COUNTY DATED SEPTEMBER 2, 2003, TO ESTABLISH AN OPERATIONAL AGREEMENT FOR THE CONSOLIDATED 911 CALL CENTER

At staff's request, Vice-Mayor Davis moved to remove this item from Council consideration. This motion was seconded by Councilman Mumpower and carried unanimously.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

Councilman Newman moved to approve Consent Agenda Items "C", "F", "G", and "H." This motion was seconded by Councilwoman Cape.

C. RESOLUTION NO. 09-35 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WALKER PARKING CONSULTANTS FOR WALL STREET AND RANKIN AVENUE PARKING GARAGES RESTORATION

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Walker Parking Consultants to provide engineering services for Wall Street and Rankin Avenue parking garage restorations.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center deck was built in 1976 and the others in 1988. Like any structure, these parking decks deteriorate over time and require restorative maintenance. This normally consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs but a detailed assessment is required to be sure. The City of Asheville commenced a multi-year program to accomplish restoration of the garages in 2007. The restoration work was completed in Civic Center garage in 2008. Plans are for restoration work on Wall Street Parking Garage in fiscal year 2008/2009 and in Rankin Avenue Parking Garage in fiscal year 2010/2011. City staff recommended, and Council approved, including restoration work on Wall Street garage for inclusion in the Capital Improvement Plan for fiscal year 2008/2009.

Included in Parking Services' operating budget for the current fiscal year is $500,000.00 for debt service on the proposed parking garage on Biltmore Avenue. As construction of that facility has not yet started, this money will not be needed for debt service. Combining those funds with money in the Capital Improvement Plan will provide adequate funds to complete the restoration of both garages. This action will prevent the City from having to fund Rankin Avenue

Parking Garage restoration work and debt service on the proposed Biltmore Avenue deck simultaneously next fiscal year. Combining the work will also significantly reduce the engineering services fees and expenses.

During fall of 2008 Parking Services sent out a Request for Proposal to interested firms to provide engineering services for the restoration of Wall Street Parking Garage. The scope of work included a detailed assessment of the condition of the facility, preparation of working drawings, preparation of bid package for general contractors, and supervision of the restoration work. Five firms responded to the request for proposal. An internal review committee consisting of the Assistant Director, Transportation & Engineering, Minority Business Outreach Coordinator, and the Parking Services Manager selected Walker Parking Consultants as the most qualified and responsive of the five.

Walker Parking Consultants' fee for engineering services for the Wall Street Parking Garage restoration is $82,000.00. Parking Services requested, and received a quotation for a combined fee for engineering services for the Wall Street and Rankin Avenue parking garages restoration at $116,750.00; a significant per garage reduction. The primary savings will be on travel and lodging expenses. Staff is requesting authorization to sign a contract with Walker Parking Consultants, 1850 Parkway Place, Suite 730, Marietta, Georgia, for no more than $125,000.00; $116,750.00 for the contract and $8,250.00 for contingencies.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

Pros:

- Combining the engineering services for both Rankin Avenue and Wall Street garages significantly reduces the overall cost than if they were done separately.
- The advantage of this to the City is by correcting problems in the deck now will prevent more costly repairs later and will extend the useful life of the parking facilities.
- Precludes the City from having to fund a large debt service and restoration project in one fiscal year.

Con:

- Completing both garages at the same time can be administratively cumbersome but is not insurmountable.

Funds were approved in the fiscal year 2008/2009 Operating and Capital Improvement Plan budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with Walker Parking Consultants in an amount not to exceed $125,000.00 for engineering services to complete Wall Street and Rankin Avenue parking garages restorations.

When Councilman Mumpower asked what provisions we have to ensure the contractor is hiring legal citizens, City Manager Jackson said that our contracts have boilerplate language that requires all our contractors comply with each and every federal regulatory requirement.

Councilman Mumpower could not support this action in that he felt City government is not making a responsible effort to make sure our contractors and their subcontractors hire legal citizens.

As noted after the Consent Agenda, Councilman Newman moved for the adoption of Resolution No. 09-35. This motion was seconded by Councilwoman Cape. This motion then carried on a 6-1 vote, with Councilman Mumpower voting "no."

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F. RESOLUTION NO. 09-37 - RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO CREATE A POLICY FOR AWARDING RETIRING POLICE OFFICERS THEIR SERVICE WEAPONS

Summary: The consideration of a resolution authorizing the City Manager or his designee to create a policy for awarding retiring police officers their service weapon.

North Carolina General Statute sec. 20-187.2 provides that surviving spouses, or by surviving children if widowed of a law enforcement officer killed in the line of duty or who was a member of a law enforcement agency at the time of death, and retiring law enforcement officers shall receive upon request and at no cost, the badge worn or carried by the deceased or retiring officer. The statute further provides that the governing body of a law enforcement agency may also award to a retiring member or surviving relative as provided above, upon request, the service side arm of the retiring or deceased officer.

As is the practice of most police departments, for convenience and efficiency, the Chief of Police, has customarily awarded service side arms to retiring officers and to surviving family members of deceased officers. The department's Chiefs of Police have made such awards in consideration of the officers' many years of loyal and dedicated service to the City.

A law enforcement officer's badge and service side arm are more than just tools necessary for the performance of his or her duties; they are symbolic of service as a law enforcement officer. In recognition of this belief years ago, North Carolina passed, General Statute 20-187.2.

For honoring the dedicated service of a career police officer most police departments in the United States and in North Carolina including CALEA accredited agencies such as Raleigh, Charlotte, Burlington, Winston-Salem, Greensboro, Durham, High Point, Fayetteville, Greenville, Cary, Kannapolis, New Bern, NCALE, NCSHP, Monroe, Clayton, Albemarle, Rocky Mount have the Chief of Police or City Manager award service side arms to retiring officers or to surviving family members of deceased officers. This is a common and cherished tradition across the United States. Some municipalities and counties charge a token $1.00; others require no cost to the retiring officer or surviving spouse. North Carolina General Statute 20-187.2 provides for this.

Neither the City of Asheville nor the Asheville Police Department has ever awarded to retiring officers, or to qualifying surviving family members of deceased officers, the service side arm of the retiring or deceased officer. The loyal and dedicated service of the officer who has completed years of service to the City of Asheville and is eligible to retire under the North Carolina Local Law Enforcement Retirement system with the City of Asheville has gone without any award of their service side arm.

On February 17, 2009, the Public Safety Committee reviewed this request and endorsed it.

Pros:

- Positive recognition by the City of Asheville for a difficult career with many sacrifices
- Long term appreciation by the retiring officer
- High morale booster for current personnel

Con:

- Minimal budget impact

There will be minimal financial impact for the replacement of a handgun. Replacing weapons is an ongoing part of the budgeting process and weapons in the department are in varying stages of life expectancy and diminishing value.

Chief William A. Hogan and any subsequent Chief of Police at the time of retirement award the service weapon with the official credentials to said officer. Chief William A. Hogan and any subsequent Chief of Police at the time of the death of an officer award the service weapon with the official credentials to the survivor of said officer. This in accordance with North Carolina General Statute 20-187.2, for officers retiring after February 1, 2009. The retiring officer must have completed 20 years of credible service with the City Of Asheville and meet the requirements under the North Carolina Retirement System for Local Law Enforcement Officers. If an officer retires with less than 20 years of service with the city and retires on a service related physical disability, the officer will be awarded the service weapon and official credentials in the same manner.

Officers retiring in good standing with 10 - 20 years creditable service with the City of Asheville can request the award of the service weapon for a cost of $ 250.00. Any retirements under 10 years can request the award of the service weapon for fair market value.

Non physical service related disability retirements will be evaluated based on individual circumstances with a determination to be made by the Chief of Police.

City staff recommends City Council authorize the City Manager or his designee to create a policy for awarding retiring police officers their service weapon.

At the request of Councilman Mumpower, Police Chief Hogan explained the reasoning behind the policy request, in that it is a way of recognizing employees.

In response to Councilman Mumpower, Chief Hogan said that the policy could be made retroactive.

As noted after the Consent Agenda, Councilman Newman moved for the adoption of Resolution No. 09-37. This motion was seconded by Councilwoman Cape.

After a brief procedural discussion, Councilman Mumpower moved to amend Councilman Newman's original motion for a separate vote on Consent Agenda "F". This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape and Councilman Newman voting "no."

Councilman Mumpower moved to approve Resolution No. 09-37, with the City Manager (1) exploring the potential for retroactive consideration for our police retirees at the discretion of City operational staff; and (2) reporting back to Council on any logistical or practical concerns. This motion was seconded by Councilman Russell and carried unanimously.

Vice-Mayor Davis was pleased to note that the Secretary of State honored the Asheville Police Department for their participation in apprehending almost $1 Million in counterfeit merchandise this past year.

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G. RESOLUTION NO. 09-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED PROFESSIONAL SERVICES AGREEMENT WITH MCGILL & ASSOCIATES TO PREPARE ENGINEERING AND CONSTRUCTION DOCUMENTS FOR THE SANITARY SEWER INSTALLATION IN THE SARDIS ROAD AREA OF THE 2007 ANNEXATION

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment to an existing professional services contract with McGill & Associates to prepare the required documents to install sanitary sewer as outlined in the 2007 annexation services plan.

In June of 2008, a Request for Qualifications (RFQ) was solicited from several engineering firms for the engineering services required to design and construct the proposed sewer service in the Sardis Road area, as described in the 2007 annexation services plan. Several firms submitted RFQ's and a committee selected McGill & Associates (located at 55 Broad Street, Asheville, N.C.) as the firm to negotiate terms with first. Their initial fee was higher than estimated, but McGill & Associates suggested that they might be able to reduce the fee with a more detailed review of the sewer alignment. Therefore, the initial scope of work was reduced to include only preliminary surveying and engineering. The reduced fee was $20,200.00, and was executed on September 16, 2008. McGill & Associates determined that the proposed alignment could be changed such that the number of easements could be reduced substantially, therefore reducing the overall cost of the design and construction accordingly.

In addition to these costs savings, the Transportation and Engineering Department has re- examined this contract to determine what components could be done with City staff. Based on this evaluation, several tasks have been omitted from the proposal, and re-assigned to the Engineering Services Division, further reducing costs. The total estimated cost reduction equals $103,000.00.

This contract amendment will allow for the design, right of way acquisition, and construction of the sanitary sewer for Sardis Road area that was part of the 2007 annexation. The original contract allowed McGill & Associates to proceed with the preliminary surveying and engineering, and is nearing completion.

This action complies with the City Council Strategic Operating Plan in that it will enhance the infrastructure within our municipal limits, and fulfill the City's obligation outlined in the 2007 annexation of the Sardis Road area.

Pros:

- Will allow for the ultimate construction of approximately 6,455 linear feet of new sanitary sewer within the Asheville City limits.
- Will fulfill the City's obligation of the 2007 annexation of the Sardis Road area.

Con:

- The City will not receive any financial return directly from installation of the sewer, as it will be turned over to MSD upon completion.

This will cost the City $164,490.00 in fees for professional services.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute an amendment to an existing professional services contract with McGill & Associates.

Councilman Mumpower could not support this action in that he felt City government is not making a responsible effort to make sure our contractors and their subcontractors hire legal citizens.

As noted after the Consent Agenda, Councilman Newman moved for the adoption of Resolution No. 09-38. This motion was seconded by Councilwoman Cape. This motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 446

H. RESOLUTION NO. 09-39 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION FOR THE NORTH GENERAL AVIATION EXPANSION

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $1,889,029.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $1,889,029 is for the North General Aviation Expansion Project No. 3-37-0005-034-2009.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-034-2009.

Councilman Mumpower felt that he could not support spending $2 Million at our airport during this economic climate. He also questioned if there was any policy to make sure the workers are legal citizens.

As noted after the Consent Agenda, Councilman Newman moved for the adoption of Resolution No. 09-39. This motion was seconded by Councilwoman Cape. This motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

City Attorney Oast said that the use of the E-Verify System is a requirement of all federal contracts. He noted that there has been legislation introduced in the General Assembly to require the E-Verify System in state contracts as well.

After a brief discussion on the City's efforts to hire and require contractors and subcontractors to verify and hire legal citizens, it was the consensus of Council to instruct City Manager Jackson to update the information provided to Council earlier and explore other audit practices.

RESOLUTION BOOK NO. 31 – PAGE 447

III. PRESENTATIONS & REPORTS:

A. QUARTERLY REPORTS

Boards & Commissions Committee Chair Report

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, provided Council with an update of their activities during the last quarter. He thanked his other Committee members of Mayor Bellamy and Councilman Mumpower for their hard work on this Committee.

Strategic Operating Plan

Assistant City Manager Jeff Richardson reviewed with Council the 2008-09 Strategic Operating Plan.

In the affordable focus area (1) Community Development Block Grant (CDBG) and HOME funds as of December 31, 2008 (a) 54 projects; (b) 584 affordable units; (c) served 6,000 citizens; (d) 40 micro-businesses; and (e) 29 applications received (1/1/09); (2) Housing Trust Fund as of December 31, 2008 (a) $1.6 Million allocated; and (b) 76 affordable units; (3) Ten Year Plan to End Homelessness (a) $500,000 in CDBG and HOME funds as of December 31, 2008; and (b) promotional campaign for "Spare Change for Real Change; and (4) Employer of Choice (a) implemented 3 tiered health insurance plan; and (b) expanded flexible work schedules - condensed work weeks, with no service reductions.

In the green focus area (1) Public Works (a) collected 7,838 tons of recyclable material in 2008; (b) constructed 6.08 miles of sidewalks in 2008; and (c) CNG sales are 60% higher than projected (1/1/09; (2) Engineering & Transportation (a) transit received $2.1 Million for five hybrid buses and a Federal Transit Administration Grant; (b) 1.5 Million transit passengers (12/31/08); and (c) two "Hop and Ride" locations; (3) Water Resources; (a) Water Resources re-certified as ISO 14001; and (b) Water Production upgrades as part of the bond project are complete; (4) Office of Economic Development (a) acquired property along Swannanoa River Road for floodplain/river protection (Wilma Dykeman Riverway Plan); and (5) Building Safety (2/1/09) (a) 36 sustainable fee waivers issued totaling $11,800 in fee waivers for green building efforts.

In the safe focus area of Asheville Fire and Rescue (AFR) (1) 94% customers rate AFR services as excellent/good in citizen survey; (2) extended 2008 responding to 15,377 calls; (3) AFR benchmarked performance with ICMA, AFR's workload is comparative to cities with populations 150,000 people; and (4) secured property for a future fire station in west Asheville.

In the safe focus area of the Asheville Police Department (APD) (1) APD responsible for mutual aid to U.S. Secret Service for dignitary protection at numerous political events; (2) police bicycles bought with funds from the West Riverside Operation Weed & Seed Project; and (3) graduated more than 100 adults and nearly 40 teenagers from the Citizens Police Academy and Junior Police Academy in 2008. Service calls for 2008 for 911 calls is 33,096; wireless calls is 2,107; for a total number of service calls of 113,570 (includes officer initiated).

In the sustainability focus area (1) River District Brownfields Program - financial assistance application for Phases I and II began on December 1 (applications due March 13); (2) One Stop Shop (a) staff site visit to Columbia, S.C.; and (b) next steps include identifying key functions to relocate to Public Works; (3) Transit Master Plan (a) completion of first phase and (b) next steps; (4) Water Bond Project - Water Bond projects are approximately 70% complete; (5) City Manager's Development Forum (a) discussion on economic issues facing area; and (b) Planning & Zoning Commission; (6) Neighborhood Stabilization Grant (a) reduce vacant properties; and (b) available affordable housing; and (7) Expand Partnership with UNC-Asheville (a) UNC-Asheville and City of Asheville staff collaboration; and (b) five areas of focus.

Fire Chief Greg Grayson responded to various questions from Council, initiated by Councilwoman Cape, regarding the AFR's 15,377 calls in 2008 and how the AFR's workload is comparative to cities with populations 150,000 people. Councilman Mumpower felt that if we are processing double the calls based on national statistics, then Council should have some policy deliberation about what we can do to address that workload.

Mr. Richardson responded to Councilman Kelly explaining that improved customer experience and better efficiencies over time will result in cost efficiencies with the one-stop shop.

Mr. Richardson said that Council has been provided with an economy report for FY 2008-09 (2nd Quarter). He reviewed charts on (1) employment change by major industry; (2) unemployment rates; (3) monthly home sales - units; (4) monthly home sales - average price; (5) residential building permits - units; (6) residential building permits - value; (7) City business licenses; and (8) special focus of total employment - Asheville MSA.

He said that Council has been provided with the Asheville Police Department's outreaches/actions for January 2009. He said that January was a very successful month for the APD, particularly in terms of key arrests and drug interdictions. Detectives in the Criminal Investigations Division (CID) cleared several first-degree residential burglaries ("home invasions") and made an arrest for second-degree murder in a homicide cold case that was nearly 20 years old. CID also in January arrested two women for a string of eight armed robberies that had plagued local hotels and convenience stores, as well as two men who were posing as law enforcement officers and robbing people. In addition, our K-9 Unit and Drug Suppression Unit

(DSU) made key interdictions of large supplies of marijuana and cocaine that would otherwise be on the streets. He reviewed the following most notable arrests/actions from January: (1) APD charges man in 1990 homicide; (2) arrests made in home invasions; (3) DSU seizes nearly 2 kilos; (4) man pleads guilty to sexual battery; (5) two charged with impersonating law enforcement officers, robberies; (6) APD top 10 arrestees of 2008; (7) CID/crime stats; (8) Support Services Division calls; (9) Patrol Division charges/seizures; (10) K-9 Unit makes key seizure; (11) outreach; and (12) staff and other recognitions.

In response to Councilman Mumpower, Police Chief Bill Hogan explained what their efforts have been to eliminate the open air drug market, noting that they have not let up in their efforts to reduce drugs. He agreed with Councilman Mumpower in that there are not sufficient resources for the judicial system.

Councilman Mumpower urged the citizens to take ownership of their neighborhoods and work with the Police Department to eliminate the open air drug market.

In response to Councilwoman Cape regarding the homeless population, Mayor Bellamy noted that the service providers are tracking where people are coming from and City Council will be hearing a report on the homeless initiative in the very near future.

B. TRANSIT MASTER PLAN UPDATE

Director of Transportation and Engineering Cathy Ball said that the following report is to provide an update of the development of the Transit Master Plan.

The City of Asheville is analyzing existing transit services, assessing current and future needs, determining future equipment and operational requirements, and determining how existing bus transit services can be streamlined to provide improved service levels through the development of a Transit Master Plan.

The City hired HDR Engineering, Inc. of the Carolinas as the firm to provide services for the development of the City of Asheville Transit Master Plan (TMP).

The scope of work identified seven specific tasks as follows: Task 1: Data Collection; Task 2: Public Involvement; Task 3: Impacts to Existing Ridership; Task 4: Impacts to ATS Operations; Task 5: Transit Facility Locations; Task 6: Recommendations and Implementation Plan; and Task 7: Funding.

To date the consultants have finished with the data collection and the first phase of the public involvement tasks.

The data collection consisted of data gathering and application of several surveys. During the data gathering the consultants reviewed relevant studies and data collected from other sources. Such sources included the Comprehensive Transportation Plan, Long-Range Transportation Plan, any relevant issues from the latest Federal Transit Administration (FTA) Triennial Review or North Carolina Department of Transportation (NCDOT) reviews, or other studies conducted by the City and the Metropolitan Planning Organization.

Three different surveys were applied to get input from riders and non-riders, and included:

- On-board survey to gather travel information, rider profile information and rider attitudinal information.
- Ride check survey to determine origins and destinations, identifying busiest areas and more used bus stops.

- Survey Monkey, an on-line tool which aims to identify potential new riders and barriers that prevent them from riding the bus, as well as current riders and the potential for improvements.

This task was completed with a public meeting held on January 22nd at the Civic Center. 176 persons signed in and gave their input to the consultants and staff.

The analyses showed that most of the rider's trips originate and end at home (35%), 20% are work related trips and 11% are for shopping.

Regarding frequency, most of the riders ride six days per week (54%), and 40% have been riding for five years or more.

The analysis showed that two thirds of the riders are transit dependant and one third are choice riders.

The ethnicity analysis showed that 48% of riders are white/non-Hispanic and 40% are black/African-American.

The surveys allowed identifying the most needed improvements, shown below:

- Sunday service (25%)
- More frequent service (16%)
- More evening service (14%)

When riders were asked to choose only one of these improvements 53% identified Sunday service as the most needed improvement.

During the public meeting a dot voting system was implemented. The analysis showed that 22% of the riders want more frequent service, followed by a tied between Sunday service and more sidewalks (18%).

Non-riders who participated in the SurveyMonkey identified more frequent service (32%) as the main reason to consider riding the bus. Riders considered the same as a needed improvement (30%) in the on-line survey.

The next steps involve the development of tasks 3 to 7 and completion of the public involvement process. The consultants will be developing recommendations, implementation plan, cost analysis and funding.

Staff expects to have the draft plan ready by mid-May and bring the final plan for Council approval by the end of June.

The Transit Commission supports the development of the Transit Master Plan.

Regarding the Strategic Operating Plan, the TMP will support the areas of environmental sustainability, promoting emission reductions through transit and identifying a sustainable funding structure for transit.

The project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: (1) Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region; and (2) Goal X: Develop a comprehensive set of implementation strategies intended to reduce local vehicle miles traveled in accordance with the State of North Carolina transportation policies.

Pros:

- The development of the transit master plan provides the tools to reshape the transit system accordingly to current ridership and development.
- The TMP will identify future opportunities for growing in a planned and organized way.
- The TMP will make recommendations related to technology, transit facilities and funding opportunities.

Con:

- None.

The project cost is $89,245 and 10% contingency for unforeseen expenses during the development of the master plan.

Ms. Ball summarized by saying that the study objectives for the Transit Master Plan include (1) assess current conditions; (2) project future system needs - equipment and operational requirements; (3) streamline and improve service levels; and (4) identify funding opportunities.

The scope of work entails (1) data collection; (2) public involvement; (3) impacts to existing ridership; (4) impacts to Asheville Transit System (ATS) operations; (5) Transit facility locations; (6) recommendations and implementation plan; and (7) funding.

Work completed includes (1) data collection (a) ride check and analysis; (b) on-board survey; and (c) survey monkey (on-line); and (2) public involvement (a) public forum.

Key findings consist of (1) 35% of the trips are to/from home, followed by work related trips (20%) and shopping (11%); (2) most of the riders ride six days per week (54%); (3) 40% have been riding for 5+ years; (4) one-third of the riders choose to ride the bus instead of taking a car; and (5) 48% of riders are White/Non-Hispanic, 40% are Black/African American.

Riders are satisfied or very satisfied with all service aspects except hours of operation. The best attributes are safety and fire. The worst attributes are hours of operation, frequency, and on-time.

She reviewed the requested service improvements of (1) Sunday service; (2) increased service frequency; (3) more evening service; (4) new routes; (5) more sidewalks; (6) better on-time performance; (7) more shelters; and (8) express buses.

Next steps include (1) development of recommendations to be presented to the Steering Committee and operators; (2) second public meeting is April 2; (3) implementation plan; (4) cost analysis and funding; (5) draft plan; and (6) presentation to City Council for adoption in June 2009.

This report is to provide an update to City Council; no action is recommended at this time.

Councilwoman Cape stressed the need for on-time performance.

After a brief discussion about concerns (or perceptions) of buses speeding through neighborhoods, Ms. Ball said that one of their goals is to design the route so that the buses can go slower (so they are not perceived as going faster) and still make the route. She felt they can also do some random checks, if Council desires.

C. EMERGENCY PREPAREDNESS SYSTEM

Fire Chief Grayson introduced Mr. Doug Hoell, Director of North Carolina Emergency Management (NCEM); Mr. Mike Cook, Western Branch Manager for NCEM; Mr. Jimmy Ramsey,

NCEM Area 14 Coordinator; Mr. Jerry VeHaun, Buncombe County Emergency Services and Homeland Security Director; and Dr. Martha Salyers, Director of Region 6 Public Health Team.

Chief Grayson said that the system component representatives include (1) City government efforts; (2) County government efforts; (3) NC Emergency Management efforts; (4) non-profit agencies as partners, such as American Red Cross, United Way 211 and a host of others.

The NC's system is an all-hazards approach to emergency assistance (1) severe weather (hurricane, snow, tornado, flood, drought); (2) technological (hazardous materials/radiological, fixed nuclear facilities); (3) man-made (weapons of mass destruction, cyber-terrorism); and (4) lost person search/rescue.

Emergency management traditional phases include (1) preparedness (a) training; and (b) equipment); (2) response; (3) recovery; and (4) mitigation.

Chief Grayson then reviewed the flow chart of the NC Emergency Management System when disaster strikes in Asheville.

The City's primary emergency services include (1) Fire and Rescue; (2) Police; (3) Public Works - fleet and streets); (4) Water; and (5) support departments such as Finance, Information Technology, Engineering, Public Information and Building Safety.

Key emergency roles for Asheville include (1) City Manager keeps all elected officials apprised of emergency situations and obtains policy direction from elected officials when necessary; (2) Fire and Rescue has the key coordinating role to ensure that unified command and control is in place and operates in concert with Buncombe County and NC Emergency Management efforts; and (3) all other operating departments perform specific services as needed for the emergency.

Buncombe County's primary emergency services include (1) emergency medical services; (2) emergency management; (3) Sheriff's Department; (4) Human Services departments; (5) health; and (6) support departments.

Transition from County to State Emergency Management includes (1) all 100 counties have an Emergency Management Director whose position is partially funded by state government; (2) the state has three geographical districts that the County directors connect with. The Western North Carolina branch headquarters is located in Conover; and (3) North Carolina operates an Emergency Operations Center in Raleigh 7/24/365 and upgrades when needed for all significant emergencies.

In response to Councilman Miller, Chief Grayson and Dr. Hoell updated Council on plans for future fuel shortage problems.

In response to Councilwoman Cape, Chief Grayson and Mr. VeHaun stressed the importance of individuals to be prepared (for at least 72 hours) and outlined the various ways they can make a plan, e.g., visiting the various links on the City website, Buncombe County website, watching programs on the City Government Channel, contacting the Red Cross or Hearts with Hands, etc. Even some digital billboards help advise people on what they need to have in case of an emergency.

When Councilwoman Cape asked if any changes are made to prepare for climate adaption, Mr. VeHaun said that they are keeping abreast of changes and adapting where necessary. Dr. Hoell also explained how the NCEM is preparing for multi-hazards.

In response to Vice-Mayor Davis about nuclear transportation, Fire Chief Grayson and Assistant Fire Chief Gary Cornett and member of the Hazardous Materials Team, explained how Asheville is more prepared than many other cities our size. Our greatest resource is Asheville being a regional hub and because of that we have Dr. Salyers and her team. He also noted that Asheville is one out of 7 teams in North Carolina that houses a Hazardous Materials Team.

In response to Mayor Bellamy regarding the excellent collaboration of public involvement at the grassroots level, Dr. Salyers said that Mr. Chris Emory with Buncombe County Health Center Preparedness Coordinator, is working on a vulnerable populations initiative. This is a means to get all of the organizations agencies in the City and Buncombe County to figure out a consistent way to identify the populations that we're worried about and help them produce a more prepared population so that when things do happen, we can look to ourselves and our neighborhoods. Mayor Bellamy said that this plan will be coming before Council once it's completed.

Mayor Bellamy, on behalf of Council, thanked the individuals for coming in and helping Council and the public understand the emergency preparedness system we have in place and what is forthcoming.

Budget/Personnel Issues

Due to the number of speaker requests regarding the budget and a personnel issue, Mayor Bellamy noted that at the Informal Discussion and Public Comment portion of the meeting Council does allow public comment on any item not on the agenda. However, Council does not consider personnel matters in open session. City Attorney Oast said that to the extent public comments deal with specific personnel recommendations, Council may limit the comments.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR WEIRBRIDGE VILLAGE (PHASE II) AT 1741 HENDERSONVILLE ROAD TO REDUCE THE NUMBER OF BUILDINGS AND DWELLING UNITS; REDUCE THE HEIGHT AND WIDTH OF THE BUILDINGS; AND CHANGE THE LOCATION OF BUILDINGS

ORDINANCE NO. 3703 - ORDINANCE AMENDING THE CONDITIONAL ZONING ORDINANCE FOR WEIRBRIDGE VILLAGE (PHASE II) AT 1741 HENDERSONVILLE ROAD TO REDUCE THE NUMBER OF BUILDINGS AND DWELLING UNITS; REDUCE THE HEIGHT AND WIDTH OF THE BUILDINGS; AND CHANGE THE LOCATION OF BUILDINGS

Mayor Bellamy opened the public hearing at 7:20 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning ordinance for Weirbridge Village Phase (II) at 1741 Hendersonville Road to reduce the number of buildings and dwelling units; reduce the height and width of the buildings; and change the location of the buildings. This public hearing was advertised on February 13 and 20, 2009.

Ms. Cogburn said that the subject property, 15.86 acres of a 20.66 development, is located within the city limits, at the corner of Hendersonville Road and Racquet Club Road. The property previously contained a few homes and accessory buildings, which have now been demolished. Surrounding properties are both residential and commercial. To the north is the Racquet Club (a recreational facility) and the Racquet Club Village condominiums. Applebee's restaurant is on the northwestern corner at the intersection of Racquet Club and Hendersonville Roads. Across Hendersonville Road are apartments and commercial properties. To the south, a

low density multi-family development (Crowfields Condominiums) abuts the development and to the east another condominium development, South Oaks, is located. Two banks have been constructed on the commercial portion of the project. There is one remaining outparcel that has yet to be developed. The zoning in the area reflects the development; to the north and east, RM16 and HB, and to the south and west, RM6.

The applicant received conditional zoning approval in November of 2006 for the property to be zoned Highway Business Conditional Zoning. The site plan that was approved with the rezoning presented a mixed use development with commercial outparcels to the east (along Hendersonville Road) and 336 residential dwellings located on the middle and western portions of the property (the subject of the requested amendment). The applicants received approval for an amendment to the conditional zoning ordinance in May of 2008. This amendment approved a coordinated sign package for all phases of the development.

As approved in 2006, the residential portion of the development was proposed to contain 336 residential dwellings (112 one-bedroom units, 176 two-bedroom units, and 48 three-bedroom units) in 16 buildings. The developer is now proposing 280 units (86 one-bedroom units, 163 two-bedroom units, and 31 three-bedroom units) in 10 buildings. Both plans show a clubhouse with pool and open space in the center northeast of the property. Buildings have been shifted; they are now further away from the property lines, except to the east. Additional changes from the previously approved plans for Phase II of Weirbridge Village are the following:

- Parking is no longer proposed to be provided within the residential structures. Surface, carport, garage, and on-street parking is shown. The parking complies with the City's parking standards.
- The impervious surface is reduced in the new development proposal. The original impervious surface calculation was for 8.67 acres of impervious surface. Impervious surface under the new development proposal will be 8.49 acres.
- Two entrances to the residential portion of the project from Racquet Club Road have shifted. The originally proposed entrance to the west of the project has been moved closer to the center and the originally proposed entrance in the center has been shifted eastward to align with the drive into Racquet Club Village.
- The developer is proposing to meet Healthy Built Home Standards in the development of the project as opposed to seeking LEED certification.
- The height of the buildings is reduced under the new proposal. The buildings in the original proposal were 51'6 ¾ "in height. The new proposal contains buildings that are 40'6 ¾ "in height.
- Whereas the previous plan showed three stories of dwelling units with structured parking below, the new submittal shows residential buildings with 3-4 split to fit the topography found on the site.

The developer is still planning on providing 5% of the units (14 units) at affordable rates per the City of Asheville's guidelines. The developer, as previously approved, is designing the project to provide stormwater controls suitable to handle a 25-year storm and using Best Management Practices in the design of their stormwater measures. Landscaping is provided to meet the City's ordinance as before with the "Type C" buffers to the south and west still shown.

A number of conditions were placed on the property at the time of the initial conditional zoning approval. The signage conditions were amended with the submittal of the sign package.

Amendments to Conditional Zoning approvals come directly to the Asheville City Council so this matter has not been previously heard by the Planning and Zoning Commission. The Technical Review Committee (TRC) reviewed this project informally at their meeting on 2 February 2009. At that meeting, the Committee found no reason to review the project in detail prior to it returning to Council for consideration of the changes. The project will return to TRC for

detailed technical review of all aspects of the project, should Council approved the proposed amendment.

Pros:

- The proposed development supports the 2025 goals of: promoting transit supportive density, pursuing infill development, utilizing greenbuilding techniques, providing affordable housing, and developing and using BMPs to address the effect of development on stormwater runoff and water quality.
- The developer has and continues to work on the improvement of Racquet Club Road and its intersection with Hendersonville Road.
- The reduction in and movement of the residential structures should allow for the saving of additional mature trees on the site.
- Changes result in a small reduction in impervious surface (2%).

Cons:

- Reduces the total number of units and overall density, including the number of affordable units offered (reducing density could be viewed as a "pro."
- Removes the structured parking; however, no additional impervious area is proposed.

Based on the analysis provided in the report, staff finds this request to be reasonable.

Staff recommends approval of the amendment to the conditional zoning approval for Weirbridge Village with the conditions previously adopted with the following changes: (1) Condition 7 will be changed to read, "The project shall be designed to meet Healthy Built Homes standards."' and (2) Condition 13 statement that concerns signage shall be changed to read, "Signage shall conform to the sign package approved by Asheville City Council on June 24, 2008."

She said that the development team has met with representatives of South Oaks Subdivision and Crowfields Subdivision.

Mr. Clay Moody, Landscape Architect with Design Associates, explained that this amendment is only for the residential part of the project and not the commercial part. He explained some of the completed components of the project to date. Due to the economy, he explained in detail the requested revisions. He felt they have improved the project in many ways and urged Council for their support.

Mayor Bellamy closed the public hearing at 7:37 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3703, to approve the proposed changes to the development of Weirbridge Village and to approve amending the conditional zoning ordinance in accordance with the site plan presented for the residential phase of the project and the conditions in the original approval with the following changes (1) Condition 7 will be changed to read "The project shall be designed to meet Healthy Built Home standards" and (2) Condition13 statement that concerns signage shall be changed to read "Signage shall conform to the sign package approved by City Council on June 24, 2008." This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 185

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-41 - RESOLUTION ADOPTING THE PARKS, RECREATION, CULTURAL ARTS AND GREENWAYS MASTER PLAN

Parks & Recreation Director Roderick said that this is the consideration of a resolution adopting the Parks, Recreation, Cultural Arts and Greenways Master Plan.

Based on the direction from City Council, the City of Asheville contracted with GreenPlay, LLC, at a cost of $120,000, to lead the process to develop a master plan for parks, greenways, recreation and cultural arts. GreenPlay, based out of Broomfield, Colorado, operates as a consortium of experts to provide services for parks, recreation, open space and related agencies.

GreenPlay worked with staff and a volunteer steering committee to guide development of the plan and gather public input. Over 1,000 people participated in the public input process January through July 2008 via seven focus groups, eight stakeholder meetings, nine public meetings, three board and commission meetings, and a direct mail survey.

The consultant 1) analyzed the existing level of services in parks, recreation, cultural arts, public art, festivals and greenways, 2) inventoried and assessed existing assets and services, 3) inventoried and analyzed recreation programs, 4) developed recommendations for goals, strategies and action steps.

The preliminary recommendations were presented to the Master Plan Steering Committee on June 10, 2008. Based on feedback, GreenPlay refined the recommendations and presented it to the public at a public meeting on July 17, 2008. GreenPlay presented the master plan and recommendations to City Council at a work session on November 18, 2008, with the intent for the plan to come back to Council at a later date for action. The master plan is a long-range planning document presented in goals, strategies and action steps that creates a vision and a guideline for a coordinated effort to deliver parks, greenways, recreation and cultural arts services over the next 10 to 15 years. The master plan does not obligate nor commit City Council to a funding timeline for implementation. The recommendations in the plan will be implemented as funding opportunities become available.

This action complies with the City Council Strategic Operating Plan and the Asheville City Development Plan 2025.

This item was reviewed on November 7, 2008, by the Council appointed boards. The Recreation Advisory Board and the Public Art Board voted unanimously to recommend the adoption of the master plan to City Council. The Greenway Commission voted unanimously to abstain from voting to support the master plan as drafted. While the Greenway Commission supports the intention to simplify and streamline communications among Council appointed boards and commissions as well as other committees associated with the Parks, Recreation & Cultural Arts Department, the Commission thinks the structure laid out in the plan is unnecessarily complex and hierarchical.

Staff agrees with the master plan and the recommendations as presented, but recommends:

1) Goal # 2: Improve administrative effectiveness and transparency as it pertains to the role of citizen boards, commissions and committees and relationship with staff, each other and to City Council. Staff recommends that staff and the Recreation Advisory Board further assess citizen board, commission and committee development to determine a model that is a best match for operations, which will be brought back to Council at a later date for consideration.
2) Timetable for Capital Improvement Projects: Rather than assign Capital Improvement Plan (CIP) projects to a five-year incremental timeline, staff recommends prioritizing the projects based on expressed community interest and a plan to preserve the existing

infrastructure of parks and recreation facilities which may be adjusted and implemented as funding becomes available.

Pros:

- Establish a clear direction and a coordinated effort to guide staff, advisory boards and commissions and elected officials in efforts to enhance Asheville's parks, recreation and cultural arts programs, services and facilities.
- Prioritize capital projects in a manner to allow for adjustment as funding becomes available
- Help meet the recreational needs of Asheville citizens by positioning Asheville to build on the community's park and recreation assets and identify new opportunities.

Con:

- None

The financial impact of implementing the plan will be determined by future capital improvement planning processes.

Staff recommends City Council adopt a resolution adopting the Parks, Recreation, Cultural Arts and Greenways Master Plan with direction to 1) assess board, commission and committee development at the Council's Boards & Commissions Committee, and 2) prioritize capital improvement projects for future consideration and implementation as CIP funding becomes available.

In response to Councilman Mumpower regarding cost, Mr. Simmons said that there was not a detailed analysis for cost and that a projection over a period of time at today's dollars would be approximately $40 Million.

Councilman Mumpower questioned the realism of the plan coupled with no budget. He felt we don't have enough dollars to take care of our existing facilities.

Mr. Marc Hunt, Chairman of the Tree Commission, noted that the Greenway Commission did not vote to approve the plans noting 3 concerns, two of which Mr. Roderick addressed. The third concern is that projects in the Wilma Dykeman RiverWay Plan would not be supported by the department. Those plans are mentioned and highlighted as priorities, but it clearly states that the department will not actively engage in the development of greenways in that district. That is a mistake. Their suggestion would be for Council to direct staff to reconfigure the plan so as to address the entire City, not just the City except for the River District. Regarding funding, we do need to be proactive and definite about funding plans and some day when the economy recovers they feel a General Obligation Bond is the strategic way to get projects implemented on a manageable program timeline. Finally, they encourage Council to direct staff to expand the planning for greenways to include pedestrian and bicycle amenities around the City. He feels there needs to be one plan that brings these segments together.

In response to Councilman Newman, Mr. Hunt was not suggesting the Greenway Commission have broader authority for the pedestrian and bicycle plans, but it should be looked at in the context of a multi-department approach.

Mr. John Pomeroy, representing some local businesses in the River District, urged Council to adopt the Plan with the inclusion of the development of greenways in the River District.

Mr. Michael Soule, founder of Asheville on Bikes, encouraged Council to adopt a plan for multi-modal infrastructure.

Mr. David Madera, represent developers on River District, spoke in support of adopting the Plan with the inclusion of the development of greenways in the River District.

Ms. Karen Cragnolin, Director of RiverLink, urged Council to adopt a plan that includes the development of greenways in the River District with the Wilma Dykeman RiverWay Plan.

Mr. Darryl Searcy did not support adopting this plan in that we are trying to balance the budget and this plan has no budget associated with it.

Mr. Mike Fryar could not support the plan in that it has no budget associated with it.

Ms. Jean Webb noted Council is not voting on spending $40 Million but voting on a vision. She urged the plan be approved and that the Wilma Dykeman RiverWay Plan, which is a vital part of this plan, be prioritized in this plan.

Ms. Leesa Kulba was concerned about adopting the plan with the proposed revenue sources.

Mayor Bellamy closed the public comment period at 8:03 p.m.

In response to Councilwoman Cape, Mr. Simmons stressed this is a guiding tool and that everything in the plan having to do with fees or taxes has to come back before Council for approval. Anything implemented that is a policy decision has to come back for Council approval, through the Recreation Board.

Mr. Simmons said that in response to the Wilma Dykeman RiverWay Plan, he said that plan is not left out, but this plan isn't to enhance the Wilma Dykeman RiverWay Plan. The Wilma Dykeman RiverWay Plan is a part of the City because it was adopted. There are other things in place to move the Wilma Dykeman RiverWay Plan along. In order to advance our park system, we have to build on the rivers. He said the Wilma Dykeman RiverWay Plan is a valuable tool. In addition, this Plan will be updated as we move along and if there are elements left out or needed to be added, this Plan can be amended.

Councilwoman Cape confirmed that we are not leaving out the Wilma Dykeman RiverWay Plan out of the overall master plan for the City of Asheville.

In response to Councilman Newman, Mr. Simmons explained that the Wilma Dykeman RiverWay Plan was not developed by the City, but by community partners coming together. We don't have ownership of it, but we can include that in our planning so we don't overlap in the development of the build-out of the riverways.

Councilman Newman said there is a lot of support for the inclusion of the Wilma Dykeman RiverWay Plan in this Plan. He asked that if this Plan is approved, that we ask the Parks & Recreation Department, RiverLink and others interested in the Wilma Dykeman RiverWay Plan to have a follow-up meeting with the goal of making some adjustments to this Plan. We would like to make it clear that we view this as an integral part of the City and that the Parks and Recreation Department is fully supportive of the Plan and wants to provide resources to help make that happen as part of our overall park development plan moving forward.

Councilman Miller agreed with Councilman Newman regarding the Wilma Dykeman RiverWay Plan. He noted that the 2025 Plan, which Council references frequently, does not have prices attached to the different elements.

Councilman Mumpower was concerned that this is a $52 Million vision with no direct plan for implementation. He explained how he felt this is a waste of resources.

Vice-Mayor Davis explained why he could not support this Plan in the form presented.

Mayor Bellamy noted there are several strategies in this Plan. Usually when we get a large Master Plan staff breaks it down into different phases. She suggested the Plan be broken down into phases and be brought back to Council. Each phase can have short-term goals. This is a multi-year vision for our City. She did note that the bulk of this Plan is to maintain our existing facilities and acknowledges that many of them are in disrepair or have no connectivity.

Councilman Russell felt to walk away and have no vision is not the right answer, even though it may be years before we can move forward with some of these projects. He agreed with comments regarding the Wilma Dykeman RiverWay Plan and only one sentence in this Plan is misleading.

Councilman Miller offered to work with GreenPlay to amend the Executive Summary in order to have a little more continuity.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-41, with the two recommendations outlined by staff and that staff be directed to report back to Council on how the Plan can be implemented in phases. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 31 – PAGE 450

B. RESOLUTION NO. 09-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A SAFE ROUTES TO SCHOOL DEMONSTRATION PROJECT

Summary: The consideration of an resolution authorizing the City Manager to execute a municipal agreement with the N.C. Dept. Department of Transportation (NCDOT) to receive $250,000 for a safe routes to school demonstration project.

In November 2007, City Council authorized the City act as lead agency on a Safe Routes to School Demonstration Grant application for sidewalk improvements in the Emma Community. In February 2008, City Council adopted a resolution of support for the grant application. The $250,000 Safe Routes to School Demonstration grant was awarded to the City. This requested council action will allow the City Manager to execute the grant agreement with the NCDOT. These actions are required to follow-through on implementation of the grant.

Safe Routes to School (SRTS) is a federally-funded grant reimbursement program providing an opportunity for communities to improve conditions for bicycling and walking to school. The grant requires no local matching funds.

This grant complies with the City Council 2009-10 Strategic Operating Plan within the Affordable and Sustainable Focus Areas by supporting a strong commitment to infrastructure maintenance and capital improvements, and the safety focus area by implementing a Safe Routes to School projects.

Pro:

- The project will provide more and safer transportation options to Emma Elementary students and to other people in the Emma Community.

Con:

- The use of City staff to administer the program and oversee the contracts will add additional work load. This aspect can be compensated through the use of a 15% administration fee from the Safe Routes to School grant.

The City will receive $250,000 through the Safe Routes to School Program.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a municipal agreement with the N.C. Dept. Department of Transportation (NCDOT) to receive $250,000 for a safe routes to school demonstration project.

Ms. Ball said that the goal of the Emma Community Safe Routes to School Demonstration Project is to improve conditions for children to walk or bicycle to Emma Elementary School. Prior Council actions include (1) in November 2007, Council authorized the City to act as project lead agency; and (2) in February 2008, Council adopted a resolution of support for the project.

The description of the project is a 0.4 mile of sidewalk and crosswalks along North Louisiana Avenue from Emma Road north to Mosswood Mobile Home Park. Grants include (1) in-school encouragement programs to promote walking and biking to school; and (2) materials allowance to upgrade existing roadside trails on private property.

She then reviewed the scope of the project, which is all located in Buncombe County.

Regarding funding (1) this grant requires no local match; and (2) this is part of a planned larger sidewalk project extending south to Patton Avenue (a) Community Development Block Grant and federal Job Access grant funds, which require no local match, have been secured for the larger project; and (2) further grant funding is being sought to complete the larger project.

Councilman Mumpower could not support this action is it is nice, but not necessary.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-42. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 450

ORDINANCE NO. 3704 - BUDGET AMENDMENT TO SET UP PROJECT BUDGETS FOR THE RIDE, AUTOMATED VOICE ANNUNCIATION SYSTEM AND EMMA COMMUNITY (N. LOUISIANA AVENUE) PEDESTRIAN INFRASTRUCTURE PROJECTS

Summary: The consideration of a budget amendment, in the amount of $893,412, to set up the project budgets for the RIDE, Automated Voice Annunciation System, and Emma Community (North Louisiana Ave.) Pedestrian Infrastructure projects. Funding for these projects will come from Job Access and Reverse Commute and New Freedom grants, the Safe Routes to School (SRTS) grant, Community Development Block Grant funds, and Buncombe County.

In 2006, the Federal Transit Administration (FTA) initiated two new formula grant programs, the Job Access and Reverse Commute (JARC) and the New Freedom programs, to improve and enhance accessibility to public transportation to low-income individuals and individuals with disabilities.

JARC, previously a discretionary program, is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas. New Freedom is also a FTA formula grant program for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990. These funds are intended to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

To be eligible, both programs required an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties (MPO), human services agencies, public and private transportation providers, the N.C. Dept. of Transportation (NCDOT) and general public to assess current transportation needs, identifies gaps and sets goals. The plan was adopted on April 17, 2008, by the French Broad River MPO's governing body, the Transportation Advisory Committee, which is made up of elected representatives from each of the eighteen local governments which make up the MPO. They include Buncombe, Haywood, and Henderson County, and each of the incorporated municipalities in the three counties.

The City will be responsible for the Program Management and, as designated recipient, to oversee the utilization of the grant funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use 10% of the grant funds for administration purposes, which will cover the program management expenses. Therefore, the City will receive $47,643 for grant administration over the period of three years. The CTP-HSTP set the rules to apply for projects; all the projects that applied for funds responded to these assessment. Three projects were selected for funding, as follows:

New Freedom project:

RIDE: Program ridership independence for the disabled and elderly – Mountain Mobility, Buncombe County. This project will cost $417,024, half of which will be paid by Buncombe County. The City will receive and pass through to Buncombe County the New Freedom grant amount of $208,512.

Job Access and Reverse Commute projects:

Automated Voice Annunciation System – Transportation Management Division, Transportation and Engineering Department, City of Asheville. This project will cost $147,400. The City will receive JARC grant funding of $117,920 for this project, and the remaining cost of $29,480 will be covered by Buncombe County.

Emma Community (North Louisiana Ave.) Pedestrian Infrastructure Project – Engineering Services Division, Transportation and Engineering Department, City of Asheville. This project will cost $537,500. The JARC grant funding is for $187,500. In the addition to the JARC funding, the City has also received two other grants for this project. In February of 2008 City Council adopted a resolution supporting a grant application to the Safe Routes to School Program for $250,000 for pedestrian infrastructure improvements in the Emma community. The City was awarded the grant. In April of 2008, City Council was also awarded $100,000 in Community Development Block Grant Funds for this project.

These actions comply with the City Council 2009-10 Strategic Operating Plan within the Affordable and Sustainable Focus Areas by offering a standard of living that is affordable and

attainable for citizens of Asheville; and supporting a strong commitment to infrastructure maintenance and capital improvements.

Pro:

- The subject projects will provide more and safer transportation options to low-income individuals and individuals with disabilities, improving Asheville citizen's quality of life.

Con:

- The use of City staff to administer the program and oversee the contracts will add additional work load. This aspect can be compensated through the use of the 10% administration fee from the JARC and New Freedom projects, and a 15% administration fee from the Safe Routes to School grant.

The total budget for these three projects is $893,412. Funding in the amount of $863,932 will come from grant sources. Buncombe County will provide $29,480 in funding. The impact to the City's general fund is the in-kind services contributed for administration of the projects.

Staff recommends that City Council adopt a budget amendment to set up the project budgets for the RIDE, Automated Voice Annunciation System, and Emma Community (North Louisiana Ave.) Pedestrian Infrastructure projects.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3704. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 188

C. WATER AND ANNEXATION FOLLOW-UPS

City Manager Jackson said that the purpose of this information is to respond to a City Council request for more information and staff recommendations regarding annexation policy.

On January 27, 2009, the Asheville City Council held a work session to discuss the status and background of annexation policy for the City of Asheville. That discussion led to a request for further information from staff on the following items:

- **Water Utility Financial Information:** Information including a benchmark comparison of water system rates for city residents and non-residents, fund balances, costs, and condition of water infrastructure as well as a summary report of independent, third-party analysis of the water utility is below;

- **Sullivan Acts and Voluntary Annexation**: Information outlining the fiscal and growth impacts to the City resulting from the inability to use waterline extension as an incentive for voluntary annexation is below;

- **Annexation Agreements/"Spheres of Influence":** A proposal for long-term managed growth through agreements with other county municipalities and the County using the "Spheres of Influence" model pioneered in Mecklenburg County is outlined below, and

- **Municipal Financial Structure:** A benchmark comparison of the financial structure of the City and the revenue diversification of the North Carolina metropolitan areas.

The annexation limitations included in the legislation collectively known as the "Sullivan Acts" have led to the anomaly of Asheville having a substantially lower population growth rate than the residual and less urbanized portions of Buncombe County. In addition, the City's inability to control the extension of water and sewer leaves Asheville in the position of not being able to offer these benefits to potential developments as an incentive to secure growth at long term, fiscally supportable densities.

As a result, Asheville's residents have been forced to support lower density, suburban growth patterns in the County by paying higher taxes to compensate for: (1) the lost water revenue that would normally come from differential water rates and (2) the increased stress on city services and infrastructure caused by non-city residents coming into the Asheville for employment, services, recreation and tourism, as evidenced by Asheville's daytime to nighttime population ratio. This growing burden on city taxpayers has been compounded by the lack of other revenue options (i.e., hotel tax, food and beverage tax, improvement district tax, etc.) available to Asheville.

The unique set of circumstances described above has culminated in a continually growing and unsustainable demand on the city's property tax revenue, and one that is gradually weakening the city's ability to deliver high quality core services at a cost that is reasonable and affordable for Asheville citizens. To meet this challenge, the city has shifted resources and streamlined operations; however, Asheville has experienced below average citizen satisfaction with core services because it remains limited in its capacity to address increasing needs with consistent service delivery models supported by adequate funding.

This situation is comparable to circumstances in other states where cities have been unable to use annexation as a tool to achieve prudent and planned growth, thus increasing the tax burden on a core population in the urban center. As a result of an increasing tax burden and a decreasing quality of municipal services, citizens have left those urban centers, causing the cities to deteriorate and creating a less sustainable pattern of suburban growth.

Despite the challenges created by the Sullivan Acts, Asheville has continued to operate according to the legislation. Asheville has worked to systematically address the financial stability of the water utility as well as the long-term viability of the system's infrastructure. Asheville has instituted a capital improvement plan and dedicated funding source to ensure the system's capacity to serve the region in future generations. The City has also improved the utility's financial standing and associated bond rating, partially through building a fund balance for unplanned needs that can arise from an aging water system in challenging topography. Many of these efforts have been recommended and/or validated by independent, third-party experts.

Given the information and analysis presented in this report, staff would make the following recommendations:

- Seek a negotiated legislative remedy for the financial limitations Asheville has experienced as a result of the Sullivan Acts, including alternatives to diversify the City's revenue opportunities, to provide a more equitable position for city tax payers;

- Seek a regional approach to plan for future growth and annexation beginning with an annexation agreement process similar to Charlotte-Mecklenburg County "spheres of influence" model, and;

- Continue to operate the water system according to best management practices and professional engineering analysis conducted to ensure the long term viability of the water system.

Water Utility Financial Information

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Mr. Robert Griffin, Interim Director of Water Resources Director summarized the following (1) the water utility is in good financial condition; (2) the City of Asheville is systematically addressing critical infrastructure needs though a comprehensive capital improvement program; and (3) water rates and the utility's fund balance are comparable to State benchmarks and verified by independent engineering analysis.

He provided Council with the following benchmarking data and financial performance indicators for the City of Asheville Water Resources Department and our water system. Using charts, he reviewed the five year trend from Fiscal Years 2003/04 through 2007/08 for each of the following: (1) Revenue versus Expenditures; (2) Maintenance Costs; (3) Water Demand (or Consumption); (4) Water Rates and Fees Comparison; (5) Total Water Meters and Customers, and (6) Reserve Fund (Fund Balance).

He then reviewed with Council the independent information on key financial management of the water system compiled from various sources.

The observations and recommendations from independent third-party assessments of the water system, separated into key areas of interest:

- **Engineering/Physical Condition**
  - "These credit strengths are offset by water loss the system will continue to experience, mainly attributed to the geography of the mountainous region..."(Standard & Poor's Rating Report, October, 2007)
  - "A consideration to be made is that [the system] has such dramatic system pressure ranges." (Brown and Caldwell Water Audit, August, 2005)

- **Capital Improvement Plan (CIP)**
  - "Development fees have not been updated since 1988 and need to be adjusted to fit current conditions. "(Brown and Caldwell Water Rate Recommendations Report, September, 2005)
  - "System requires $57 million in improvements within the next five years. The existing rate structure is unable to support this schedule. "(QualServe Peer Review Report, March, 2006)

- **Rates**
  - "Although the city's water system rates are above average at $38.03 per 1,000 cubic feet, they are still competitive with other cities within the state. The city is planning 4% annual rate increases for five years, beginning in 2008. The rate increases will affect the administrative and volume charges." (Standard & Poor's Rating Report, October, 2007)
  - "In order to meet future revenue requirements documented in this report, a moderate annual rate increase of 3 percent per year of the next seven years will be required. " (Brown and Caldwell Water Rate Recommendations Report, September, 2005)

- **Financial/Credit-worthiness**
  - "The upgrade to Aa3 [Water Revenue Bonds Rating] reflects a strong track record in the two years since the system has been solely a city enterprise, particularly the implementation of a capital charge which will be used to address deferred maintenance, including paying debt service on the current issue. The upgrade also reflects the continued economic vibrancy and sustainable growth in the customer base, modest levels of debt, healthy financial position and legal framework which satisfactorily protects bondholders." (Moody's Investor Service Rating.Report, October, 2007)

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- "Sound financial performance, evidenced by a strong liquidity position and debt service coverage levels" (Standard & Poor's Rating Report, October, 2007)

- **ISO 14001 certification**
  - "Environmental Management Program(s): Obj[ectives]/targets excellent" (ISO 14001 Readiness Review Report, October 2004)
  - "City of Asheville Water Resources Department continues to maintain an excellent environmental management system (EMS) that has resulted insignificant improvements to the department environmental performance." (ISO 14001 Surveillance Report, January 2009)

Sullivan Acts and Voluntary Annexation

Planning & Development Director Judy Daniel summarized the following report by outlining the growth impacts of the Sullivan Acts (1) Asheville annexation policy has been very conservative but has led to lengthy and expensive legal battles; (2) cities like Asheville provide the benefits of urban living to residents of the surrounding County, but do not receive revenues from those areas (a) City residents pay both city and county taxes; (3) Asheville has been accused of "aggressive" annexation but the City of Asheville – 11th in population – is 19th in total acres annexed and 20th in acres annexed as a percentage of total city area; (4) Asheville is one of only two cities where less than half of the population lives in a municipality (a) Buncombe County's population is the 7th largest; (5) rational growth management allows a city to (a) annex where density is sufficient to warrant urban levels of services; and (b) determine where water and sewer service should be extended and at what density; (6) rational fiscal management allows a city to set rates for services that reflect the cost to serve those areas; and (7) other choices that are available and need to be considered as the City evaluates how to attain long term fiscal and environment stability.

In summary of the annexation agreements (1) legislative authority for cities to enter into agreements delineating areas where they would and would not annex; (2) provides certainty over growth boundaries; and (3) if Council is interested in pursuing such agreements, staff recommends regional meeting facilitated by the Land of Sky Regional Council of Governments (a) staff of the various governments would map the proposed "spheres of influence; and (b) proposed areas would be presented to the governments for approval and public process.

The following outlines a history of the City's annexation policy, the evolution of annexation in America and its' impact on taxes, and the impact of these factors on Asheville's growth and fiscal challenges. It offers recommendations for a preferred annexation policy, and suggestions for considering alternate development patterns for areas already in the City, that would be more environmentally and fiscally sustainable. Finally, it outlines what the fiscal impacts of alternate annexation policy would be, and the detrimental impact of the existing situation to the City.

Because the City of Asheville has had to use a statutory (involuntary) annexation approach since 1999 annexation has been very conservative, taking in only areas clearly urban in nature that are not difficult or complicated to serve from a service provision standpoint, that enhance the city's ability to provide efficient and effective municipal service, and areas that can clearly benefit from enhanced urban services. Even these very rational annexations have too often led to protracted and expensive legal battles.

This careful, measured, approach to annexation has led to moderate growth, but the surrounding County has grown much faster, expanding into the surrounding mountains as well as more easily developed areas, subsidized by Asheville taxpayers, and stunting the ability of the City to require more density on less land and build a more fair and stable tax base. Compounding the detrimental impact to City taxpayers is the seemingly legal, but fiscally unsound and inherently prejudicial and unfair, requirement to provide water service to any area

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where it is requested without setting rates reflecting the true cost of service. The City is legally bound to provide water service regardless of topographic challenges or proposed density. How should a City be able to annex? Why has that normal urban function come to such a distorted place in North Carolina?

Annexation as a Normal Aspect of Urban Growth - Cities have traditionally annexed as a means of extending urban services to unincorporated areas. Throughout most American history this was the means of differentiating between urban and non-urban places. During the growth of suburban America during the post WWII era, those distinctions began to blur as vast stretches of rural lands were converted to low density residential suburbs. Over time, those suburbs often began to be served with public water or even public sewer service, formerly critical parts of the municipal services template.

In some cases, people living in unincorporated areas near cities enjoyed these urban services and the many benefits of nearby urban areas (entertainment, cultural attractions, special events, etc.) without having to pay for the city taxes used to support those benefits. This is the situation in which Asheville finds itself. Alternately, in areas which allowed easier annexation, cities annexed both fairly dense suburbs and stretches of open land to accommodate future growth. They later (especially since the 1970's) allowed substantially low density development on public water and sometimes even public sewer. In recent years the fiscal flaws in both these models have been revealed and have led to difficult fiscal issues for many (if not most) cities.

Cities like Asheville are providing the benefits of urban living to residents of the surrounding county, but not receiving the taxes sufficient to fully support the urban institutions necessary for a clean and safe urban environment. Cities that included extensive areas of low density development found themselves paying more in services to these suburban areas than they received in taxes. That led to an endless cycle of annexation of new suburbs to get more tax revenue, but poor service to existing residents. Both situations led to increasing resentment of taxes which seemed to take more and more, but provide less and less.

What is a balanced model? What would be a rational concept for this City to reach in terms of balancing growth and fiscal stability? Due to the topographical constraints of Asheville's location, it has never been susceptible to the type of fiscally insupportable annexation practices of taking in large areas of low density development. And that practice is what has led to some of the annexation strangulation legislative initiatives that North Carolina now debates. The fiscal woes of Asheville's past (from the 30's) did, however, lead to the strangulating tentacles of the Sullivan Acts which prevent both rational annexation of urbanized areas, or higher water rates for areas expensive to serve, or use of water and sewer as the tools and services of urban places.

The models for what to annex that the City has been following in recent years are philosophically strong: taking in properties clearly urban in nature, avoiding vacant land or sparsely developed properties, and annexation of areas not difficult or complicated to serve from a service provision standpoint. Areas clearly urban in nature due to moderate to high density development should be in a city for both fiscal and public safety reasons. Similarly, property owners who wish to develop with moderate to high density should be looking for annexation to secure the urban level of services they need – water, sewer, trash removal, fire, and police.

Because of the complicated past history of this area, the City of Asheville has been blocked from normal and rational methods of growth. The inability to charge more for water service to areas that clearly require far more dollars per tap to support puts a fiscal burden on the City residents living at higher densities, forcing them to support County residents living in remote, low density, topographically challenged, suburban developments. The inability of the City to control the extension of water and sewer leaves the City in the unfortunate position of not being able to offer these benefits to potential development as an incentive to secure growth at densities fiscally supportable over the long term.

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Asheville's residents support the low density suburban lifestyles in the County by paying higher taxes to compensate for the lost water revenue that would normally come from differential water rates. County residents, enjoying urban services without urban taxes, cannot be blamed for wanting to keep this system in place. They have much to gain and little to lose, until these fiscal stresses impact the City that provides the cultural and other amenities they value in this area.

But certain accusations leveled at the City are manifestly false and should be addressed. For example, the City has been accused of "aggressive" annexation. This is patently untrue. The staff studied the 25 largest North Carolina cities (by population), sorted by their recent "annexation aggressiveness", measuring annexation area as a percentage of total city area. The study found that Asheville -- 11th in population -- is 19th in total acres annexed and 20th in acres annexed as a percentage of total city area. This clearly highlights that far from being an aggressive leader in annexation, Asheville is near the bottom of the list.

Further, the inability to annex substantially developed areas has also led to the anomaly of Asheville having a substantially lower population than the residual portions of Buncombe County. The staff looked at all cities in North Carolina with a population of 50,000 to 100,000, comparing their county to city population, and found Asheville's ratio of City population to County population is the lowest. Asheville is one of only two cities where less than half of the population lives in a municipality, and Buncombe County's population is much higher than most of the others — the seventh largest county in NC by population. Clearly this is an abnormal situation.

Rationally, the City should be allowed to more easily annex in areas where density is sufficient to warrant urban levels of services and protection. Rationally, the City should be allowed to determine where water and sewer service should be extended as these are traditional urban services. Rationally, the City would extend services only where density and topography make it sensible and fiscally and environmentally sustainable to extend such services. Rationally, the City should have rates for services that reflect the cost to serve those areas. But rationality has been denied, and fiscal constraints hamper the provision of services desired by City residents.

Beyond these rational choices denied to the City of Asheville there are, however, other choices that are available and need to be considered as the City evaluates how to attain long term fiscal and environmental stability. For example, another path for the City (and a worthwhile path for most American cities) is to consider incentives for the redevelopment of some of the incorporated areas at substantially higher densities. Multiple commercial properties, especially retail properties, are currently "underbuilt" and substantially "underutilized" in terms of their actual "highest and best use". These sites offer great potential for future redevelopment as mixed use neighborhood centers. Adding mixed uses at moderate urban densities in these areas will also begin to build the level of density required to support a mass transit system that can provide more frequent service and with more frequent use by a wider range of our residents. This in turn will increase the fiscal and environmental sustainability of the City.

Annexation Agreements – "Spheres of Influence"

In 1984, the North Carolina General Assembly first approved the ability of municipalities to enter into agreements delineating areas in which one or more of the cities could not annex. The legislation was a local bill, applying only to cities and towns in Mecklenburg County. The purpose of such legislation was to get cities in that County to agree upon their respective annexation "spheres of influence" in order to enhance orderly planning by such cities as well as the residents and property owners in areas adjacent to such cities. In 1989, the General Assembly extended this authority statewide.

Statutory Authority and Requirements

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The statutory authority, founding NCGS §160A-58.21-58.28 allows two or more cities to enter into binding agreements concerning future annexations. The agreeing parties delineate one or more areas in which one or more cities *may not* annex. An agreement applies to both voluntary and involuntary annexations. Such agreements can be designated to last for any term up to twenty (20) years. Unless all cities involved in an agreement concur, a city may prematurely terminate the agreement only after five (5) years notice to the other parties. If all are in agreement, the agreement may be terminated at any time. While in effect, an annexation agreement prohibits annexations in violation of the agreement.

An annexation agreement must describe "clearly the area or areas subject to the agreement." (There are no specifics on this; one just must be able to locate boundaries on the ground). Even though the agreement describes areas in which one or more cities may not annex, in the usual case, the annexation agreement provides each participating city with an area, or "sphere of influence" in which it alone can annex property. The statute requires each city to give the other municipalities that are party to the agreement notice of any annexation undertaken at least sixty (60) days prior to the adoption of an annexation ordinance. Parties to an agreement can stipulate otherwise concerning notification. An agreement can state anything else that the parties think is necessary or proper. Some agreements have included provisions about whether cities may extend utility lines in each other's spheres of influence and about the operation of these lines. "Spheres of influence" often follow extraterritorial jurisdiction boundaries.

In order to adopt an agreement, the city (or town) council of each municipality must hold a public hearing on the agreement. A joint hearing may also be held. Notification is the same as for voluntary annexation – publication in a newspaper having general circulation in the municipality at least ten (10) days prior to the date of the public hearing. If any sphere of influence is greater than three (3) miles out of the corporate limits, the county commissioners must also approve the agreement.

Suggested Next Steps

Before staff members of any jurisdiction begin work on recommended "spheres of influence"/annexation agreements, the applicable governing boards of the pertinent jurisdictions must sanction the effort. Therefore, the first step in pursuing annexation agreements with other municipalities surrounding Asheville should have the Mayor (or other Council representative) meet with representatives of the other local governments and Buncombe County. The purpose of this meeting (or meetings), which perhaps could be facilitated through the Land of Sky Regional Council of Governments, would be to evaluate interest in and commitment to examining the development of annexation "spheres of influence". This meeting should include representatives of Woodfin, Weaverville, Black Mountain, Biltmore Forest, Montreat, Asheville, and Buncombe County. While all these areas may not want to consider annexation agreements, the staff recommends that the initial invitation should be extended to all noted. Although it might seem prudent to include representatives of Leicester and Swannanoa in such meetings, as there are no official governments or representatives at this point, the staff does not recommend including them at this time. The proposed boundaries for these areas should, however, be part of the discussion. The staff also recommends that consideration be given to including the towns of Fletcher and Mills River in Henderson County.

Should agreement be reached on pursuing one or more annexation agreements, staff from the respective jurisdictions can begin mapping suggested "spheres of influence." In determining boundaries, consideration should be given primarily to efficiency of service provision. It should also be recommended that each party to an annexation agreement establish internal annexation policies. Such policies would detail the principles for annexation established by that municipality and the service delivery that can be expected to those annexed. The staff further recommends that extraterritorial jurisdiction be discussed as part of each annexation agreement. Since Buncombe County now has zoning, they would need to agree to any changes to jurisdiction as part of this proposal.

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Once "spheres of influence" have been preliminarily determined, the staff of agreeing municipalities can present such areas for approval by their governing boards. Following any approval received, a formal public hearing for consideration of an agreement should be held, following all statutory requirements.

Questions for Discussion

- Should Fletcher and Mills River (and perhaps Henderson County) be invited to the initial meeting? The staff recommends their inclusion.
- Is there any way to tie service provision into the discussion? This would involve the legislature. Staff research has revealed that a major benefit found in annexation agreements that are in place across the State of North Carolina is in planning for service provision.
- Will such discussions precipitate additional calls for incorporation? Should this be a concern?
- Do those involved in previous discussions with Fletcher or Woodfin have information to contribute prior to moving forward?

Municipal Financial Structure

Chief Financial Officer Ben Durant summarized the following report by saying that the service demand and revenue diversification (1) Asheville has the highest ratio of daytime to residential population in the state; (2) the demand for services and pressure on infrastructure grows as a result of daytime influx; and (3) yet Asheville's revenue "tool-box" for meeting increased service and infrastructure demands is limited compared to cities with lower day-time populations; (4) "Tools" used by other cities (but unavailable to Asheville) include maximized occupancy tax rates, food and beverage taxes, and differential water rates; (5) despite revenue limitation, Asheville still has the fifth lowest property tax rate out of the 15 largest cities in the state; and (6) impact high day-time population and low revenue diversification (a) growing and unsustainable burden on property taxpayers; (b) gradual weakening the City's ability to deliver high quality core services at a reasonable rate and affordable cost; and (c) community survey results that show below average citizen satisfaction with core services.

Staff recommendations are (1) seek a negotiated legislative remedy for the financial limitations Asheville has experienced as a result of the Sullivan Acts, including alternatives to diversify the City's revenue opportunities, to provide a more equitable position for city taxpayers; (2) seek a regional approach to plan for future growth and annexation beginning with an annexation agreement process similar to Charlotte-Mecklenburg County "spheres of influence" model; and (3) continue to operate the water system according to the best management practices and professional engineering analysis conducted to ensure the long term viability of the water system.

The purpose of this staff report is to present a benchmark comparison of city & CDB service demands and the revenue diversification of North Carolina metro areas. It is also structured to serve as a response to a recent report by The John Locke Foundation that claims that the City of Asheville has the second highest combined city and county costs per capita.

The residential population of a city is a key indicator of demand for city services. A better measure of service demand, however, is a municipality's daytime population. The daytime population of a city center can be much higher than resident populations due to the influx of a large daytime workforce.

Daytime Population

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Based on the latest official census data, Asheville has the highest ratio of daytime-to-residential population in the state for large cities (i.e. cities with populations over 50,000):

City	Resident Population	Daytime Population	Ratio
Asheville	68,889	102,472	1.49
Wilmington	75,838	105,774	1.39
Winston-Salem	185,776	233,617	1.26
Jacksonville	66,715	87,346	1.31
Greensboro	223,891	282,808	1.26
High Point	85,839	105,462	1.23
Raleigh	276,093	345,286	1.25
Charlotte	540,828	655,483	1.21
Rocky Mount	55,893	64,787	1.16
Gastonia	66,277	76,887	1.16
Greenville	60,476	70,501	1.17
Fayetteville	121,015	138,334	1.14
Durham	187,035	214,137	1.14
Concord	55,977	61,189	1.09
Cary	94,536	92,231	0.98

Asheville is expected to continue being at the top of the day-time population list in future years.

Service Demand

Demand for both the quantity and quality of Asheville's services grows significantly as a result of its large daytime influx of population. Examples of increased demand are as follows:

- Increases and different mixes of criminal activity
- Increased traffic congestion, requiring alternative mobility options
- More demands on parks, community and recreational/entertainment facilities
- Accelerated maintenance requirements for streets, sidewalks and water & storm water systems that deteriorate at a faster pace.

Local revenues used to fund operations are being stretched as a result of this increased demand. Asheville's two largest sources of revenue for general government services are property taxes and sales taxes. The John Locke Foundation states that Asheville has the second highest sales tax burden and the fifth highest property tax burden in the state. Both assertions are misleading.

Consider the claim that Asheville has the second highest "sales tax burden" in the state. One obvious problem with this argument is that sales tax rates are set by the state, not by local government, and the rates are identical for cities across the state. The Locke Foundation points out that the sales tax in Asheville produces more revenue, on a per capita basis, than other cities. That is not because our rate is higher. It is because Asheville has more tourists and visitors than most other cities, reflective of a vibrant economy rather than a "burden".

Using these same methods of analysis, if the Locke Foundation were studying two grocery stores that charged the same prices for their groceries, but one of the stores had more customers and therefore produced more revenue, the Locke Foundation would report that the more successful store has placed a "greater burden" on their customers.

The assertion that Asheville has the fifth highest property tax rate in the state is also inaccurate. In fact, of the fifteen largest cities in the state, the City of Asheville's rate is 11th, with

only four cities having a lower rate. This ranking can be seen in the Property Tax Comparison section of this document. Families in Asheville must also pay County property taxes. People in some Asheville neighborhoods also pay the supplemental school tax, which is also set by the County Commissioners. Currently, the combined rate of these three property tax rates is $1.095 per $100 of assessed value.

There are other fees for government charges, but the rates set by Asheville tend to be in-line with other communities. One fee that is higher in Asheville than the state average is our water/ sewer rate. Our mountain topography makes this infrastructure more expensive to build and maintain than in the flatlands. City Council and MSD have increased rates to make up for years of previous neglect. More information on water fees is presented later in this report.

As an alternative to excessive reliance on property taxes, it is generally accepted that cities need a well balanced and diversified set of taxes and revenue options to fulfill the increased service demands created by high day-time populations. A review of the revenue diversification of North Carolina metro cities is provided below.

Revenue Diversification

The major types of revenues available to North Carolina municipalities are local taxes, state-shared revenues, user charges, other local fees and charges, and federal and state grants. With few exceptions, large North Carolina municipalities utilize all revenues that are statutorily available to them to support their various services. Thus, revenue diversification is not necessarily achieved by cities identifying new and unique revenue sources; rather, it is accomplished through a city's ability to establish revenue structures that maximize the use of what is already available to us and earmark those proceeds through a local act to support specific municipal needs.

To compare Asheville's revenue diversification with that of other metro cities, the finance department gathered benchmark data on the rates and the use of the tax proceeds for the 1) Room Occupancy Tax and 2) the Food & Beverage Tax. These revenues were chosen in particular because their rates and usage vary considerably among jurisdictions; consequently they offer significant revenue enhancement and diversification possibilities for Asheville through the adoption of local acts. Our review focused on the 15 cities (and encompassing counties) surveyed in the preceding day-time population analysis. Key findings are listed below:

Occupancy Tax:

- Buncombe County's county-wide room occupancy rate of (4%) is the second lowest of the 15 cities survey in the benchmark study.
- In several instances in the survey, the general assembly has authorized both a county and a city within that county to levy an occupancy tax. Approximately 50% of the cities in the survey have a city levied room tax.
- Currently, Asheville does not have legislative authority levy a city occupancy tax.
- Usage of occupancy tax proceeds varies considerably among jurisdictions. Examples of current usages include providing funds for product development, operating and debt service support for civic centers and coliseums, design of a performing arts center, financing of a NASCAR Hall of Fame museum and economic development grants.
- Over the past several years, there has been a greater effort to make occupancy taxes uniform. Generally, the county occupancy tax rate cannot exceed 6% and the city occupancy rate, when combined with the county rate, cannot exceed 6%.

He provided Council with detailed results of the occupancy tax benchmarking data.

Food & Beverage Tax. Currently only four counties in North Carolina have a prepared food & beverage tax. They are Cumberland, Dare, Mecklenburg and Wake counties. None of the 15 cities in the survey levy a food & beverage tax. Currently, the only municipality with a food & beverage tax is the town of Hillsborough. A uniform rate of 1% is charged by the aforementioned jurisdictions. In general, usage of these proceeds is for Convention & Visitor Bureau activities, convention center financial support and various special capital projects.

Water Revenue. Water Resources staff compared water rates for the 15 large cities in the benchmark analysis. The chart below provides an inside/outside water rates comparison. Because some cities use different tiers for their rate structures, in order to provide for a consistent comparisons rates are presented using typical residential water usage of 5 CCF or 3,740 Gal per month. Data is shown in CCF and Gallons:

	Water Rate Per CCF (Based on 5 CCF Usage)		**Water Rate Per 1,000 Gallons (Based on 3,740 Gal Usage)**	
	Inside Rate	Outside Rate	Inside Rate	Outside Rate
Asheville	3.45	3.45	4.61	4.61
Wilmington	1.95	1.95	2.61	2.61
Winston-Salem	1.09	1.64	1.46	2.19
Jacksonville	1.80	3.60	2.40	4.81
Greensboro	2.30	4.60	3.07	6.15
High Point	2.19	4.39	2.93	5.87
Raleigh	1.96	3.91	2.62	5.23
Charlotte	1.56	1.56	2.09	2.09
Rocky Mount	1.69	3.39	2.26	4.53
Gastonia	2.03	4.07	2.72	5.44
Greenville	2.21	3.43	2.95	4.58
Fayetteville	1.65	2.06	2.20	2.75
Durham	1.98	3.96	2.65	5.29
Concord	3.67	4.41	4.90	5.89
Cary	2.45	7.36	3.28	9.84

Key findings are as follows:

- Twelve of the 15 cities in the survey (or 80%) charge differential (higher rates) for customers outside of the city limits.
- Of the preceding 12 cities, 8 of them charge double or higher rates to customers outside of the city limits.
- Asheville is prohibited through local legislation from charging differential rates.

Property Tax Comparison

The North Carolina Department of Revenue (NCDOR) collects data on property tax rates for all North Carolina municipalities. In order to accurately compare property tax rates among multiple cities, the effective tax rate must be used. The effective property tax rate is calculated by multiplying the sales assessment ration by the current tax rate. The sales assessment ratio is defined as the percentage of market value represented by the current property tax rate and is

calculated by the NCDOR for each city. This allows from comparative tax rates even though revaluation of property occurs at different times among cities. It makes for a "fair" comparison:

Property Tax Rate Comparison

City	Effective Rate
Greensboro	59.11
High Point	58.44
Durham	53.29
Jacksonville	53.16
Greenville	51.86
Gastonia	50.14
Fayetteville	47.51
Winston-Salem	46.99
Charlotte	43.00
Concord	42.97
Asheville	**41.92**
Raleigh	36.74
Cary	35.48
Wilmington	30.97
Rocky Mount	24.23

Based on the data above, 10 of the fifteen cities with populations over 50,000 have property tax rates that are higher than Asheville's.

Conclusions - Asheville has the highest day-time population for cities with populations of 50,000 or above, yet it has less revenue diversification to support the resulting increased demand for services. The county-wide room occupancy tax in Buncombe is the second lowest in the survey; Asheville currently does not have legislative authority to levy its own occupancy tax rate. Furthermore, Asheville is prohibited by the Sullivan Acts from charging differential water rates to customers outside of the city boundaries, and is thereby limited in its ability to address critical infrastructure needs. Despite these limitations, Asheville continues to have a relatively low property tax rate.

Proposal to Settle the Sullivan Act Dispute

Councilman Newman, working with Mayor Bellamy and Vice-Mayor Davis (per Council's direction at the City Council retreat), briefed Council on the following proposal to settle the Sullivan Act dispute:

"Proposal. (1) City of Asheville agrees there will be no differential rates charged for water customers inside and outside the city limits; (2) the Sullivan Acts will be modified to allow Asheville to operate under the Voluntary Annexation policies that apply to all other cities in North Carolina. Asheville is open to policies to assure voluntary annexation will not be abused. Potential policies could include (a) no more than 5% of the city properties could be non-contiguous with the primary city limits unless specifically authorized by state legislation (such as the airport property). Existing state law allows cities to have up to 10% non-contiguous; (b) no properties could be voluntarily annexed into the city unless they are within one-half mile of the city limits. However, Asheville could still require other developments that are more than a half mile from the city limits to sign a Voluntary Annexation agreement with the city if they wish to connect to city water lines, so that the city can bring them into the city once the city has grown outwards to the point that the development is within one-half mile of the city; (c) developments of less than eight residential units or 10,000 square feet of commercial space would not be required to enter

into a Voluntary Annexation agreement with Asheville in order to access municipal water services; (d) no existing customers of the water system could be required to sign an Annexation Agreement as a condition of continuing to receive water service. The policy would apply only to new developments; and (e) new developments that are located closer to another incorporated town or city than Asheville could not be required to sign a Voluntary Annexation agreement with Asheville unless there is a "sphere of influence" agreement between Asheville and the other town or city; (3) Asheville will not be allowed to divert Water Funds to the General Fund. However, up to 5% of Water Funds may be used for infrastructure improvement projects directly related to water line replacement (such as improving streets or sidewalks torn up during the line replacement process); and (4) City and County continue discussions about opportunities to work together to be partners on infrastructure and facilities that serve the larger region. The previous water agreement included the following City/County partnerships (a) County reimbursed Asheville about $1.7 Million annually for law enforcement services provided outside the city limits that are not provided in the City; and (b) the County was financially responsible for the Nature Center, McCormick Field and the golf course.

"The Sullivan Acts II and III. In 2004, the City Council decided to dissolve the Water Agreement that had governed management of the system since the early 1980's. In response, members of the legislative delegation passed Sullivan Acts II and III. Sullivan Act II prohibits the city from charging differential water rates. Sullivan Act III prohibits the city from using Water Funds for any purposes unrelated to management of the water system and prohibits Asheville from using Voluntary Annexation of new developments that wish to access City water services.

"Benefits of the proposed settlement. The proposed settlement represents a compromise. Neither party gets everything they wish. However, it does address the core concerns identified by the City, County and legislators over the past several years. Benefits of the settlement to Asheville include (1) the water system will be managed by the City, which has demonstrated good stewardship of the system over the past several years, investing tens of millions in long overdue water infrastructure repairs; (2) voluntary annexation will allow the city's tax base to grow as the area urbanizes; and (3) the city will have additional funds to upgrade streets and sidewalks as part of the process for replacing old water lines. Benefits of the settlement to non-city residents include (1) assurance that water rates will be no higher for non-city customers than for those who live in Asheville; (2) assurance that for all existing customers, water cannot be used as a condition for annexation into the city; and (3) assurance that payments made for water services cannot be diverted to the City's General Fund. Benefit to the water system is the assurance that the infrastructure will be fixed as funds cannot be diverted to non-water system programs."

Councilman Newman said that unfortunately the Sullivan Act litigation was not resolved in a way the City hoped they would be. But in spite of that we have a sense that there is some openness amongst our legislators to changing the Sullivan Acts in ways that might make them more fair to Asheville and address some of the issues that staff has about the unique limitations that Asheville has on the management of the water system. Mayor Bellamy, Vice-Mayor Davis and he would like Council's support of putting this proposal forward for discussions with our legislators. In summary, we want to put forward a proposal that the Sullivan Acts should be modified to allow Asheville the ability to grow as other cities do. Across the State, the normal and non-controversial way that cities grow in terms of growth outside the existing city limits is through voluntary annexation. He reiterated the voluntary annexation agreement proposal as outlined above in the proposal. As part of this, we will have discussions with our neighboring municipalities around questions of "spheres of influence." There also seems to be some genuine openness to is the ability to use some of our water resource funds to fix infrastructure in our community that is directly associated with water line repairs.

Mayor Bellamy would like to present this proposal to our legislators and begin dialogue with Buncombe County about how we move forward, prior to the deadline for writing a bill.

Councilman Mumpower said that the N.C. Supreme Court validated the power of our local legislators to steal Asheville's water system. They have taken away from Asheville a $1 Billion asset. He felt this negotiated proposal does nothing more than sell out the people of Asheville and that's wrong.

Councilwoman Cape said that even if we had won the Sullivan Act litigation, we would still be up against this negotiation process about annexation. She commended Mayor Bellamy, Vice-Mayor Davis and Councilman Newman for helping us try to get to a better place. She supported the proposal, except in order to be fair, she suggested deleting the clause "Developments of less than eight residential units or 10,000 square feet of commercial space would not be required to enter into a voluntary annexation agreement with Asheville in order to access municipal water services."

Vice-Mayor Davis said that no one on Council is pleased with the outcome of the lawsuit. Regarding Councilwoman Cape's concern, he said that after discussions with our legislators, they wanted a density portion, but that can still be negotiated. The legislators do recognize we are good stewards of our water system. We have up until March 3 for any kind of an amendment to the Sullivan Act to take place. The proposal is at least a position and an opportunity to amend the Sullivan Act to where at least we have some benefits beyond what we have. The legislators do recognize that for Asheville to be healthy, they must have some reasonable way to grow. He felt this proposal is a gain.

Vice-Mayor Davis moved to adopt the proposal outlined by Councilman Newman. This motion was seconded by Councilman Miller.

Councilman Russell was concerned that this is the first time Council has seen the proposed settlement. We do need to work with our legislators, but didn't want to rush into a proposal.

Councilman Newman apologized for not circulating the proposal sooner, but realized there are some deadlines in the legislature quickly approaching. He was asking for Council's support in moving in this direction, noting that he is not asking Council to approve the specific language.

Mayor Bellamy said the proposal is the beginning of conversation. She believes that the legislators realize Asheville is going a good job with management of their water system. It is incumbent upon Council to spend time educating the community letting them know how Asheville is moving the water system forward. She feels the community wants elected officials who will work together and leadership on issues that affect our community. She urged Council to support this proposal to move our community forward, acknowledging that this is an opportunity to make some changes.

The motion made by Vice-Mayor Davis and seconded by Councilman Miller carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-43 - RESOLUTION AUTHORIZING THE USE OF DOWNTOWN ASHEVILLE STREETS FOR THE LAYOUT OF THE BELE CHERE FESTIVAL ON JULY 24-26, 2009.

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the use of downtown Asheville streets for the layout of the Bele Chere Festival on July 24 – 26, 2009.

The City of Asheville via the Parks, Recreation, and Cultural Arts Department produces the annual Bele Chere Festival in downtown Asheville. The festival requires many downtown streets to be closed prior to and during the three-day event. As downtown Asheville continues to develop, adjustments to the festival layout are necessary.

She showed a map which showed the streets that will have festival activities as well as street closings.

The most significant changes to the festival include (1) the elimination of using College Street (between Biltmore Avenue and South Charlotte Street) and other surrounding streets due to the ongoing construction of Pack Square Park, and (2) the addition of the Asheville Civic Center; and (3) reduced number of contracted stages from six to four.

Festival staff developed the festival layout and has been approved by representatives from the Asheville Fire Department and the Asheville Police Department. Staff has also spoken with newly impacted members of the downtown community and the initial feedback was very positive.

This action does not comply with the City Council Strategic Operating Plan or other City master plans.

This item was reviewed the by the Bele Chere Advisory Board at its regular meeting on January 28, 2009, and by the Recreation Advisory Board and at its regular meeting on February 9, 2009. Both boards support the action and recommend City Council approve the proposed festival layout.

Pro:

- Establishes the Bele Chere festival layout with advance time to communicate information to the community.

Con:

- None

There is no fiscal impact.

Staff recommends City Council adopt a resolution authorizing the 2009 Bele Chere festival layout and indicated by the festival map.

In response to Vice-Mayor Davis, Ms. Ruggiero said that staff has met with members of the Mt. Zion Church to share this footprint and they were excited. City staff will continue to work with representatives of the Eagle/Market Street.

Councilman Miller said that since July and October are our busiest months, he suggested that long-term staff look at holding Bele Chere in September to extend sale tax business over a very difficult month.

Councilman Russell thanked the Bele Chere Committee for their commitment and the number of hours they devote to this festival.

In response to Councilwoman Cape, Ms. Ruggiero explained why Lexington Avenue was deleted from the footprint.

Mayor Bellamy said that the Bele Chere Festival was born at a time when we needed to get people downtown. She urged the Committee to focus on local artists and local merchants.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-43. This motion was seconded by Councilman Mumpower and carried unanimously.

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B. RESOLUTION NO. 09-44 - RESOLUTION APPROVING HOUSING TRUST FUND LOANS FOR THREE AFFORDABLE HOUSING DEVELOPMENTS

Mr. Randy Stallings, Community Development Analyst, said that this is the consideration of a resolution allocating $700,000 in Housing Trust Fund (HTF) loans for three (3) affordable housing developments.

The following three (3) Housing Trust Fund applications have been evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at its January 28th meeting. As of February 18th, $718,600.39 is available in the Housing Trust Fund. The HCD Committee has recommended partial funding of three loan applications, due to insufficient funds to meet all requests in full.

1. Mountain Housing Opportunities Inc. (MHO) - Westmore

MHO requested a $470,000 loan, but the HCD Committee has recommended a loan of $300,000 at this time. The loan is for the development of 72 apartment rental units in West Asheville. The property is located near Deaverview and Pisgah View Roads. If approved, the developer does anticipate requesting the additional $170,000 at a future date. The second subsidy would be contingent upon the receipt of an early repayment on the Crowell Park development estimated to be $480,000. The Housing and Community Development Committee (HCD) reviewed the project and recommended that $300,000 be approved at the present time, and that additional funding be considered at a future date upon receipt of the Crowell Park repayment by the City.

In addition, the HCD committee supports the additional amount of $170,000 to Mountain Housing Opportunities Inc. when the Crowell Park funds are returned to the Housing Trust Fund.

Terms Requested: 2% Interest, permanent financing, 30 year term.

Pros:

- Receipt of State Tax Credits will ensure 30 years of guaranteed affordability for families below 60% AMI.
- Per-Unit subsidy is extremely low at $4,166.
- Large number of affordable units.
- Project will be Energy Star certified.
- Public transit and employment centers are within close proximity.
- Track record of the developer is exceptional
- Complies with the Mayor's Task Force recommendation that rental housing be prioritized.

Cons:

- The property does require a partial rezoning from CI-RM16
- The large appropriation will more quickly deplete available funds.

2. Mike Figura, Eco Concepts Development, LLC – Sulphur Springs.

Mr. Figura requested $250,000; and is recommended for a $200,000 loan for the development of a 27 unit mixed-use development in West Asheville. The property is located at 22 Sulphur Springs Road on the Haywood Road Corridor. The project will contain a total of 10 affordable condominium units and 17 market rate units. The project also includes 3,577 feet of lower level commercial space. The developer has agreed to a Memorandum of Understanding with Mountain Housing Opportunities to find qualified buyers for the affordable units. The project will have an elevator and will be either LEED or NC Healthy Built Homes certified. Thirteen of the project units are already under reservation. The per-unit subsidy is $20,000. HCD has reviewed the proposal and is supportive of the project.

Terms Requested: 2% interest, construction financing, 24 months

Pros:

- The project meets many of the goals and objectives identified in the City strategic plans, including mixed use development, mixed income, infill development, accessibility to jobs and transit, pedestrian friendly design, and green building practices.
- Provides redevelopment of a blighted area.
- Project will be LEED or NC Healthy Built certified.
- Partnership with MHO will provide additional expertise for the affordability component of the project.
- Project has all appropriate planning and zoning approvals.

Cons:

- The developer has no prior history with the Housing Trust Fund.
- Extensive site-cleanup is needed; however, the developer has received a favorable bid and has factored this into the construction budget.

3. Kirk Booth, Beaucatcher Properties LLC - 57 Nancy Street

Mr. Booth requested $250,000, and is recommended for $200,000 for the development of 12 single family rentals in a cottage development located in West Asheville. The property is located near employment centers on Patton Avenue. The project has received Level I approval and all financing has been committed. The per-unit subsidy is $16,667. The developer has agreed to the filing of a Deed Restriction to ensure that rents remain affordable for a minimum of 10 years. HCD has reviewed the proposal and is supportive of the request.

Terms Requested: 2% interest, permanent financing, 30 year term.

Pros:

- The project meets many goals and objectives identified in the City strategic plans, including infill development, accessibility to jobs and transit, pedestrian friendly design, and green building practices.
- The cottage development style provides housing appropriate for families and children.
- Project will be Energy Star certified.
- Construction ready to proceed immediately.
- Complies with the Mayor's Task Force recommendation that rental housing be prioritized.

Cons:

- Proposed rents are near the program maximum for 3-bedroom units.
- No prior history with the Housing Trust Fund; however, the developer has successfully completed similar projects locally.

All three applications were presented to the Housing and Community Development Committee on January 28, 2009, and were unanimously approved.

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This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

It also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Funding for the Housing Trust Fund has been previously appropriated. The current balance in the Trust Fund is $718,600.39. The remaining available balance if all three (3) projects are funded at the terms requested will be $18,600.39. All projects are new construction and are anticipated to add $22.4 million dollars in new development to the City tax base.

As recommended by the HCD Committee, the staff recommends adoption of a resolution authorizing the City Manager to approve the additional Housing Trust Fund loans for the projects identified below:

- Mountain Housing Opportunities Inc. - Westmore $300,000.
  $170,000 to Mountain Housing Opportunities Inc. for the Westmore project when an anticipated $480,000 is returned to the Housing Trust Fund through an early repayment of a loan to Mountain Housing Opportunities Inc. for the Crowell Park development
- Mike Figura, Eco Concepts Development – Sulphur Springs $200,000.
- Kirk Booth, Beaucatcher Properties LLC – 57 Nancy Street $200,000.

Mr. Mike Figura, from Eco Concepts Development, thanked Council for partnering with them on this project, noting that they will be able to use this money to leverage against the seller's finance loan.

Upon inquiry of Vice-Mayor Davis, Councilman Newman, Chair of HCD, felt the financial difficulties of the Villas of Cedar Hill should not have a negative impact on this project.

In response to Councilman Mumpower, Planning & Development Director Judy Daniel said that the Villas of Cedar Hill did receive a Housing Trust Fund loan.

Councilman Mumpower spoke against the action in that this is not a time to use taxpayer dollars to subsidize affordable housing.

Councilman Newman said that overall the Housing Trust Fund has a very low rate of default and foreclosure amongst the developers and residents who have invested in making home ownership a reality through this loan program. These are well thought out loans to help people afford homeownership in a sustainable way. We are leveraging a lot of good out of these projects.

In response to Councilman Mumpower, Mr. Stallings said the sales price on the condominium units will be $145,000 for 2 bedrooms; the 3-bedroom rental will be $875/month and the 2-bedroom rental will be approximately $600. Councilman Mumpower then felt the prices are not affordable for normal people.

Councilwoman Cape stressed that people need jobs. Here we have a Housing Trust Fund and we can either sit on the $700,000 or get people back to work to buy food and pay sales taxes. Our City has very limited opportunity to put jobs on the street and the Housing Trust Fund can do that.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-44. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no".

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C. RESOLUTION NO. 09-45 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PURPOSE OF PERFORMING CERTAIN CONSTRUCTION AND REPAIR WORK ON COUNTY PROPERTY

ORDINANCE NO. 3705 – BUDGET AMENDMENT FOR STREET WORK NEAR BUNCOMBE COUNTY JAIL COMPLEX

Public Works Director Mark Combs said that this is the consideration of a resolution authorizing the City of Asheville to perform certain construction and repair work on city-maintained streets adjacent to the new jail complex and on Buncombe County property.

Last autumn, Public Works staff prepared an estimate for Buncombe County to do streets milling, resurfacing, re-striping and miscellaneous paving or patching in the vicinity of the new jail complex behind City Hall.

The estimate for the project is $157,508.62 which includes all 'out-of-pocket' expenses such as supplies, sub-contract work and materials to complete the project. The estimate does not include overhead expenses (labor and equipment wear & tear), which is an additional $56,702 'soft cost' to the City. Buncombe County has agreed to contract with the City to perform this work per the estimate, to be completed in Spring 2009.

This action complies with the City Council Strategic Operating Plan to "Develop better relationships with State and County elected officials...."

Pros:

- Highest quality infrastructure adjacent to City Hall;
- No direct financial impact to the City for materials and supplies;
- Reduced financial impact to Buncombe County (estimated private sector cost to do this project: $220,000);
- Promotes 'win-win' partnership with Buncombe County.

Cons:

- Three weeks of work for Public Works staff, 'opportunity cost' for other projects
- 'Soft cost' of $56,702 (labor and equipment wear & tear)

There is only indirect financial impact to the City as outlined in the pros and cons above.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Buncombe County to perform the described work.

City Attorney Oast said there is a dollar limitation on a project we can do with our own labor force. The authorization to get around that has not been obtained yet, therefore, any actions Council takes will be subject to compliance with the applicable statutory provision.

In response to Councilman Mumpower regarding subcontractors hiring illegal workers, Mr. Combs said that the City will go through their normal process to verify residency.

Councilman Mumpower could not support this action because we cannot find ways to make sure subcontractors are hiring legal workers.

In response to Mayor Bellamy, Mr. Combs said we are doing the work in-house, except for milling of the street which must be sub-contracted out.

City Manager Jackson noted that one of Council's strategic goals is relationships with partners. The City has stepped up and (1) put in waterlines to the CTS contaminated areas at significant savings to Buncombe County; and (2) used our contract to extend broadband to the 911 Call Center saving hundreds of thousands of dollars. This is a way to build good relationships with our partners.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-45, subject to compliance with the applicable statutory provision. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

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Councilwoman Cape moved for the adoption of Ordinance No. 3705, subject to compliance with the applicable statutory provision. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

Economic Stimulus Package

Mayor Bellamy updated Council on her recent trip to Washington, D.C. to meet with President Obama, Vice-President Biden and 5 Cabinet members, where 37 cities were represented. She outlined each key priority and the amount of funding (some which are competitive). She asked for Council's support on (1) use the Finance Committee as the Economic Recovery Committee and adding three community members to be a part of that dialogue; (2) develop a page on our website to show projects and how money is spent; (3) develop an Energy and Environment Plan; and (4) coordinate with the Housing Authority, schools and other entities.

Mayor Bellamy said that City Manager Jackson has asked Assistant to the City Manager Lauren Bradley to be the staff liaison to keep track of these issues. Due to time sensitive deadlines and since we don't want to miss any opportunities, she asked Ms. Bradley to give Council a brief report.

Ms. Bradley said the following are funding opportunities already announced through the N.C. Dept. of Environment and Natural Resources (DENR) through the Drinking Water and Clean Water State Revolving Funds. She provided Council with copies of letters of intent for projects that we intend to apply for funding for. There is an application deadline tomorrow for one of those revolving funds. She asked for Council's consensus to move those applications forward. The second item for consideration is small enhancement projects through the N.C. Dept. of Transportation (NCDOT). They have asked for a call for project proposals for that pot of money they will be receiving. She provided Council with a working list of projects staff has accumulated and they expect to have that list finalized by the end of this week. She asked for Council's consideration of staff forwarding that to the NCDOT for all projects can be considered in a timely manner. It was the consensus of Council to authorize the City Manager to proceed with (1) accepting and endorsing the letters of intent to DENR for funding consideration under the associated State Revolving Funds; and (2) accept and endorse the working list of projects

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identified by staff for funding consideration under the NCDOT's Small Enhancement Projects program, and authorize staff to forward the final list to NCDOT upon its completion.

Mayor Bellamy said that she personally presented staff's list in draft form to each of the applicable secretaries. She also let the US Attorney General know about the need for prosecutors and judges, and spoke about the success of the Weed & Seed and Project Safe Neighborhood programs. She said staff will bring Council regular updates.

Councilwoman Cape said that Congressman Shuler was in Asheville and was pleased to see how quickly things are moving.

In response to Councilwoman Cape about 20% being set aside for green initiatives, Ms. Bradley said that our Sustainability Coordinator is putting together project proposals, which are posted on our website.

Lawsuit

The City received a Complaint in Federal Court on February 10, 2009, from Holly Oxner, Jr. and Forrest Eugene Weaver. The nature of the proceeding is a class action lawsuit brought in federal court challenging the City's personnel policy regarding the conversion of accumulated sick leave for purposes of the N.C. Local Government Employees Retirement System. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to Council about the need of quality education.

Mr. Chuck Chiavaras suggested Council raise money by having bicyclists pay to use the track at Carrier Park, similar to golfers who have to pay to use the golf course. This would be one way to raise money and not cut staff. He felt current staff have worked to improved the golf course and urged Council to continue moving forward in that regard.

Mr. Brian Festa spoke to Council about the need for a conscious evolution in the way we teach in the public school system.

Mr. Mike Fryar agreed with Mr. Chiavaras in that bicyclists should pay to use our facilities.

Closed Session

At 10:12 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To discuss matters related to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered by the Council in negotiations; provided, that any final action authorizing economic development incentives will be taken in open session. The statutory authority is contained in G.S. 143-318.11 (a) (4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is G.S. 143-318.10 (e). The statutory authorization is contained in G.S. 143-381.11 (a) (1). This motion was seconded by Councilman Russell and carried unanimously.

At 10:23 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:23 p.m.

Magdalen Bouleson
CITY CLERK

MAYOR

Tuesday – March 10, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION

Mayor Bellamy was pleased to recognize and welcome Ms. Alma "Gibbie" Harris as the new Buncombe County Health Director.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote. Mayor Bellamy moved this to the end of New Business.

At the request of Mayor Bellamy, Consent Agenda Item "F" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 24, 2009

B. RESOLUTION NO. 09-46 - RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC. D/B/A VERIZON WIRELESS, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 57 CRESTWOOD DRIVE, ASHEVILLE NC

ORDINANCE NO. 3706 - BUDGET AMENDMENT FOR A LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC. D/B/A VERIZON WIRELESS, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 57 CRESTWOOD DRIVE, ASHEVILLE NC

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Bell Atlantic Mobile of Asheville, Inc. for antennas at 57 Crestwood Drive, Arden, North Carolina; and the associated budget amendment, in the amount of $56,200 from tower lease revenue.

The City of Asheville owns and operates a telecommunications tower located on property at 57 Crestwood Drive in Arden. The City leases antenna space on the tower and ground space for related equipment.

Bell Atlantic Mobile of Asheville, Inc. with its principal place of business located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, has offered to enter into a license agreement for antenna space and related equipment on the tower. A tower analysis is required by the license agreement to assure that the new installation does not interfere with existing installations and that the tower is structurally able to support the additional installation, to be paid for by Bell Atlantic Mobile of Asheville, Inc. The proposed License Agreement will enable Bell Atlantic to operate nine (9) panel antennas at that site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be five (5) years with one renewal period of five (5) years. Bell Atlantic will pay an annual License Fee based on the initial rate of $30,000 with a 4% increase annually thereafter. Two years of license fees will be collected in advance; the first two months exempted to allow for installation of equipment.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were reviewed and endorsed by the Council's Planning and Economic Development Committee on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for this type of installation.

Please note that due to the close proximity of proposed installation to the adjacent property, City staff has requested Bell Atlantic to perform outreach to the neighboring property owner. The site plan includes a privacy fence installation and additional landscaping, to be installed by Bell Atlantic, to provide an appropriate buffer and address feedback from the neighbor.

The Notice of Intent to enter into a License Agreement with Bell Atlantic Mobile was published on February 27, 2009, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan in that strategic tower asset management, through the creation of new license agreements, presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable and fiscally responsible.

Several new tenant leases are anticipated in FY09. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on utilizing an estimated $80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays $29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the FY09 budget, and once implemented, will promote significant cost savings to the City over time. The budget amendment will appropriate $56,200 into the re-engineering account.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure
- Underwrites long term cost savings plan for telecommunications

Con:

- None

Fiscal Impact:

- FY09: $56,200 revenue
- FY09: $56,200 investment programmed to support re-location of City equipment
- Beyond FY09: Additional revenue stream based on initial rate of $30,000 per year with 4% escalation per year.
- Beyond FY09: Resulting savings of initial rate of $29,000 per year with 7% rent escalations.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to execute the license agreement with Bell Atlantic Mobile of Asheville, Inc. on behalf of the City of Asheville; and (2) budget amendment to be used for cost savings plan for telecommunications.

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C. MOTION ADOPTING THE 2009-10 BUDGET SCHEDULE

Summary: Staff is seeking City Council's approval of adoption of the Fiscal Year 2009-10 Budget Schedule.

At the February 24, 2009, City Council meeting, staff provided Council with a proposed Fiscal Year 2009-10 Budget Schedule for the time period between February 2009 and June 2009, when the budget is scheduled for adoption. The proposed schedule outlines key dates in the budget process.

Staff recommends that City Council review the proposed Fiscal Year 2009-10 Budget Schedule, make changes as needed, and make a motion adopting the Fiscal Year 2009-10 Budget Schedule.

D. RESOLUTION NO. 09-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE EASEMENT FOR ELECTRIC UTILITY LINE AT AIRPORT

Summary: The consideration of a resolution authorizing the City Manager to execute two easements for the installation and upgrade of power utility lines across property at the Airport

The land on which the Asheville Regional Airport is located is owned by the City of Asheville. It is leased by the Airport Authority, which has the ability to sublease to individual tenants at the airport. A new facility is being constructed on subleased property at the Airport, and this new facility requires electrical service. In order to draw power from the nearest transmission line, this service line will have to cross Airport property that is not subject to the sublease. This is the subject of the first easement. In connection with this work, the Airport is upgrading existing service to the fuel farm. This is the subject of the second easement.

This installation has been reviewed and approved by the Airport's Development Manager and Director, and the form of the easements has been approved by the Authority's attorney. The Airport Authority will consider the easements at its next meeting, scheduled for March 13. The facility is scheduled to be operational on April 1, and both the Authority and Progress Energy have requested this action.

This action complies with the City's Strategic Operating Plan in that it contributes to the development of a multimodal transportation program, supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center.

The requested action is consistent with the Airport's Master Plan.

Pros:
- Facilitates development of Airport
- Lines will be mostly underground

Con:
- None noted

The fiscal impact would be indirect; increases potential for revenue at Airport.

Adoption of the resolution is recommended

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E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION TO CONSTRUCT THE FRENCH BROAD RIVER CORRIDOR CONNECTOR

This item was removed from the Consent Agenda for discussion and/or individual votes. This item was moved to the last item of New Business.

F. MOTION APPROVING THE CONCEPT OF A TOWN HALL MEETING REGARDING ASHEVILLE'S ECONOMIC CLIMATE

This item was removed from the Consent Agenda for discussion and/or individual votes.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell.

Item removed from the Consent Agenda for discussion and/or an individual vote

F. MOTION APPROVING THE CONCEPT OF A TOWN HALL MEETING REGARDING ASHEVILLE'S ECONOMIC CLIMATE

Mayor Bellamy said this is an effort to give our community a sense of Asheville's economic climate. She asked that the Town Hall meeting be held on March 31, 2009; however, one of the speakers (Senator Nesbitt) was unable to attend on that date. At this meeting, she is asking if Council would approve the concept and come back with an alternative date.

Vice-Mayor Davis moved to approve the concept of a Town Hall meeting regarding Asheville's economic climate. This motion was seconded by Councilwoman Cape and carried unanimously.

Continuation of Consent Agenda

Mayor Bellamy said that the City Manager is currently authorized to sign informal construction contracts under $100,000, service contracts under $50,000 and professional service contracts under $50,000 without formal City Council approval. She felt all resolutions should reflect the policy currently in place where the City Manager is authorized to sign the contracts outlined above. All other resolutions should be authorizing the Mayor to sign the contracts. She asked that policy authority be aligned on the resolutions.

At the suggestion of Councilman Mumpower, it was the consensus of Council to ask Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower, City Manager Jackson and City Attorney Oast to meet in a timely manner to discuss this issue.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried on a 6-1 vote, with Mayor Bellamy voting "no".

III. PRESENTATIONS & REPORTS:

A. MAYOR'S COMMITTEE FOR CITIZENS WITH DISABILITIES REPORT

Ms. Karen Harrington, representing the Asheville Mayor's Committee for Citizens with Disabilities, said that the Asheville Mayor's Committee for Citizens with Disabilities is a committee of persons with disabilities, agencies, business and government representatives. She then explained their mission is to promote and advocate for equal and inclusive opportunities for people with disabilities in all aspects of society and to recognize and cooperate with all people and organizations that contribute to this cause. Their goal is to be an advocacy organization to educate the community for the inclusion of all people: (1) They provide educational services to employers and businesses about local needs surrounding people with disabilities, and have consultation services about accessibility issues according to the Americans with Disabilities Act; (2) They advocate for the inclusion of people with disabilities in all aspects of the community; (3) They promote the employment of people with disabilities; (4) They recognize outstanding efforts of employers who hire people with disabilities; and (5) They participate in community activities to enhance awareness.

Ms. Harrington then updated Council on (1) the Council of Committee and its role in the community; (2) their Awards Banquet and who the recipients were and why they received an award; (3) need to connect the community as a whole with those living with disability; and (4) the need to get past negative connotation with talking about disability. She provided Council with the Committee's brochure and a sheet outlining the reasons to volunteer.

Ms. Harrington thanked the Council for their support and invited them to attend their meetings.

In response to Mayor Bellamy, Ms. Harrington explained a program where private citizens, after training, can issue parking citations to people who park illegally in handicapped spaces. In over two years, they have written over 250 tickets.

Councilman Mumpower noted that near the Grove Arcade some handicapped parkers are taking advantage of the handicapped spaces by parking in them all day long. Mayor Bellamy felt the Parking Enforcement should manage that concern.

On behalf of City Council, Mayor Bellamy thanked Ms. Harrington and the Committee members for their hard work and dedication on this committee.

B. ECONOMIC STIMULUS PACKAGE UPDATE

Assistant to the City Manager Lauren Bradley briefly provided Council with an update that went to the Finance Committee regarding staff work related to the American Reinvestment and Recovery Act (ARRA).

Administrative Update- She reviewed a policy and administrative structure has been developed as a framework for managing ARRA efforts. Staff intends to fill the project manager and grants administrator positions identified in the flow chart with existing personnel through temporary reassignments. Many ARRA funding opportunities allow for a portion of the funds to

be used for grants administration; therefore, expenses associated with these positions may be charged to ARRA projects where appropriate and permitted. Staff will maintain detailed records in compliance with federal standards to ensure the highest level of financial accountability when managing these project funds.

Program Updates - This section provides updates on specific funding allocations that have been announced for Asheville as well as any associated grant applications, awards and project implementation.

Community Development

CDBG
HUD has announced that Asheville is designated to receive $332,942 in ARRA funds through the CDBG program. HUD is requiring grantees to prepare an action plan amendment for the use of these funds and will process the plans in an expedited manner, execute grant agreements, and make the funds available in each grantee's line of credit. Staff is waiting for additional announcements regarding requirements for the action plan amendments, including any changes in beneficiary and other eligibility requirements.

Homeless Prevention Fund
HUD has also announced that Asheville is designated to receive $509,000 from the Homeless Prevention Fund, which is dedicated to providing financial assistance and services to prevent individuals and families from becoming homeless and help those who are experiencing homelessness to be quickly re-housed and stabilized. Staff is waiting for additional information about the receipt and distribution of these funds.

Environment

As approved by City Council, staff submitted four applications to the NCDENR's Drinking Water State Revolving Fund. These projects included an Automated Meter Reading System, Pump Station Meters, Pumping System Installations, and the William DeBruhl Water Treatment Plan Backwash Lagoon. Applications for the Water Quality State Revolving Fund are due by March 24. Staff will provide ongoing updates on the funding status of these projects.

Transportation

Transportation Enhancement Projects
Staff responded to NCDOT's request for "small enhancement" projects (shovel-ready projects under $100,000) and submitted the letter made available at the last City Council meeting. Staff anticipates an additional call for larger enhancement projects ($100,000- $300,000 range) and is developing a list of recommended projects for future City Council consideration.

MPO Urbanized Area Funding
A portion of the state's highway funding is allocated to urbanized areas of over 200,000 in population. As previously reported, the Asheville urbanized area is expected to be allocated approximately $6 million. It is anticipated that these projects will be selected by the Transportation Advisory Committee of the French Broad River Metropolitan Planning Organization (MPO). It is anticipated that the MPO will call for suggested projects for this funding in the coming weeks. Staff will bring forward a recommended list for City Council consideration prior to submittal.

In order to ensure project expediency for funds that may be awarded for either enhancement projects or larger capital projects, staff plans to issue a Request for Qualifications for design/build teams for sidewalk projects. This step will allow the City of Asheville to pre-qualify firms that may be interested in bidding on specific projects once funding is confirmed,

thus accelerating the bid and project implementation process. As in all such requests, the City is not obligated to hire one or any of the firms submitting qualifications, so this step can be done now, before funding decisions are known.

Transit Capital Projects
The FBRMPO is expected to guide project choices for the $2.5 million in transit funding allocated for urban fixed-route transit systems in the Asheville urbanized area, which includes Asheville Transit and Apple County Transit in Henderson County. If these funds are allocated to the two systems using the existing state funding formula, Asheville Transit could expect to receive $2,004,598, and Apple County Transit would receive $585,841. The FBRMPO has requested the City of Asheville submit a prioritized list of transit capital projects by the end of the week, which staff has compiled and submitted for the Finance Committee's review. The list was prioritized based on system need, citizen benefit, and ability to implement according to ARRA required timeframes.

Public Safety

Edward Byrne Memorial Justice Assistance Grant - $265,466 is the minimum base allocation. Applications are due in May.

On Friday, March 6, staff presented this information to the Finance Committee and requested their approval of the Transit Capital Improvements Project Proposals, which she outlined, and approval to authorize staff to forward the list to the FBRMPO. ARRA transportation funding is in the form of reimbursable grants requiring no local match. There will not be adverse fiscal impacts to the city if these funds are obtained.

In summary, as of March 10, 2009, the total specific funding allocations that have been announced for Asheville as well as any associated grant applications, awards and project implementation is $3,607,408.

She also noted the following community announcements, which will be posted on our website with appropriate links. One is the Dept. of Education has just posted some specific information about how funds will be administered through their programs. We will be reaching out to our school systems to make sure that they are receiving information and that they get the support they need in order to move forward with their applications. The other announcement is the National Endowment for the Arts has put up their process for awarding funds. We have several community organizations that can benefit from that process. Those funds are eligible for pass grant recipients and also sub-granting authorities, which we have a couple in the Asheville area.

Ms. Bradley responded to questions from Council to the best of her knowledge regarding the funding allocations.

Councilman Mumpower felt that for Council to participate in these initiatives in any way represents a betrayal of the people we are trying to represent at a time of dire economic difficulty.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS CROWNE PLAZA RESORT AT 1 RESORT DRIVE FOR A MASTER PLAN COMPOSED OF THREE PHASES TOTALING 364,700 SQUARE FEET OF NEW FACILITIES, CONSISTING OF (1) DETAILED APPROVAL OF PHASE I THAT INCLUDES A 61,500 SQUARE FOOT EXPANSION OF THE EXISTING SPORTS CENTER FACILITY WITH A REQUEST FOR MODIFICATION TO REQUIRED SETBACKS; AND (2) CONCEPTUAL APPROVAL OF PHASES II AND III THAT INCLUDE A 123,200

SQUARE FOOT MIXED USE BUILDING AND A 180,000 SQUARE FOOT CONDO/HOTEL BUILDING RESPECTIVELY

ORDINANCE NO. 3707 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS CROWNE PLAZA RESORT AT 1 RESORT DRIVE FOR A MASTER PLAN COMPOSED OF THREE PHASES TOTALING 364,700 SQUARE FEET OF NEW FACILITIES, CONSISTING OF (1) DETAILED APPROVAL OF PHASE I THAT INCLUDES A 61,500 SQUARE FOOT EXPANSION OF THE EXISTING SPORTS CENTER FACILITY WITH A REQUEST FOR MODIFICATION TO REQUIRED SETBACKS; AND (2) CONCEPTUAL APPROVAL OF PHASES II AND III THAT INCLUDE A 123,200 SQUARE FOOT MIXED USE BUILDING AND A 180,000 SQUARE FOOT CONDO/HOTEL BUILDING RESPECTIVELY

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:34 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Crowne Plaza Resort at 1 Resort Drive for a Master Plan composed of three phases totaling 364,700 square feet of new facilities, consisting of (1) detailed approval of Phase I that includes a 61,500 square foot expansion of the existing Sports Center facility with a request for modification to required setbacks; and (2) conceptual approval of Phases II and III that include a 123,200 square foot mixed use building and a 180,000 square foot condo/hotel building respectively (Location and Aerial Maps – Attachments to City Exhibit 3).

She said the applicant is requesting review of site plans for site improvements and new construction at the Crowne Plaza Resort. This project is considered a Level III review pursuant to Section 7-5-9(a) of the Unified Development Ordinance (UDO) which designates review for commercial developments with a gross floor area of more than 100,000 square feet. The existing

resort contains approximately 393,000 square feet and the total new construction is proposed at 364,700 square feet over three phases.

The project site consists of a 108.45 acre parcel and a small leased portion of an adjacent parcel located off of Resort Drive (accessed from Patton Avenue/I-240) and is zoned Resort District. Surrounding properties are zoned Resort, Regional Business, RM-8, RS-2, RS-8, CBI, and CBII. This site is currently the location of the Crowne Plaza Resort.

The applicant is requesting review of a three-phase improvement project, with detailed approval of Phase 1 and conceptual approval of Phases 2 & 3 (Master Plan – Attachment to City Exhibit 3):

- Phase 1 (2009) – Sports center expansion, including two surface parking lots, an addition to existing indoor tennis building for a fitness center and staff offices (2-story addition, 33'9", 36,000 square feet), a building for a pool and bathrooms (6,500 square feet), and a separate indoor soccer facility (1-story, 24'2", 19,000 square feet – total 61,500 SF).

- Phase 2 (2011-2013) – Mixed-use office and residential building, four-stories with under-structure parking (123,200 square feet).

- Phase 3 (2011-2014) – Hotel/condo expansion, four-stories with under-structure parking (180,000 square feet).

Phases 2 and 3 will return to the Technical Review Committee (TRC) separately for detailed review.

The entire resort is accessed via Resort Drive, which is private. A driveway will link Resort Drive to the proposed improvements. Access to the southernmost tennis courts and indoor soccer facility are pedestrian-only and cross the Smith Mill Creek. Surface parking lots are proposed as a part of Phase 1 and include 75 parking spaces. Future phases will have parking included under the structure.

Landscaping and open space will be provided according to the City's ordinances.

The project proposes structures that will straddle existing property lines. In the Resort district, there is a 35' front setback and a 15' side setback from the property line. Because of the unique structure placement of the tennis court and soccer facility and the Phase 1 building over the property line (which must be approved by both the Fire Department and Building Safety and may require consultation with the Building Code Council), modifications to setbacks are needed for Phase 1 structures and will need to be approved by City Council (Modification Map - Attachment to City Exhibit 3).

Several of the improvements proposed in this expansion project are on land owned by others. A lease agreement has been submitted with the project application which states in Section 6.2 that the "Lessee shall be permitted to make structural or other modification(s) or improvement(s) to the Premises without prior approval by Lessor." This language has been reviewed by the City attorney who finds no reason to withhold consideration.

This project was approved with conditions by the TRC on February 2, 2009. No members of the community expressed opposition to the project.

The Planning & Zoning Commission reviewed this request on February 19, 2009, and recommended approval of the master development plan and setback modifications by a unanimous vote (5-0). Commissioners recognized that the plans for the I-26 connector were not truly a "con" to this proposal and that until an alternative is definitively identified and funded,

proposals such as this one cannot be held hostage. No member of the community expressed opposition to the project.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The improvements in Phase 1 are proposed in areas with significant natural features, including the need to reconstruct a bridge over a jurisdictional stream that appears to be within the 100-year floodway and associated grading activities. The applicant will need to coordinate with the City's Engineering Department (as well as the Army Corps of Engineers) to demonstrate compliance with applicable state, local and federal rules and regulations.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The parcel(s) containing the Crowne Plaza Resort is quite large (over 108 acres) and the proposed activities are all focused in the southeast corner of the lot, along the access way into the Resort (far from any adjacent residential neighborhoods). This portion of the lot is in between Sam's Club and the Westgate Shopping Center, both zoned RB. Any increase in development intensity associated with these improvements is complementary to the adjacent uses and zoning and should not injure the value of the abutting property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The parcel(s) containing the Crowne Plaza Resort is quite large (over 108 acres) and the proposed activities are all focused in the southeast corner of the lot. As mentioned in #3, this is an appropriate location for higher density residential, recreational and resort development. The proposed buildings are located far from any single-family or low density development and the uses and development are compatible with the hotel and resort amenities and buildings existing on the site.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This proposal aligns with Smart Growth Land Use Policies in the 2025 Plan by including mixed-use development with hotel, recreational and residential components on a site with existing infrastructure, close to transportation and the downtown (pg. 31). Also, the tourism industry is highlighted in the Plan as needing to concentrate on "creating and marketing 'destination' travel opportunities to attract travelers" (pg. 195). Expanding and enhancing the amenities of this centrally located resort will no doubt have a positive draw to visitors, but many of the improvements are also available as a benefit to the public and the tennis courts will be used by UNC-Asheville.

The Plan states "the route that the Connector takes and the extent to which I-26 is widened are topics of great controversy in the City of Asheville" with concerns including "impacts on community character, promotion of economic development, loss of businesses and housing, public safety, construction noise and congestion, business access during construction and further inducement of a sprawl development pattern" (pg. 140). Three of the four proposals for the Connector have a serious impact on the viability of this proposal, with Alternative 2 being the only proposal that appears to not have a detrimental effect on the Resort property. Under the City's current preferred alternative (4B), almost all of the land for Phase 1 and a portion of Phase 2 would be taken.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (rt. 15). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The subject project has been reviewed by the City Traffic Engineer and the following comments are provided. The proposed project will likely trigger the need for a traffic impact analysis (TIA) at full build-out conditions, including Phase 3 if not sooner; however, the analysis should be delayed until Phase 2 for the following reasons:

   1. *The proposed recreational uses are intended for use by guests of the resort the majority of the time.*
   2. *The indoor soccer complex will be for non-spectator event(s) due to the actual size of the complex (no room provided for spectators should mean no additional vehicle trips).*
   3. *The uncertainty of the final location of the I-26 connector, which will affect the nearby street network and thereby any improvements recommended by a TIA.*

   Since the construction of Phase 1 will not increase the number of available rooms (beds), the overall traffic impact should be minimal and the existing street network is sufficient. Phase 1 should not cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal is aligned with City goals relating to economic development (tourism) and sustainability (mix of uses on a parcel with access to transportation options and existing infrastructure).
- Allows for a partnership with UNC-Asheville for use of the recreation facilities.

Cons:

- Three of the four proposed I-26 Connector alternatives seriously impact the viability of this project.
- Impacts to a jurisdictional stream are unavoidable; however, they are within the parameters of normal development practices and will require review, approval and oversight by outside agencies.

Staff recommends approval of the Level 3 phased master development plan and the modifications to setback as requested by the applicant.

Mr. Marvin Mercer, with Mercer Design Group, said that he was present to respond to Council questions.

Mr. Dennis Hulsing, owner, spoke in support of the conditional use permit which will bring additional tourists to Asheville.

Mayor Bellamy closed the public hearing at 5:40 p.m.

There was considerable discussion, initiated by Councilwoman Cape, regarding how Council's support of the N.C. Dept. of Transportation's I-26 Connector Alternate 4-B that Council endorsed would affect this project, since that alternative would seriously impact the viability of this project. It was City Attorney Oast's opinion that Council's vote on a preferred path for the I-26 Connector would not be diminished by their vote on this project. Because the Crowne Resort is in the way of several N.C. Dept. of Transportation's alternatives, and there is no decision on the final plan or acquisition of properties, he was unsure whether that is proper consideration in this decision. In addition, the Council's support of the I-26 Connector Alternate is just an endorsement of a N.C. Dept. of Transportation Plan, not the City's plan.

In response to Councilman Mumpower, Mr. Hulsing explained how they have been working on this project for several years while waiting to hear about the final I-26 Connector Plan. Even though he disagrees with the Alternate 4-B that Council endorsed, he preferred to move forward with this project in order to keep people employed and bring business to Asheville.

Vice-Mayor Davis said that from the Metropolitan Planning Organization's standpoint, the N.C. Dept. of Transportation decision on a final alternate plan could be made in early September.

Councilman Miller felt there is a definite need for these types of structures in the City and its uncertain when the N.C. Dept. of Transportation will be ready to start purchasing land, especially with the prospect of lawsuits being filed.

Councilman Miller moved for the adoption of Ordinance No. 3707, granting a conditional use permit for the project identified as Crowne Plaza Resort at 1 Resort Drive for the proposed 3-phase Master Plan with approval of the proposed setback modifications, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) Bridge reconstruction may require review by the Army Corps of Engineers; and (7) No building permits shall be issued until a solution is devised concerning resolution of the property line/building code matter. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape and Councilman Mumpower voting "no."

City Attorney Oast said that due to the vote, this matter will have to come back for a second reading. Mayor Bellamy said it will be placed on the March 24, 2009, agenda.

Mayor Bellamy asked staff to see if they can find out a date when the N.C. Dept. of Transportation expects to have a final decision, prior to Council's consideration on March 24.

In response to Councilman Mumpower, Mayor Bellamy said that if there is going to be reconsideration of a motion, that reconsideration must be made by someone who voted in favor of the motion.

Councilman Newman felt we should not freeze development and hold hostage all property owners in the different alternate areas until a decision is made.

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B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3708 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GUARANTEEING PERFORMANCE)

ORDINANCE NO. 3709 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (PERMIT VALIDITY)

ORDINANCE NO. 3710 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ALTERNATIVE LANDSCAPING COMPLIANCE IN DISPLAY AREAS)

ORDINANCE NO. 3711- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (APPROPRIATE ACCESS TO HIGHWAY BUSINESS ZONED PARCELS)

ORDINANCE NO. 3712 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (PARKING REDUCTION FOR SELF-STORAGE FACILITIES)

ORDINANCE NO. 3713 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ELIMINATE ACCESSORY STRUCTURE BUFFER)

ORDINANCE NO. 3714 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GREATER SIGNAGE FOR LARGE NEW DEVELOPMENTS)

ORDINANCE NO. 3715 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (GREATER FLEXIBILITY FOR TEMPORARY SIGNS)

Mayor Bellamy opened the public hearing at 5:57 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of eight amendments to the Unified Development Ordinance (UDO) for the purposes of responding to the current economic climate to assist businesses and development proposals to open and operate more easily, while still meeting the technical UDO standards along with City adopted goals. This public hearing was advertised on February 27 and March 6, 2009.

Planning & Development staff began to see impacts on local development emerging throughout the fall, and started to consider how regulations could be adjusted to provide relief. Several proposals were under already consideration when participants at the City Manager's Development Forum held on December 5, 2008, were asked for their ideas on what other changes would be helpful. At the Forum, similar concern was expressed over the national economic climate and additional suggestions were made to staff. Staff discussed how minor changes to the UDO would be able to provide some relief to development proposals facing difficulty with willingness of banks and financial institutions to provide bonds or loans, the increased cost of construction operations, materials and general delays, all resulting in a decrease in revenue overall. The staff suggestions led to other ideas from the group which has led to a consolidated package of amendments designed to assist those facing difficulty completing projects and/or keeping existing projects viable.

Staff is proposing eight (8) separate code changes as a response to the Forum discussion, meetings with stakeholders and brainstorming among City staff. Although the eight (8) changes are loosely grouped together for purposes of this report as serving as a response to the current economic climate, they are distinct in their directives and will therefore be described separately below. Each item will require a separate vote.

The first two (2) changes relate to timelines and the process for projects from approval to occupancy. The last six (6) are intended to offer some economic relief to both business owners and homeowners. All eight (8) proposals in this report have been carefully considered to balance providing some relief to the currently affected development community with maintaining the intent of the UDO and development review process. While providing relief was the main objective, it should be noted that the proposed changes do result in some consequences.

The changes included in this report should be seen as a starting point. Staff continues to meet with property owners and members of the business community to develop additional potential UDO changes.

1. **Issue: Provide an alternate method of guaranteeing performance if bonds are not available.**

   Current: For major subdivisions and development projects wherein the installation of public infrastructure (streets, waterlines, etc.) is part of the development, the City can issue plat approval or a certificate of occupancy for structures in the development prior to completion of the infrastructure, provided that a bond or other financial instrument is in place to guarantee payment of the cost of the infrastructure if the developer is unable to complete the project. In other cases, the City can issue temporary certificates of occupancy as for a building, and allow such peripheral requirements as landscaping, to be installed later. This also requires a financial guarantee. These temporary arrangements are authorized in State law, which provides that in no case may a certificate of occupancy or other approval issue for structures that do not otherwise satisfy building, fire, and safety code requirements.

   Proposal: Because banks and other financial institutions have been unable or reluctant to issue bonds in recent months, the City should consider allowing alternative means of providing this flexibility, while ensuring that required improvements are made. One method of doing this is a "Delayed Compliance Agreement," whereby a developer agrees to complete required installations within a certain time. However, instead of a financial guarantee, the developer waives defenses to legal actions to enforce the agreement, and agrees to pay attorneys fees. The City should be careful to use such agreements only in extraordinary circumstances, only for certain types of improvements, and only where it can be demonstrated

that a bond is not available even though that developer was willing to pay for it, and was otherwise qualified for it.

Relevant Code Sections: 7-5-8(a)(4) and 7-15-1(g)(4): Major Subdivisions; 7-11-3(f)(1): Landscaping; 7-5-19: Certificate of Occupancy

Pros:

- Allows for an alternative method to ensure completion of site improvements in the event that a bond or traditional guarantees are not available.
- Allows for an alternative that may be better suited to address unique circumstances or needs.
- Allows resources to be focused on more pressing needs.
- Provides a negotiated time frame within which to work.

Cons:

- Removes the third-party financial element and places a greater burden on the City to recover costs in the event a developer cannot complete project.

In response to Councilman Newman, Ms. Bernstein and City Attorney Oast explained the City's risk, how this would be used for only non-safety improvements, how the developer would have to submit verification from a financial institution of why there is a problem, how criteria is being developed to evaluate which projects could be considered for this alternate method, and what options the City has if required improvements are not made.

2. **Issue: Extend zoning permit approvals and terms of permit validity**

Current: In August 2007, Council approved an increase in the validity of Conditional Use Permits from one year to two years. Currently, the UDO states that all Conditional Use Permits, Conditional Zonings and Level 3 project zoning approvals shall be valid for *two years* from the date of approval by City Council. *Failure to initiate construction* or otherwise begin the permitted use within this time shall render the approval void. The Planning & Development Director may grant a single extension of up to six months upon submittal by the applicant of sufficient justification for the extension. Level 1 and 2 projects have zoning approval valid for one year from the date of approval with the same parameters of validity and extension.

Proposal: Due to the cumulative effect of the economic climate from availability of funding sources and the overall market downturn, the City should consider allowing the approving body to grant an additional extension up to one year beyond the two years approval validity and six-month extensions already allowed for Conditional Use Permits and Level 3 projects. The six-month extension granted by the Planning & Development Director should be included for Conditional Zoning approvals. Additionally, the circumstance which begins this term of permit validity for all projects (those mentioned above as well as Level 1 and 2s) should be changed from "failure to initiate construction" to "failure to obtain zoning permit" since no project activity may occur prior to issuance of the zoning permit.

In order to safeguard against the possibility of degradation on the site during the time of permit extension, conditions can be added to the initial approval or extension approval to address site maintenance issues such as graffiti removal, trash pick-up, mowing and security.

Relevant Code Sections: 7-5-5(j): CUP/Level 3; 7-7-8(c.)(9): CZ; 7-5-9(c.)(9): Level 1; 7-5-9(b)(9): Level 2

Pros:

- Allows the development community additional time to complete financial and property transactions without having to return through the review process because of permit expiration.
- Can be applied to existing as well as future projects.
- Changing "failure to initiate construction" to "failure to obtain zoning permit" provides a more definable method to track permit validity.
- Places authorization on the approving body and not staff (could be viewed as a con).

Cons:

- Has limited application - although zoning rights would be vested, this would not protect against changes to Engineering standards or Building Safety codes that may be amended during that time of extension.
- Community priorities may change/evolve over a 3 ½ year period and this amendment could facilitate a project that no longer reflects technical standards or adopted goals.

In response to Councilman Newman, Ms. Bernstein said that this applies to new projects but could also be retroactively placed on some projects if they contact the City and request an extension with sufficient justification for the extension.

3. **Issue: Businesses that rely on large outdoor display areas feel adversely impacted by landscaping requirements in parking fields/display areas. The cost and location of the plantings cause financial hardship in a time of declining sales and revenues**

Current: All businesses that include large outdoor display areas (including car dealerships or rental businesses) are required to comply with all landscape code standards, including property line buffer, street buffer, street trees, parking lot landscaping, building impact landscaping and screening. An alternative is currently offered which allows reduction in size of the required landscape islands, reduction in number of interior plantings and alternatives for tree spacing if the development includes specific design features aimed at reducing the impervious parking field and improving water runoff amount and quality. Several of the alternatives are offered to any type of development; however the waiver for tree spacing is available only to those who use their parking field as a display area.

Proposal: Because of the significant amount of impervious surface associated with automobile dealerships and the subsequent issues with stormwater runoff and water quality, staff does not feel that a complete elimination of parking lot landscaping is advisable. However, the alternative option for tree spacing and interior plantings can be altered to allow for a 50% reduction of parking lot landscaping materials provided that the planting areas are either concentrated towards the perimeter of the lot or grouped in one large central area and that they are designed so that stormwater runoff is captured through bio-swales and/or constructed wetlands.

Relevant Code Sections: 7-11-3(e)(3)

Pros:

- Reduces some financial burden on these businesses.
- More appropriately accommodates the unique nature of these outdoor display areas.
- Allows for a reduction in some of the interior parking lot landscaping, but does so in an alternative that incorporates stormwater runoff best management practices while maintaining parking field interior plantings.

- By consolidating islands, arguably, improves the growing conditions of the plantings.

Cons:

- Eliminating interior planting creates a larger impervious surface which can increase stormwater control and quality issues, especially on a site where gasoline, oil, soap and other potential groundwater contaminants are regularly utilized.
- Reduces other benefits from interior plantings such as moderating surface temperatures and improvements to air quality.
- Bioswales, rain gardens, constructed wetlands and other BMPs require regular maintenance to be effective.
- Increasing concessions to only one group of business owners may result in feelings of disparate regulation from other developers who would also appreciate less restrictive landscaping.

Items regarding landscaping were discussed with the Tree Commission at their meeting on January 26, 2009. The Commission was not supportive of the proposal in #3 to further reduce the number of interior plantings required for businesses using their parking fields as display areas. While they acknowledge the reasoning behind the request they do not feel the reduction aligns with that body's goals and objectives regarding improving the visual and environmental quality of Asheville.

Mayor Bellamy said that proposal states that "Because of the significant amount of impervious surface associated with automobile dealerships ..." and wondered this is amendment is open to all businesses or just automobile dealerships. Ms. Bernstein said that this relates specifically to businesses whose parking area doubles as a display area. Primarily we think of automobile dealerships first, but it would also be large scale rental, boat rental, etc. – those businesses who use the parking field as display. It would not apply to a business with a large parking lot – it would have to double as a display area.

In response to Mayor Bellamy, Ms. Bernstein that this amendment does not change anything to the property line buffer that is required between different zoning districts.

At Mayor Bellamy's suggestion, Ms. Bernstein said that she would be happy to clarify the language that this does not change anything to the property line buffer that is required between different zoning districts.

In response to Councilman Newman, Vice-Mayor Davis further explained the Tree Commission's lack of support for this amendment.

Councilman Newman supported the Tree Commission's guidance on this matter.

Mayor Bellamy asked for a friendly amendment clarifying the language that this amendment relates specifically to all businesses whose parking area doubles as a display area. Councilman Mumpower and Councilman Russell accepted the friendly amendment.

4. **Issue: Development in the Highway Business District (HB) may be restricted due to the minimum lot frontage requirement**

   Current: In the HB zoning district, it is stated that there shall be no minimum lot *size* or *width* standards, however, the minimum lot *frontage* shall be 100 lineal feet. For through and corner lots, the minimum street frontage shall be required along the property line abutting the larger thoroughfare.

   Proposal: There are a number of areas zoned HB where additional development would be possible however the creation of new lots is currently prohibited without

sufficient lot frontage. Section 7-11-2(k) of the UDO provides standards for safe access and states that lots or parcels used for non-residential purposes are not required to abut a public street if an easement or right-of-way is established with a minimum width of 30' connects the lot to a public street. The City should consider exempting HB-zoned lots for non-residential development from the minimum lot frontage requirement, provided they can comply with the access standards.

Relevant Code Sections: 7-8-16(f)(4)

Pros:

- Removes a barrier to creating new lots for non-residential development while maintaining safe and adequate access to those sites.

Cons:

- None noted.

5. **Issue: Number of parking spaces required for self-storage facilities is excessive for the use**

Current: Self-storage facilities are required to have a *minimum* of one parking space for each 10 storage units plus one space per two employees on the shift of greatest employment and a *maximum* of 1 space for each 5 storage units plus one space per two employees on the shift of greatest employment.

Proposal: Owners of these types of facilities have indicated that the current code requirements far exceed the number of spaces that are generally needed by customers, even during busy hours. Staff has researched methods used by other communities and has found some validity in this issue. The City should consider amending the requirements to be based on the office square footage (a minimum of four parking spaces per 1,000 square feet of office space and a maximum of eight parking spaces per 1,000 square feet of office space). The fire department has requested a minimum aisle width of 24 feet.

Relevant Code Sections: 7-11-2(c.)

Pros:

- Requiring fewer parking spaces results in less impervious parking surface on the site.
- Specifying a 24 foot drive aisle satisfies Fire Department access needs.
- Allows for more efficient use of property and could result in more storage units per acre.

Cons:

- None noted.

6. **Issue: Buffer required around accessory structures in residential zones is excessive considering there are no buffering requirements for the principal structure**

Current: Accessory structures are considered as a use by right, subject to special requirements in all residential districts. Provided that the homeowner can meet setback and lot size requirements (as well as design and placement standards), an accessory structure can be constructed. The code requires that all accessory structures with a footprint of more than 600 square feet shall be buffered from the adjacent residential development. This buffer requirement was enacted at a time when there was no size limit to accessory structures.

Proposal: Homeowners have indicated that if their proposal for an accessory structure complies with all standards in the UDO, including location, size and height, the additional requirement to install a landscaped buffer is an undue financial burden – especially when the much larger principal structure on the lot is not required to be buffered. Also, the code reference describing the buffer is obsolete and refers to a section that no longer exists. In considering the homeowner's request, the City has determined that the requirement can be eliminated.

Relevant Code Sections: 7-16-1(c.)(2)e.

Pros:

- Removes an obsolete code reference.
- Allows homeowners to maximize personal usage of their lots while complying with setback and other standards.
- Provides a small financial relief to homeowners and homebuilders.

Cons:

- Results in the loss of some tree cover currently required in these residential districts.
- Accessory structures are permitted to be placed closer to property lines than primary structures – this could result in an unbuffered structure in close proximity to a home on an adjacent lot.

At Mayor Bellamy's suggestion, Ms. Bernstein said that she would be happy to clarify the language that this does not change anything to the property line buffer that is required between different zoning districts.

7. **Issue: Allow for greater signage advertising new multi-family, commercial or mixed-use developments**

Current Procedure: Real estate signs advertising the sale, lease or rental of property is currently exempt from permitting. However, while these types of signs are not required to obtain permits from the City, they are held to certain restrictions relating to size, number of signs, illumination and duration of use.

Proposal: Allow larger banner-style signs to be displayed for a limited time period when a new building is preparing to come on-line. Banner will be used for real estate purposes and will advertise the availability of the new units.

Relevant Code Sections: 7-13-4(a)

Pros:

- Provides a cost effective advertising and announcement opportunity for projects seeking to bring multiple units on-line at one time.
- Utilizes the features of the building itself to communicate availability – does not clutter roadways.

Cons:

- Providing this opportunity to only one form of real estate may result in feelings of disparate regulation from other property owners or developers of smaller or older projects desiring larger signage as well.
- Most tall projects will be downtown where signage is typically more restrictive.

In response to Mayor Bellamy, Ms. Bernstein explained what qualifies as a banner and what the standards are that regulate this type of banner.

In response to Mayor Bellamy, Ms. Bernstein that that they will be researching additional economic condition ordinances and would be happy to research the issue of people who have signage related to their business on a vehicle giving them more flexibility as to where and how long they can park the vehicle.

In response to Councilman Miller, Assistant Planning & Development Director Shannon Tuch said that since these signs shall only be displayed for no more than 120 days, they felt that would not be enough time for an all-weather material to become tattered.

In response to Mayor Bellamy, Ms. Bernstein said that these ordinances will also apply to property in the extraterritorial jurisdiction areas.

8. **Issue: Allow businesses to display temporary signs for shorter periods more frequently in a year**

   Current Procedure: Temporary signs are currently allowed in all nonresidential zoning districts and may be displayed twice a year for a period of 30 days for each sign. Permits are required and the size and location of the sign is restricted.

   Proposal: Allow business owners to display temporary signs more often but for shorter time periods, such as for a series of holiday sales throughout one year. Proposal is to limit all businesses to 60 days of temporary signage that may be divided into a maximum of six separate ten day occurrences, not to exceed 60 days in total.

   Relevant Code Sections: 7-13-4(a)(8)(b)

   Pros:
   - **Allows for more flexibility with temporary signage to meet smaller needs throughout the year.**

   Cons:
   - The City's current permitting & tracking software does not allow for the automatic tracking of short term permits. Information will have to be entered into two separate systems in order to track of permit durations and frequency.
   - Enforcement will be more difficult given current resources and will likely result in proliferation of unpermitted signs.

The Planning & Zoning Commission reviewed the entire proposal as included in this report and attachment and recommended approval of all eight amendments by a unanimous vote (5-0). One member expressed concerns that extending the time period for permit validity (item #2) would result in more time for a site to remain vacant and possibly be subject to degradation which could have safety implications and could cause adverse impact to the surrounding neighborhood or other potential redevelopment in that area. Conditions can be added to an initial approval or any permit extension that would guarantee site maintenance during an extended period of dormancy. Wording clarification was also provided by Commissioners for item #3.

City staff recommends approval of the code amendments as proposed.

Mayor Bellamy closed the public hearing at 6:05 p.m.

In response to Mayor Bellamy, Ms. Bernstein said that all these changes are permanent changes to the UDO.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3708 (guaranteeing performance). This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 201

Councilman Mumpower moved for the adoption of Ordinance No. 3709 (permit validity). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 202

Councilman Mumpower moved for the adoption of Ordinance No. 3710 (alternative landscaping compliance in display areas), as amended. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilwoman Cape and Councilman Newman voting "no."

ORDINANCE BOOK NO. 25 - PAGE 204

Councilman Mumpower moved for the adoption of Ordinance No. 3711 (appropriate access to Highway Business zoned parcels). This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 206

Councilman Mumpower moved for the adoption of Ordinance No. 3712 (parking reduction for self-storage facilities). This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 207

Councilman Newman moved for the adoption of Ordinance No. 3713 (eliminate accessory structure buffer). This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 208

Councilman Newman moved for the adoption of Ordinance No. 3714 (greater signage for large new developments). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 209

Councilman Russell moved for the adoption of Ordinance No. 3715 (greater flexibility for temporary signs). This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 211

V. UNFINISHED BUSINESS:

A. DISCUSSION REGARDING CONSTRUCTION EASEMENT TO ALLOW FOR A PERMANENT ROAD IMPROVEMENT ON PUBLIC LAND (PACK SQUARE PARK)

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of a request for a construction easement to allow for a permanent road improvement on public land (Pack Square Park).

On July 7, 2008, the Asheville Technical Review Committee (TRC) reviewed and approved the Level II Parkside Condominium project, finding no technical insufficiencies. The proposed development plan included a variety of site features including a new road to be constructed on the north side of the building located between the building and the southern edge of the Pack Square Park. Because this proposed road (identified as "Court Plaza") crossed into property owned Buncombe County and the City of Asheville as tenants in common, the project approval was conditioned to require a construction easement from both the City and County in order to construct this permanent road improvement; no permits may be issued until these easements are obtained.

On July 9, 2008, the City Manager's office received a request from SWAG Holdings, Black Dog Realty LLC, and Parkside Condominiums LLC for the necessary construction easement.

In the fall of 2007, a lawsuit was filed in Buncombe County Superior Court by the heirs of George Pack claiming, in essence, that part of the property on which the Parkside project was to be built (acquired by the applicant from Buncombe County) had been given to the County by George Pack subject to a restriction limiting its use to public purposes, and that the proposed condominium use was in violation of that restriction. During the time between the City's receipt of the request for the construction easement and the City Council meeting at which the request was to be considered, the Court ruled in favor of the Pack heirs, a ruling that clearly affected whether the Parkside project, as it had been approved, could be built. This development caused the construction easement request to be withdrawn until a later date when the potential impact of this decision could be more fully evaluated. The Superior Court's decision has been appealed. Argument and decision dates are difficult to estimate but are not expected before this fall.

In an effort to have all unresolved issues addressed in the event of a favorable outcome, the original construction easement request has been revived and resubmitted by Stewart Coleman, on behalf of Parkside LLC, under a new letter dated January 28, 2009.

The general layout and design of the road is reflected in one of three Pack Square Park Master Plans that were reviewed and approved concurrently by the Asheville City Council in 2004. Staff reports and meeting minutes reflect the need for three separate Master Plans due to the uncertainty over the potential development of two publicly owned sites that bordered the Park (commonly referred to as Site A and Site B) as well as the privately owned property commonly known as the Hayes & Hopson building. Should the Hayes & Hopson building remain in its current state, construction of Court Plaza as proposed would not be possible and alternatives would need to be considered. Since the road had been included in a previously adopted Master Plan for the park, staff determined that the Parkside Condominium project was in compliance with previous approvals for the Park and would not require any additional approvals other than a design review by the Pack Square Conservancy (PSC). Under the Pack Square Guidelines, all improvements in the park required a mandatory review with mandatory compliance; however, this would be limited to design considerations only and would not include an option to disapprove the road entirely. Should the Council and, at a later date, the Buncombe County Commissioners approve the easement for the road, it would then go before the PSC for design review as the next step.

It is important to note that Court Plaza is technically necessary for the current design of the Parkside Condominium project as it provides the necessary fire apparatus staging area which, per state fire code, requires a minimum width of 26 feet. Both Marjorie Street and Spruce Street could be widened to accommodate this width but would necessitate design changes that could result in further encroachment into the Park. As stated by the developer during the July 15th City Council meeting – should the construction easement be denied, their stated preference would be to leave the design of the building as proposed and widen Marjorie St. to accommodate the fire apparatus staging. If the form/size of the building is not changed; this would result in the condo building moving approximately 15 feet closer to the park, further eclipsing the view of City

Hall; this amount would be increased by 7 feet if on-street parking was retained. A change of this magnitude would require re-review by both the Downtown Commission and the TRC. Of course, other design options could be explored including; reducing the footprint of the building, widening Marjorie in the direction of City owned property (employee parking lot) or providing other staging surfaces in the park.

This easement for the road is separate and distinct from the "no-build" easement that will be required from Buncombe County (which owns the property adjacent to the east of the site) in order to allow for the Parkside building to have window and door penetrations on the east elevation, as the current plans reflect.

This report is informational only and compliance with the Strategic Operating Plan is not relevant.

Pros:

- Improves vehicular traffic flow in front of the Courthouse and City Hall.
- New road provides access and staging for the park (although PSC has expressed some concern over the development that the road would serve).
- Helps to prevent further encroachment towards the park (eclipsing view of City Hall) as a result of a potential building redesign or new layout.
- Complies with one of three approved park Master Plans.

Cons:

- Directs vehicular traffic along edge of park (one way).
- Potential for deliveries to occur on the side of the building facing the park.
- Does not comply with two of the three park Master Plans.

Approving this request will result in a private investment into public infrastructure that will require public maintenance over time. Other impacts may be more difficult to identify.

She said that should this approval be granted, staff would recommend that Council condition it specific to this plan. In the event that the courts rule in favor of the Pack heirs on this appeal, then we would want to reconsider the construction easement for the road or any other options.

Since the proposed road minimally complies with (one of) the approved Master Plans and other technical standards required for the extension of public infrastructure, it potentially conflicts with park use. Staff recommends that the Council take the time necessary to carefully consider the pros and cons along with other citizen and stakeholder concerns in deciding whether such easement should be granted and/or conditioned to mitigate any potential concerns. Should it be determined that additional information or analysis is necessary, staff would recommend the Council continue this item to allow for new information to be presented and considered.

Vice-Mayor Davis didn't think there was going to be a lot more information forthcoming and favored making a decision. He personally would have a difficult time approving the project without the road because the building would further encroach into the view corridor of the City Hall, and it would be expensive to widen Marjorie Street and reduce the size of the City employee's parking lot.

In response to Vice-Mayor Davis, Ms. Tuch said that both of those options are to maintain a certain product. There is always the option to scale down a product or re-design it with lesser units, or to provide for some other kind of staging area other than a road on the Park. She said that she hasn't discussed a different staging area in any detail with the developer. She understood that the developer's preference would be to have the road over a staging area than bringing everything to the side or rear of the building. She would also be concerned that an

alternative staging area might have a different design aesthetic and that would have to be approved by the Park and may be difficult to achieve a uniform appearance. Whereas, the road was clearly contemplated in at least one of the three plans that were approved.

Councilwoman Cape felt we heard clearly from the community that the sale of public land for infrastructure is not what our community supports. She could not support this construction easement and felt that anything can be re-designed.

In response to Councilman Russell, Ms. Tuch said that the traffic and traffic flow was considered by the Technical Review Committee. The City's Traffic Engineer said that having a road would improve the traffic flow in the area.

Councilman Russell noted that the Park is currently surrounded by roads on three sides. He felt if a road was allowed, it would keep the building out of the view corridor and create more open space.

In response to Councilman Mumpower, using an illustration, Ms. Tuch showed where the existing magnolia tree is located.

In response to Councilman Mumpower, Ms. Tuch said that the City was not a party to any decisions related to this development plan.

Councilman Mumpower expressed concern that the City was not a part of this development plan, even though it is in our front door, is now being asked to provide a rescue opportunity for the project to move forward. He would be willing to keep the lines of dialogue open, but could not support any intrusion on the public properties.

In response to Councilman Newman, Ms. Tuch said that if the plan is modified with another configuration, that plan would represent significant changes to the proposal and would have to be submitted as a new project.

Councilman Newman felt the City is being told to take approve this road or they will do something worse. As a separate issue, he would support directing the City Manager to craft an ordinance that future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council. He felt that if the courts do say that this project is not allowed or if there are new plans submitted by this developer or others, Council will have some oversight of those projects.

Councilman Miller gave some important context to this matter. He said that the three plans that were submitted were predicated on Site A and Site B maybe happening and then a plan was submitted with those sites being a part of the deal. When those two projects fell by the wayside, the Pack Square Conservancy designer was directed to go forward with the plan that is now being constructed. That was the plan that was submitted to the N.C. Dept. of Transportation and that was the plan that received approval. That plan did not have a road. When the Conservancy talked about Site B the intent was to have that building farther south.

In response to Councilman Miller about the road potentially conflicting with Park use, Ms. Tuch said that while a road could serve the Park, it would effectively route vehicular traffic around the edge of the Park thus creating the potential of vehicular/pedestrian conflict.

Councilman Miller supported asking the developer come back to Council after we hear from the court. Another crucial point is the protection of the view corridor and exactly where would the building be located. He questioned if something can be done to the Hayes & Hopson Building on a buy-out and get this other piece of land back so we can have something there that is a little bit more in line with what the intent of the 6.5 acres of Park space.

In response to Councilman Mumpower, Mr. Stewart Coleman, developer, said that they have made a presentation to Council that fully addressed most of these issues. It is not his intent to intimidate anyone into choosing one design over another design. He will be gifting land back to the City as private land and he is not taking land from the City. He intends on giving the access for this road. He explained the many benefits of the road, some being, that it would improve vehicular flow in front of the Courthouse and City Hall and eliminate the "bottle-neck" that the present cul-de-sac generates; and the new road would provide access and staging for the Park and provide access for early morning deliveries to occur on the side of the building facing the Park. He felt moving the building north is an atrocity as it will affect the view corridor to the point of where it's against everything they have tried to work towards in this design. They followed the Pack Square Conservancy guidelines. There is very little they have not given up to build the best product for the City, the County and the Park. He said they have spent an enormous amount of money in the design levels to meet the fiber of what is presently in the area.

Mayor Bellamy suggested that in all fairness to this Council, since we had no part in the decisions made previously, that Mr. Coleman present this request to the Buncombe County Commissioners first for their consideration of approval of the easement for the road.

Councilman Mumpower moved to (1) table (postpone) this item pending a decision from the Court of Appeals and pending Buncombe County's decision on the construction easement request; and (2) request further deliberation between the developer and City staff to see if there are additional points of resolution. This motion was seconded by Councilman Miller.

The following individuals spoke in favor of Councilman Mumpower's motion to table action on this easement request:

Ms. Dixie Deerman
Mr. Steve Rasmussen
Mr. Coleman Smith
Ms. Clare Hanrahan

Mr. Coleman reviewed with Council the proposed Parkside Condominium project at 80 Court Plaza. He showed the proposed landscaping design, proposed Court Plaza streetscape, the existing view from the Vance Memorial per guidelines (showing the Hayes & Hopson building), a view of the revised building (view from Vance Memorial per guidelines), and several renderings of the Pack Square Park with a copy of the front page of the AT&T Yellow Pages of July 2008, noting many of the documents show a road. He said that they are trying to construct a building that is compatible with the fabric of the neighborhood. He questioned what the Park will do with the property south of the sidewalk if the road is not put in. He noted that the Conservancy Chairman had initially agreed to not only put it in, but to pay for it. Now that there are budget issues, they have asked him to pay for that.

Mr. Guy Clerici, Chair of the Pack Square Conservancy, emphasized that three proposals were approved by Council, one of which did include the road. Construction drawings, from which the Park is being built, do not include that roadway. It is the Conservancy's position that once they have all the facts in front of them and the litigation resolved, that we should come together and determine what the best use for this property is for Asheville. He supported Council's motion to table.

The motion made by Councilman Mumpower and seconded by Councilman Miller carried unanimously.

City Attorney Oast said that if the Court's decision is overturned and Buncombe County approves the construction easement, he felt that Council will be expected to act on the request in a fairly quick timeframe. Mayor Bellamy agreed that Council will consider on that matter expeditiously.

Councilman Newman moved to direct the City Manager to craft an ordinance that future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council. This motion was seconded by Councilwoman Cape.

Mr. Mike Fryar spoke against the motion.

Mr. Steve Rasmussen supported the motion and suggested it be incorporated into the Downtown Master Plan.

Councilman Miller suggested staff try to find a way to include the Pack Square Conservancy in the review process.

Councilman Mumpower could not support the motion in that he felt we are close to creating a policy to address a specific project.

Vice-Mayor Davis hoped that this can be incorporated into the Downtown Master Plan but liked the motion in principle.

Councilman Newman was supportive of the Downtown Master Plan; however, his motion is not about one person, but one place – the town square of Asheville. At present the Council has no oversight to determine the future of our town square and this motion would give us the oversight authority.

Councilwoman Cape felt that anyone who buys land in the City's "living room" should realize there will be an engagement of the public process. We do have an obligation to protect our community.

Upon inquiry of Councilman Miller about placing restrictions on property that the City and County owns, City Attorney Oast said that if staff is directed to look into drafting an ordinance, that is something they will research, but just as a general notion he believed that Council could adopt zoning regulations that would apply to properties that are not necessarily owned by the City.

Mayor Bellamy noted that the motion as proposed would impact the Pavilion, the Art Museum Expansion and all the development that is occurring. She suggested the motion be clarified for staff to look at some options that dovetail with the Downtown Master Plan and the Pack Square Conservancy. She does think the view corridor is important. Part of the issue that Council pushed with County Detention Center was we didn't want it to impact the view corridor of City Hall. As the motion stands, it just doesn't impact the Parkside development. She suggested staff bring back some recommendations for Council to consider.

Councilman Newman agreed that he is not asking for a particular policy outcome, but that there be some options given to Council for some meaningful oversight of the future plans that are proposed for this area.

In response to Councilwoman Cape, Mr. Clerici said that attached to the City/ County/Conservancy agreement is a map of where the Conservancy has design review. Unfortunately outside the map is mostly the buildings.

Councilman Newman clarified his motion that the City Manager be instructed to provide some options (with input from the Conservancy Board) to allow future proposed developments that are directly contiguous to Pack Square Park be reviewed and approved by the Asheville City Council.

In response to Councilwoman Cape's comments regarding a timeline, Planning & Development Director Judy Daniel said that if the motion passes, staff will be happy to come back with some options. This would be about the same timeline as the Downtown Master Plan and so this might be something they make in their recommendations on the Plan – perhaps an addendum to the Plan. That will be coming to Council in the next 1-½ months.

The clarified motion made by Councilman Newman and seconded by Councilman Miller carried on a 6-1 vote, with Councilman Russell voting "no."

At 7:33 p.m., Mayor Bellamy announced a 20-minute recess.

B. BUDGET PLANNING

Staff Reports

Chief Financial Officer Ben Durant said that the following is information City Council requested from staff on several items that were discussed at the February 24, 2009, Quarterly Report/Budget Worksession. Provided below are answers to questions that were raised by Council.

1. **Provide information on transfer from General Fund Balance to the Health Care Fund.**

Beginning in Fiscal year 2008, the City began accounting for its self-funded Health Care and Worker's Compensation programs in a new insurance fund, separate from the City's General Fund. Accounting for these programs was formerly done in the General Fund. Segregating these funds from the General Fund was done to enhance the City's financial management and reporting capacity for its self-funded insurance programs.

The impact of the preceding change is reflected in the financial summary statements from the City's previous two audits. The Audit and Financial Statement Summary produced by Dixon Hughes for FY 2007 shows that in that year, total fund balance for the General Fund was $41.61 million, which included reserves for Health Care and Worker's Compensation. The Audit and Financial Statement Summary for FY 2008 shows the 2007 total fund balance amount restated to $34.64 million to reflect the transfer of approximately $3.47 million in Health Care reserves and $3.51 million in Worker's Compensation (Risk Management) reserves to the new internal service fund.

It is important to note that even when Health Care and Worker's Compensation reserves were included in the total General Fund balance, they were unavailable for appropriation as they were reserved for their intended use. Thus, their removal from the General Fund had no impact on our "available" fund balance.

2. **What has fund balance been spent on in recent fiscal years?**

Available fund balance peaked in FY 2005-06 at $23.79 million or 31.0% of General Fund expenses. At that time, Council made the policy decision to begin appropriating a portion of fund balance to address high priority capital and operating needs that were one-time in nature. Highlights include:

- October 2006, Council appropriated $1.0 million in fund balance, along with $1.5 million in revenue from property and sales taxes that were coming in over budget, to fund $2.5 million in capital projects, including the Civic Center arena roof and the Haw Creek and Patton Avenue sidewalk projects.

- With adoption of the FY 2007-08 budget, Council authorized the appropriation of $3.7 million in fund balance for capital improvement projects and $500,000 to fund one-time operating costs, such as the Downtown Master Plan update, the Parks & Greenways Master Plan Update, and the Comprehensive Affordable Housing Plan. Funded capital improvement projects included the Hominy Creek greenway, repairs at Fire Station 6, and replacement of the City Hall chiller, as well as additional vehicle and equipment replacement.

- Other major mid-year fund balance appropriations since FY 2005-06 include: 1) $575,000 for the City's initial payment for the Overlook Park/Beaucatcher Mountain property; 2) $353,000 for the demolition of Tunnel Road property; and 3) $259,000 to fund the City's share of the cost of replacing a wrecked fire truck.

3. Show how various levels of fund balance appropriation would impact the City's financial position in FY 2009-10.

At the February 24th budget worksession, staff estimated that fund balance would end the current fiscal year at $17.68 million or 19.7% of General Fund expenditures. Staff also indicated that under current budget assumptions, $1.0 million would be appropriated from fund balance in next fiscal year's budget. Appropriating $1.0 million in fund balance for next year's budget would lower available fund balance to $16.68 million of 18.2% of estimated FY 2009-10 expenditures. The table below shows three additional scenarios for fund balance usage ranging from $2.0 million up to $4.0 million. However, staff would caution against the use of additional fund balance to pay for ongoing budget expenses since such a practice creates an automatic budget gap that has to be filled in the subsequent budget year.

2009-10 Fund Balance Usage	2009-10 Est. Year End Avail. Fund Balance	Fund Balance %
1,000,000*	**16,684,273**	**18.2%**
2,000,000	15,684,273	17.1%
3,000,000	14,684,273	16.0%
4,000,000	13,684,273	15.0%

* Current proposed fund balance usage

4. Provide a list of current year encumbrances in the General Fund.

An encumbrance is created whenever the City enters into a contract with an outside vendor for supplies, professional services, etc. Typically, the City will encumber the full amount of a contract at the outset of a project, then the vendor is paid from that encumbrance as services are provided. Often, contracts are not completed and fully paid out by the end of the fiscal year; therefore the remaining balances on those contracts (encumbrances) are carried over to the next fiscal year. The "savings" generated from not having completed those contracts in the year that the funds were actually budgeted temporarily inflates general fund balance. This additional fund balance, however is not available for general use; instead, it is required to be held in reserve and re-appropriated in the subsequent fiscal year specifically to cover the eventual completion of the encumbered contracts that we carried over from the previous year.

As noted during the presentation of the Quarterly Financial Report, there was a total of $1,443,395 in General Fund encumbrances carried over from FY 2007-08 into FY 2008-09. Thus, approximately $1.4 of the $19.67 million beginning fund balance that was reported in the Quarterly Financial Report was actually fund balance that was held in reserve and restricted for use in covering the carry-over encumbrances from the prior-year. This amount was re-appropriated in FY 2008-09 to cover the prior year carry-overs and thus included in the fund balance usage that staff presented at the February 24th Council worksession.

An example of a carry-over encumbrance transaction is the $170,000 contract that the City entered into with Goody Clancy & Associates for the update to the Downtown Master Plan. The full amount of the contract ($170,000) was encumbered in FY 2007-08, however only $20,000 was actually paid out in FY 2007-08. As a result, the remaining encumbrance of $150,000was carried over to FY 2008-09. Financial reporting standards require that the City reserve a portion of its fund balance to cover outstanding encumbrances since they are pending obligations of the City. We report the amount of fund balance reserved for encumbrances in the City's Comprehensive Financial Report (CAFR) and in each of our Quarterly Financial Reports to Council. He presented Council with all the General Fund encumbrances that rolled over from FY 2007-08 to FY 2008-09.

5. **Provide different revenue scenarios to show the impact on the General Fund budget.**

Property taxes and sales taxes together make up approximately 70% of the General Fund revenue budget. Staff is currently projecting that the property tax base (exclusive of annexation) will grow by 2.0% in FY 2009-10. Because of the recession, staff has projected a growth rate for the property tax base that is less than the 10-year average growth rate of 3.3% and less than 4.2% growth that occurred in the current fiscal year. The chart below shows how property tax revenue would increase or decrease compared to the current 2.0% estimate for growth values ranging from 1.5% to 4.0%. As the chart indicates, every 0.5% change in the estimate results in an impact of approximately $217,000. Finance staff will be meeting with the Buncombe County Tax Assessor in the next few weeks to review property tax estimates for FY 2009-10:

Tax Base Growth	Property Tax Revenue	Change Vs. Current Estimate
1.5%	44,190,233	(217,686)
2.0%*	**44,407,919**	**0**
2.5%	44,625,604	217,685
3.0%	44,843,290	435,371
3.5%	45,060,976	653,057
4.0%	45,278,662	870,743

* Current estimate

Sales tax revenue through the first six months of the current fiscal year is down 3.1% compared to the prior fiscal year. Staff is currently projecting that this same trend will continue through the remaining six months of the fiscal year and as a result, the city will end the year with a **$1.5 million** shortfall in sales tax revenue.

In projecting sales tax revenue for next year, staff started with an adjusted sales tax base that is reduced by $1.5 million, reflecting the current year shortfall. Staff is then estimating that the adjusted sales tax base will remain flat (or experience no growth) in the upcoming fiscal year. This assumption was a major contributing factor to the initial $5.6 million budget gap that was projected for FY 09-10, prior to the identification of specific budget balancing strategies.

Sales tax revenue is highly sensitive to economic conditions, especially unemployment. As a result, there is the possibility that sales tax revenue could decline even further. Staff has prepared sales tax scenarios that show the impact on current revenue estimates for sales tax declines if the annual decline ranges from 4% to 7%. As the chart indicates, every 1.0% decline in the estimate results in a reduction to the base of approximately $165,000.

Projected Annual Decline	Additional Reduction to Base
4.0%	(164,735)
5.0%	(329,471)
6.0%	(494,206)
7.0%	(658,941)

* Current estimate

6. Review cost recovery estimates and staff recommendations for fees & charges.

Fees & charges will be reviewed initially by the Finance Committee and recommendations made to the full Council in late March.

7. Review revenue estimates and level of subsidy for the Transit Fund.

Asheville Transit has requested additional expenditures in the amount of $415,000 mostly due to increases in cost for intercity routes (Black Mountain and Weaverville) which are offset by increased revenues to support these routes. The transit fund will have some operational savings recommended by the Management Company that include several initiatives listed below for a total savings of approximately **$150,000**.

- Workers comp – First Transit found a different policy: $25,680
- Overtime: reduced from 13.81% to 7.67%, representing around $80,000
- Drug and alcohol policy, Printing and Telephone: $5,000
- Reengineering: $ 40,000

Asheville Transit will be receiving an additional $484,000 from the Federal government to be used for operations.

The FY 09 subsidy from the general fund was approximately $1.5 million. The anticipated subsidy from the general fund for FY 10 is $900,000, reflecting the combined impact of operational savings and increased federal assistance.

8. Review fund status and level of allocation for the Housing Trust Fund (HTF).

There has been no new HTF fund activity since the Council meeting on February 24, 2009, during which time Council was last updated. The current available balance is $18,600.39.

MHO has refinanced its loan from the Housing Trust Fund for the Crowell Park project through another lender. As such, an early pay-off of $480,000 will be paid to the City in one lump sum sometime in April. MHO is currently making $3,500 monthly principal payments, so the principal balance will decrease proportionately upon receipt of the regularly scheduled payments for March and April. $170,000 of this projected payoff was allocated by Council to the Westmore project; therefore the net revenue to the fund will be roughly $310,000.

9. Review the details of re-engineering/streamlining efforts and compensation options, including four-day work weeks and reducing 401K allocations.

He provided council with a chart showing the details of the City's re-engineering/streamlining efforts, as well as a list of various compensation options.

At Mayor Bellamy's request, it was the consensus of Council to prepare a formal response to reports that Asheville has the 2nd highest tax burden in the State.

In response to Mayor Bellamy, Mr. Durant reviewed what the Fund Balance has been spent on in recent fiscal years.

There was a short discussion, initiated by Councilman Mumpower, about the use of Fund Balance.

Finance Committee Recommendations

Councilman Russell, Chair of the Finance Committee, updated Council on their meeting held on March 6, 2009, on the following topics (1) introduction of Management/Financial Model for Energy Efficiency; (2) economic stimulus update; (3) discussion of follow-up items from 2-24-09 Committee meeting (a) Overlook Park contribution; (b) alternative revenue projection scenarios; and (c) review of Re-engineering efforts and compensation options; and 4) establishment of Schedule for Reviewing Fees & Charges. He encouraged Council to communicate any specific items to him or a member of the Finance Committee.

In response to Mayor Bellamy, Mr. Durant said that he would be happy to make available the information regarding the proposed fees and charges to the entire Council, in addition to the other information presented solely to the Finance Committee.

Councilman Newman (1) did not support raising the recycling fee; and (2) since a salary freeze affects all City employees, he supported encouraging the Finance Committee to look at something we can do for employees who are on the lower end of the income scale since they will be hit the hardest.

Councilman Mumpower supported salary reductions as an alternative to helping limit staff reductions beginning with City Council considering a 10% reduction of their own salary.

Councilwoman Cape felt that a Council salary reduction would prohibit the average person from participating in the process.

VI. NEW BUSINESS:

A. REVIEW THE SERVICE PLAN, FINANCIAL AND LEGAL REQUIREMENTS FOR AIRPORT ROAD AND RIDGEFIELD ANNEXATIONS

Mayor Bellamy said that since Councilman Miller and Councilman Russell have not participated in an annexation process, she felt it would be appropriate to have a report on how we bring in new citizens.

Urban Planner Julia Cogburn said that the purpose of this staff report is to review the service plan, as well as the financial and legal requirements for the Airport Road and Ridgefield Annexations, two annexations that recently became effective. She briefly reviewed the following report.

In April of 2005 the City of Asheville initiated an annexation services plan for four areas contiguous to the current city limits. Those areas were the Ridgefield Business Park Area, Ascot Point Village Area, Long Shoals Road Area and the Airport Road Area.

The process for annexation was initiated on April 12, 2005, with the adoption of a resolution stating the intent of the city to annex the preceding four areas. On April 26, 2005, the Council approved the Plan for Services for the annexation areas that had been prepared by staff. This plan demonstrated how each area proposed for annexation met the statutory qualifications

for annexation and further demonstrated the capability of the city to provide urban services to these areas.

In accordance with statutory requirements, information meetings and public hearings on the annexation areas were held in May and June of 2005. On June 28, 2005, Council completed the final step of the annexation process with the adoption of various annexation ordinances. The ordinances established the following effective dates for the annexations:

- September 30, 2005 – Ridgefield Business Park area
- December 31, 2005 – Ascot Point Village, Long Shoals Road & Airport Road

The annexations for Ascot Point Village and Long Shoals Road went into effect as scheduled on the original established effective dates. All required city police, fire, sanitation and other services are currently being provided in those areas.

Owners of property in the Ridgefield Business Park and Airport Road areas, however, initiated a lawsuit challenging the legality of the City's annexation process. The lawsuit delayed the original effective dates of those annexations. Recently the legal challenge against the Ridgefield and Airport Road annexations was resolved in favor of the City, with the Supreme Court denying the property owners petition against annexation. The effective date of these annexations is now March 31, 2009.

Ridgefield and Airport Road - Legal Requirements

With the recent ruling by the Supreme Court, the annexations for the Ridgefield and Airport Road Areas will become effective on March 31, 2009. According to North Carolina General Statutes, cities must commit to providing city services to annexed property on substantially the same basis as those services are provided to the remainder of the city (NCGS §160A-49(f)). The statutes, at NCGS §160A 47(a) further provide that police protection, fire protection, solid waste collection, street maintenance, water and sewer services to an annexed area must be provided at the time of annexation if such services are provided in the annexing municipality. The exception to this requirement is with respect to needed water and sewer improvements. A two year window of time is allotted to make water and sewer construction improvements.

The state statutes provide for varied means of providing the required services. For the Ridgefield and Airport Road area annexations, the approved Plan for Services calls for police and fire protection, solid waste collection and street maintenance to be provided with City of Asheville staff resources.

If the state is maintaining residential streets in the annexation area, the statutes contemplate that these streets will be transferred to city control by agreement with the state Department of Transportation. The Plan for Services for the Ridgefield and Airport Road areas identified five streets to be taken over by the City. Streets meeting City standards will be accepted and maintenance provided in accordance with City policies.

Another section of the statutes addresses the issue of the transition of areas from rural fire service to municipal service and the impact on the rural fire departments. The statutes require the annexing municipality to make a good faith offer to contract with the rural fire department to continue to provide fire protection within the annexation area for up to five years. It also requires that the city offer employment to any full-time employee of a rural fire department who has lost employment because of the annexation. Lastly, in both voluntary and involuntary annexations, the city must assume responsibility for payment of a proportionate share of the rural department's indebtedness.

As with fire protection, the statutes recognize the need for providing some transitional protection for private solid waste collection firms seriously disadvantaged by annexation. If a solid waste collection firm qualifies, the statute states that the annexing city must either enter into a contract with the firm, allowing it to continue operating within the annexation area for at least two years after the effective date of the annexation, or reimburse the firm for its "economic loss". To qualify, one of the requirements is that any firm wishing to receive benefits must make a written request for such benefits before the public hearing on the annexation. GDS has made a request for these benefits in the amount of $30,880, which is included in the Plan for Services.

Ridgefield and Airport Road - Service Plan/Financing Plan

The original service plan for the Ridgefield and Airport Road Service areas was developed over fours years ago, prior to the legal challenge against those annexations. As noted earlier, on the effective date of annexation, all residents, businesses and property owners in the annexed areas must receive service on a basis substantially equal to all current parts of the City. The costs to provide these services are determined by each department based on their individual service delivery models. For example, the Police Department determines the number of new officers needed to service an annexed area based on the calls for police service in that area.

Upon the successful resolution of the lawsuit in favor of the City, staff updated the service plan to reflect today's costs and service demands for those areas. The updated plan includes provisions for extending police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection. A summary of the updated service and financial plan for Ridgefield and Airport Road is provided below:

REVENUE SUMMARY

AREA	*AD VALOREM*	*STATE UTILITY TAXES*	*SALES TAX*	*POWELL BILL*	*FEES, CHARGES, & PERMITS*	*TOTAL*
Ridgefield Bus. Park	$327,869	$44,920	$128,164	$3,217	$103	**$504,273**
Airport Road	$202,760	$55,760	$79,259	$17,972	$20,096	**$375,847**
	$530,629	**$100,680**	**$207,423**	**$21,189**	**$20,199**	**$880,120**

ANNUALLY RECURRING EXPENDITURES

AREA	(1) Police	(2) Fire	Solid Waste	Recycling	Street Maintenance	Street Lighting	TOTAL
Ridgefield Business Park	$ 0	$60,803	$521	$ 0	$0	$9,992	$71,316
Airport Road	$101,435	$37,656	$2,084	$1,070	$0	$780	$143,025
General	$0	$117,353	$0	$0	$0	$0	$117,353
TOTAL	**$101,435**	**$215,812**	**$2,605**	**$1,070**	**$0**	**$10,772**	**$331,694**

Notes:

(1) The annual costs for police services reflect two additional officers to maintain current police officer to population ratios.

(2) The annual costs for fire protection are based on the costs for 3 additional personnel and financial impact payments to the rural fire districts (5 year duration).

CAPITAL EXPENDITURES

AREA	Water Lines	Sewer Lines	Solid Waste	Rollout Containers	St Signs	Street Repair	Side-walks	Police	Fire	TOTAL
Ridgefield	$0	$0	$ 0	$510	$ 0	$ 0	$ 0	$0	$0	$510
Airport Road	$176,640	$250,000	$0	$2,295	$ 0	$ 0	$ 0	$0	$0	$428,935
TOTAL	**$176,640**	**$250,000**	**$0**	**$2,805**	**$0**	**$0**	**$0**	**$0**	**$0**	**$429,445**

After the ruling by the Supreme Court, staff sent out a mailing to all property owners and the residents in the new areas. The mailing welcoming the new citizens and gave them information about who they can contact in the City if they had questions. We will be holding an outreach meeting in each annexation area where department representatives will talk about the services to be provided and respond to questions. In addition, Sanitation has had a separate outreach effort.

In response to Mayor Bellamy, City Manager Jackson said that we are determining where we can use the stimulus dollars and apply those to projects. Our primary emphasis is that we are looking at small shovel ready projects that we can guarantee can be completed so we stay in line to get future funds. Our primary emphasis is not in regional areas, but in projects that can meet the criteria and are on the top of our priority list in terms of infrastructure needs. Any place that we can use those dollars to supplement our budget and get the projects done, we will do that.

B. RESOLUTION NO. 09-49 - RESOLUTION ENCOURAGING THE STATE LEGISLATORS TO PROVIDE ENABLING LEGISLATION TO NORTH CAROLINA MUNICIPALITIES TO PROVIDE AN ENERGY EFFICIENCY FINANCING MODEL TO PROPERTY OWNERS

MOTION TO DIRECT STAFF TO CREATE A PROPOSAL FOR THE SOUTHEAST ENERGY ALLIANCE GRANT

Councilwoman Cape (working with Councilman Newman) presented the following for Asheville's participation in Southeast Energy Efficiency Alliance grant proposal.

The Southeast Energy Efficiency Alliance (SEAA) is a non-profit organization that promotes energy efficiency for a cleaner environment, a more prosperous economy and a higher quality of life in the Southeastern United States. SEAA is currently promoting a friendly competition among cities in the Southeast centered around which can design the most effective energy efficiency plan for their community. The City that wins the competition, to be selected in June, will receive a grant of $500,000, which is being donated by a private foundation.

They believe that Asheville is well positioned to participate in this competition and recommend that City Council endorse our participation. Asheville's key strengths that should enable us to compete include:

- A demonstrated commitment to clean energy
  - o Created a Sustainable Advisory Committee for Energy and the Environment.
  - o Commitment to LEED Gold Certification of municipal buildings.
  - o Committed to reduce municipal global warming emissions by 80%, at a rate of 2% per year.
  - o City Council established "Green" as a top city priority, specifically including clean energy, in our 2008-2009 Strategic Plan for the Asheville.
  - o Dedicated staff.

- Strong partnerships
  - o Participation with Progress Energy in the Community Energy Advisory Committee (CEAC) process.
  - o Relationship with Warren Wilson College and others for sustainability initiatives.

Participating in the partnership involves the creation of a plan for promoting energy efficiency improvements at the community level, including specific goals, potential financing mechanisms, partnership commitments from businesses and community groups, and an implementation strategy.

They believe that the development of this plan will have benefits regardless of whether Asheville is selected as the winner of the competition. Developing the plan will help Asheville advance our green goals as a City. It will also position Asheville to access the significant resources that will be available through the American Recovery and Investment Act for energy efficiency.

At this time, they requested Council endorsement in principle to move the process forward. A final review of the proposed energy plan will also be reviewed by City Council prior to its submission to SEAA or other agencies. The proposal needs to be submitted to SEAA by May 15. We have requested review of this proposal by SACEE and the Finance Committee at their next meetings. For additional information about SEAA, visit http://www.seealliance.org/.

Ms. Maggie Ullman, Energy Coordinator, this is the consideration of providing City staff with direction to apply for the $500,000 Southeast Energy Alliance (SEEA) grant in concert with a resolution encouraging State Legislators to pass enabling legislation for an energy efficiency financing model.

The intention of this grant is to build regional partnerships to promote energy efficiency, energy conservation, and renewable energy in the community's existing building stock. In order to be successful, this effort will require participation from neighboring local governments, utilities, financial institutions, and public services commissions. A second variable, to support a successful grant application, involves encouraging the state to provide enabling legislation to pursue an energy efficiency financing mechanism. This financing mechanism partners the City of Asheville with property owners who volunteer to have the City of Asheville place a special tax assessment on their property in order finance energy efficiency and renewable energy improvements. This

This action complies with the following areas of the City Council Strategic Operating Plan: (1) Support diversified job growth and small business development; (2) Work with regional partners to create incentives for green building, energy conservation and energy intendance; and (3) Expand community education programs to attract volunteers to initiatives, including climate awareness, water conservation, recycling, storm water and sustainability.

Pros:

- Demonstrates City leadership state wide by pursuing legislation that enables all municipalities to pursue energy efficiency financing.
- Funds if awarded to the City may be leveraged to gain access to competitive federal stimulus dollars.

Cons:

- Requires significant staff time to prepare proposal
- Requires significant stakeholder buy in with associated letters of support before the grant is awarded

There is no fiscal impact associated with preparing the proposal and requesting enabling legislation.

City staff recommends City Council encourage the State Legislators to provide enabling legislation. Furthermore, staff recommends City Council direct staff to create a proposal for the Southeast Energy Alliance grant opportunity. In order for City Council to provide policy direction regarding a formal application, the grant proposal will be completed and available for City Council to review. On April 28, 2009, a formal resolution will come before City Council requesting authorization to submit an application to the Southeast Energy Alliance.

Councilwoman Cape said that Progress Energy instituted the Community Energy Advisory Council about 18 months ago and brainstormed about how we can work together. They have asked that each organization look at what they can do to participate. When this grant came along, she spoke with Mr. Robert Sipes at Progress Energy and said that they are supportive of this grant.

Councilman Newman said that on the financing legislation there are a lot of creative ideas being developed on a community level. If this legislation passes, it will be for all cities in North Carolina and noted that the actual participation is 100% voluntary. From our research, the model can be structured in a manner that is revenue neutral to the property owners who participates by agreeing to a special assessment on the property. Based on programs in other utilities, the property owner's utility bills will be reduced. This is also revenue neutral to the cities that sponsor these bills, including the cost of administration and staffing of a program. This should not be a financial burden on the City, the participating property owner or even property owners who do not participate in the program. This proposal was presented to the Finance Committee and they supported adopting the resolution requesting our state legislators to provide enabling legislation to North Carolina municipalities to provide an energy efficiency financing model to property owners.

When Councilman Newman asked if there would be a conflict of interest for him since he is employed by FLS Energy, it was City Attorney Oast's opinion that participation in this vote did not disqualify him from voting. If, however, the proposal is implemented, that would require a different consideration and it would also depend on the particular case.

There was considerable discussion regarding the financing model, throughout which City Attorney Oast and Ms. Ullman responded to various questions/comments.

The following individuals spoke against the proposal and asking our state legislators to provide for this energy efficiency financing model for property owners:

Mr. Sidney Bach
Mr. Gene Hampton
Mr. Mike Fryar

Councilwoman Cape explained how this model does several good things and they are asking to legislators to approve this so we can research into how this can help our community.

Councilman Russell moved adopt Resolution No. 09-49 and to direct staff to create a proposal for the Southeast Energy Alliance grant opportunity. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 461

C. RESOLUTION NO. 09-50- RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

Vice-Mayor Davis said that on November 11, 2008, City Council adopted Resolution No. 08-227 establishing the Homeless Initiative Advisory Committee (HIAC).

At the HIAC meeting on February 10, 2009, the HIAC recommended City Council appoint Gerald Hixson, Gordon Smith and Stephen Bolden.

At the February 10, 2009, City Council meeting, it was the consensus of Council to interview Gerald Hixson, Gordon Smith, Stephen Bolden, Crystal Williams and Wanda Lanier. Ms. Williams was unable to attend the interview.

After Council spoke highly of the candidates, Gerald Hixson received 4 votes, Gordon Smith received 3 votes, Stephen Bolden received 7 votes and Wanda Lanier received 7 votes. Therefore, Wanda Lanier was appointed to the HIAC to serve a three-year term, term to expire November 1, 2011; Stephen Bolden was appointed to the HIAC to serve a three-year term, term to expire November 1, 2011; and Gerald Hixson was appointed to the HIAC to serve a two-year term, term to expire November 1, 2010. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 462

D. RESOLUTION NO. 09-51 - RESOLUTION APPOINTING A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the HUB Community Economic Development Alliance.

Ms. Joyce Dorr has resigned from the HUB Community Economic Development Alliance, thus leaving an unexpired term until August 22, 2009.

At the February 10, 2009, City Council meeting, it was the consensus of Council to interview Tabatha Hamlin, Vanessa Penix, Daniel Collins and Richard Stiles. Ms. Penix was unable to attend the re-scheduled interview time.

After Council spoke highly of the candidates, Tabatha Hamlin received no votes, Daniel Collins received 2 votes, and Richard Stiles received 5 votes. Therefore, Richard Stiles was appointed to the HUB Community Economic Development Alliance to serve the unexpired term of Ms. Dorr, term to expire August 22, 2009, and then to serve a full three-year term, term to expire August 22, 2012, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 463

E. RESOLUTION NO. 09-52 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis said that this is the consideration of a resolution reappointing John Miall as Chair to the Civil Service Board.

John Miall currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

Current members of the Civil Service Board include: Chairman John Miall; Sidney Bach, Virginia Robinson, Marvin Rosen and Sharon West (who has resigned effective April 1, 2009).

At the February 24, 2009, meeting, it was the consensus of Council to interview Mr. Miall.

Councilman Mumpower moved to reappoint Mr. Miall as Chair to the Civil Service Board effective March 10, 2009, or until his successor is duly and annually appointed by the City Council, as provided by law. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mr. Sidney Bach thanked City Council for reappointing Mr. Miall, which reappointment he concurred with. He also addressed the Blue Ribbon Commission's scope of determining, through its analysis, the effectiveness of the Civil Service Law and to offer advice on future policy direction. He asked Council to reconsider the scope and ask for the Commission to do an overall objective study.

In response to Mayor Bellamy, City Manager Jackson said that Assistant City Manager Jeff Richardson brought to Council the suggestion for a Blue Ribbon Commission and on Council's direction, the Commission was formulated. He said that City Clerk Burleson would provide those minutes to Council.

Vice-Mayor Davis felt that the Commission has been meeting and the Council will be less than honorable not to hear about their study results.

RESOLUTION BOOK NO. 31 – PAGE 464

F. BOARDS & COMMISSIONS

It was the consensus of Council to interview Wilfred Lack and Albert Anderson for a vacancy on the Alcoholic Beverage Control Board.

It was the consensus of Council to interview Bridgette Odom, Davidson Jones and Beatrice Brown for a vacancy on the Civil Service Board.

Due to the lack of interest in the City's Census Complete Count Committee, it was the consensus of Council to instruct City Clerk Burleson to contact the Census' representative and ask her what her expectations are for the City committee if there is good representation on the overall County Committee by City leaders. He noted that the City does have a representative on the overall County Committee.

It was the consensus of Council to ask the Downtown Commission what their needs are and their recommendations for the vacancy on the Downtown Commission.

It was the consensus of Council to interview Sarah Sparboe Thornburg, Peggy Dalman and Honor Moor for a vacancy on the School Board.

It was the consensus of Council to re-advertise vacancy on the URTV Inc. Board of Directors.

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION AND/OR AN INDIVIDUAL VOTE

E. RESOLUTION NO. 09-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION TO CONSTRUCT THE FRENCH BROAD RIVER CORRIDOR CONNECTOR

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Site Development Corporation to construct the French Broad River Corridor Connector for an amount not to exceed $90,000.

As part of the French Broad River Greenway, the City of Asheville is preparing to construct the French Broad River Corridor Connector, an approximately 700-linear foot sidewalk connection between Carrier Park and Amboy Road Park in front of the former site of the Edaco salvage yard on Amboy Road.

The City issued a formal bid request for construction of this section of greenway and received a bid from Site Development Corporation from Cliffside, NC who was selected as the lowest, responsible bidder at a base bid of $81,015. Staff is including a contingency budget of $8,985 or approximately 11% due to unforeseen costs that may arise from construction.

Eighty percent or $72,000 of the total contract will be funded by a North Carolina Department of Transportation Federal Transportation Enhancement Reimbursement Grant. The remaining $18,000 has been allocated by City Council via the Fiscal Year 2001/02 capital budget.

This action complies with City Council's Strategic Plan (1) in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, bike paths, and sidewalks; and (2) in the Safe Focus Area in that it advances public safety and infrastructure investments that support children's health and safety. It also complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan. In addition, it complies with the Greenway Master Plan and the 2009 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides a linkage for an existing greenway identified in the Master Plan.

The Greenway Commission voted to support the project during its regular meeting on February 12, 2009. The Greenway Commission has received regular updates on the status of the project since it began in 2001.

Pros:

- Provides a vital link between two sections of the French Broad River Greenway and will increase pedestrian safety
- 80% of construction costs is funded through a grant from the State of North Carolina
- The contract amount is within the project budget

Con:

- The additional greenway mileage will require maintenance resources

Funds are currently funded in the City's capital budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Site Development Corporation to construct the French Broad River Corridor Connector for an amount not to exceed $90,000.

Councilman Mumpower said that he could not support any actions by Council until the City of Asheville can confirm the people we hire use legal employees.

After Mayor Bellamy asked for public comment and received none, Councilwoman Cape moved for the adoption of Resolution No. 09-48. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

Lawsuits

The City served a Complaint on February 27, 2009, which is generally described as follows: City vs. Edwin F. Pinner and Mona L. Pinner. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

The City served a Complaint on February 27, 2009, which is generally described as follows: City vs. Fakhoury Real Estate Investments. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

The City received a Complaint in Federal Court on March 3, 2009, which is generally described as follows: Troy Steven Wyatt v. City of Asheville, Gary Jackson, William Hogan, Officer Bridges, and Officer Martinez. This is a lawsuit brought in federal court pursuant to 42 USC 1983 for violation of civil rights due to alleged use of excessive force during drug arrests. As this case involves multiple defendants, this matter will be handled by separate counsel.

The City served a Complaint on March 4, 2009, which is generally described as follows: City vs. Suzayne Reeves. This lawsuit involves a violation of the City's solid waste ordinance and failure to pay civil penalties imposed for violation of the ordinance. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar commented about fareboxes on City buses and whether City Council was advised about a County resident who served on the Transit Commission (but is now a City employee). Mayor Bellamy asked City Manager Jackson to update Council on the fareboxes and noted that Council did not discuss personnel issues.

Mr. Brian Festa spoke to Council about quality education.

Mr. Gene Hampton requested Council (1) adopted a resolution to end the war in Iraq; (2) adopt a resolution defining "real marriage" as a union of two souls with a single thought; and (3) consider the following when appointing a new School Board member (a) requirements for a quality public education system; (b) characteristics of a quality school; and (c) crucial criteria for the key characteristics.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:38 p.m.

Magdalen Bunleson
CITY CLERK

MAYOR

Tuesday – March 24, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (excused from meeting at 7:20 p.m.); Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MARCH 28, 2009, FROM 8:30 P.M. – 9:30 P.M. AS "EARTH HOUR"

Mayor Bellamy read the proclamation proclaiming March 28, 2009, from 8:30 p.m. – 9:30 p.m. as "Earth Hour" in the City of Asheville. She presented the proclamation to Ms. Maggie Ullman, the City's Energy Coordinator, who urged all citizens to join in the millions of people around the globe in turning off the lights for one hour in order to make a statement about climate change. The City has initiated (1) a computer shut-down program at 8:00 p.m. every evening; (2) Better Energy Savings Today Program; and (3) a 4-day work week in Public Works. Regarding Earth Hour, we will have the spot lights on City Hall turned off and she will send out an e-mail encouraging non-essential city buildings to participate. The e-mail will double to let employees know they can chose to participate at home.

Councilwoman Cape, member on the Community Energy Advisory Council, thanked City Manager Jackson and City staff for their work to address energy efficiency and finding creative ways to look at our own footprint as an organization.

B. PROCLAMATION PROCLAIMING APRIL, 2009, AS 'CHILD ABUSE AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming April, 2009, as "Child Abuse Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, with Child Abuse Prevention Services, and Ms. Tammy Shook, Chair of the Community Child Protection Team, who thanked City Council for their support in this effort and briefed Council on some activities taking place during the month.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 10, 2009

After Mayor Bellamy asked for public comments on the Consent Agenda, but received none, Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. GREAT SMOKY MOUNTAIN PARK 75TH ANNIVERSARY

Mr. Bill Wright, Chief Ranger at the Great Smoky Mountain Park, extended his apologies that Mr. Dale Ditmanson, Great Smoky Mountain Park Superintendent, was unable to attend; however, Mr. Ditmanson is looking forward to attending several events in Asheville. Mr. Wright then was pleased to highlight the 75th Anniversary of the Great Smoky Mountain Park and outlined some activities that will be taking place.

The 75th Anniversary focuses on nature, culture, stewardship and partnerships through special events and programs.

Great Smoky Mountains National Park, its neighbors and partners have announced plans to celebrate the diamond anniversary of the congressional action that gave birth to the national park on June 15, 1934. Straddling the border between North Carolina and Tennessee and covering 800 square miles, Great Smoky Mountains National Park is one of the largest federally protected reserves east of the Mississippi River and the most visited national park in the National Park System.

The anniversary will serve to commemorate and showcase the Park's biologically diverse natural resources, cultural history and the host of recreational and education opportunities it offers the more than 9 million visitors who come annually. The celebration, a year of special in-Park events and over 100 community-partner events, will also highlight opportunities and the need for long-term stewardship of the Park.

The first of the Park's special activities is a media event on April 24 at Clingmans Dome to recognize and celebrate the efforts of the North Carolina-Tennessee states and local governments and early Park support groups that led to the creation of the Park. Local and state officials and other dignitaries, including both state governors, are being invited.

A three-day series of special events will occur during the "Anniversary Weekend", June 13-15. The first event will be on Saturday, June 13, when the Knoxville Symphony Orchestra (KSO) will perform in Cades Cove, reminiscent of its performance during the Park's 50th anniversary. The outdoor concert will be a ticketed event, based on a first-come, first serve basis, and the process for obtaining a "vehicle pass" and other logistical details will be announced early 2009 and posted on the 75th anniversary website.

The other two events during the Anniversary Weekend are June 14 when the Park will hold an Open House at Park Headquarters, near Gatlinburg, Tenn., to showcase Park operations and provide visitors with a "behind the scenes" view of administration and management activities such as search and rescue, exotic species control, wildlife management, archival displays, and exhibits on managing the Park's complex infrastructure of roads, trails, and bridges. On June 15, the Park's actual anniversary date, programs will take place at the Oconaluftee Visitor Center, near Cherokee, N.C., and highlight the cultural heritage of Southern Appalachians and Cherokee Indians through music, storytelling and exhibtry. The day will culminate with a groundbreaking ceremony of a new visitor center to be privately funded by Great Smoky Mountains Association and Friends of the Smokies.

The last of the in-Park special events will be held on September 2 at Newfound Gap to recognize a significant event in the Park's history—the dedication of the Park in 1940 by President Franklin D. Roosevelt. The event--at the Rockefeller Memorial which straddles the Tennessee/North Carolina boundary at Newfound Gap--will have limited attendance. An invitation will be extended to President Barack Obama. If the President is able to attend, he will be the first sitting President since FDR to visit the most popular national park in the National Park

System. The event will be supplemented by live broadcasts to be screened for a broader audience in venues located in or near the Park in gateway communities.

In addition to the events mentioned above, visitors will have a chance to celebrate the Park through many of its annual programs and educational services which will also incorporate aspects of the anniversary theme, "Celebration of our Past – Stewardship for our Future". Throughout 2009, a wide variety of community events officially sanctioned as 75th anniversary activities, will be everything from hikes and scavenger hunts to musical performances and cultural demonstrations held in and around neighboring communities to mark the occasion and showcase the nation's most visited national park.

As a major thrust throughout the celebration, the Park and its partners will be focusing on opportunities to create support for the continued health of the Park over the next 75 years.

All of the activities, sponsorship opportunities, and a variety of 75th Anniversary logo sale merchandise are listed on: www.greatsmokies75th.org.

On behalf of City Council, Mayor Bellamy appreciated the hard work that has gone into preparing the 75th Anniversary activities.

B. HOPE VI PRELIMINARY STUDY

Mr. David Nash, Chief Operations Officer of the Housing Authority, briefed Council on the HOPE VI preliminary study. He said that they have updated the City's Housing & Community Development Committee. They have also met with residents at each of the three developments and although there are some clear concerns among the residents, those meetings have been reasonably positive. He reviewed the following PowerPoint presentation:

Primary purpose of the feasibility study

- Preliminary analysis of Public Housing developments based on HOPE VI threshold of "severe physical distress":
  "Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original (including inappropriately high population density) deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project."

Physical inspections:

- Inspected 5% of 914 Units in 5 developments selected based on:
  - Age
  - Overall appearance
  - Vacancy rate
  - Police calls for service
  - Ongoing maintenance issues

For the Aston Park Tower and Garden Apartments:

- Property
  - Built in 1970
  - 162 efficiency & 1 bedroom units
  - 35.8 units/acre
  - 2007: 6.4 police calls/unit (Note: 2008 police calls declined to 3.7/Unit)
  - 2008 vacancy rate: 6.7%
- Conditions:
  - Poor accessibility

- All electric with no AC or insulation
- Obsolete systems; solid concrete chases
- Exterior brick issues
- Conclusion: severely physically distressed HOPE VI candidate

For Lee-Walker Heights

- Property
  - Built in 1950
  - 96 units, 1-4 bedrooms
  - 8.2 units/acre
  - 2007: 15.4 police calls/unit (14.3 in 2008)
  - 2008 vacancy rate: 6.2%
- Conditions
  - Oldest in Asheville
  - Narrow streets, high population density
  - Functionally obsolete electrical, plumbing, and heating systems
  - Conclusion: severely physically distressed HOPE VI candidate

For Pisgah View Apartments

- Property
  - Built in 1951
  - 262 units, 1-4 bedrooms
  - 10 units/acre
  - 8.6 police calls/unit in 2007 (6.3 in 2008)
  - 2008 vacancy rate: 7.3%
- Conditions
  - Largest and 2nd oldest in Asheville
  - Obsolete electrical system
  - Conclusion: functionally obsolete – possible HOPE VI candidate

Two other developments analyzed:

- Deaverview Apartments
  - Built in 1971, 160 units
  - 7.7 police calls/unit in 2007; 7.3 in 2008
  - Standard condition - not a HOPE VI candidate

- Hillcrest Apartments
  - Built in 1959, 234 Units
  - 7.4 police calls/unit in 2007; 7.7 in 2008
  - Standard condition - not a HOPE VI candidate

Fundamental considerations:

- One-for-one physical unit replacement
- Generous relocation benefits
- Strong support from City leadership, staff and other community partners
- Decision must be mission driven – healthy, low-income housing communities
- HOPE VI - funding to prepare strong application

Aston Park:

- Opportunities

- Potential collaboration with City and other community partners in Aston Park/Clingman Greenway area
- Expand number of truly accessible one bedroom units.
- Eliminate central office and/or maintenance warehouse

- Challenges
  - Limited development footprint of 4.52 acres – is one-for-one replacement possible on site?
  - Temporary loss of 162 0-1BR units (35% of our entire stock)
  - Office and shop relocation costs
  - Cost of HOPE VI application; current lending and tax credit environment

Lee-Walker:

- Opportunities
  - Replace our oldest, most concentrated development with highest crime rate
  - Only 96 units, so good possibilities for mixed income development with up-to-date standards and amenities
  - Convenient to many jobs; potential public/private partnerships
  - Potential to add to 1 BR stock
- Challenges
  - Topography limits development footprint (11.66 acres but not all buildable)
  - Long term residents have significant concerns
  - Cost of HOPE VI application; current lending and tax credit environment

Pisgah View:

- Opportunities
  - Replace second oldest facility with highest vacancy rate
  - Large site: 26.14 acres
  - Convenient to Carrier Park and transportation
  - Potential to add to 1BR unit stock
- Challenges
  - Very large project - 262 units hard to replace with on-site mixed income development
  - Disruption of current community building efforts
  - Cost of HOPE VI application; current lending and tax credit environment

Recommendations:

- Focus on options at Aston Park and Lee Walker
- Aston Park
  - Can tower be preserved and renovated?
  - If so, consider smaller scale replacement of garden units and maintenance facility
- Lee Walker
  - Will NOFA require "family" development?
  - Explore potential public/private partnerships
- Pisgah View
  - Potential for future redevelopment, but address immediate needs through capital/stimulus funding

Councilman Newman, Chair of the Housing & Community Development Committee, said that the Committee heard this presentation and felt it was a useful process in terms of the information. The concept of the HOPE VI has a lot of inherent appeal. He felt that if we are going to go forward with a HOPE VI effort, this would be investing in developing very specific plans for redevelopment of properties. He also encouraged Council to think about a partnership with the

Housing Authority to use some of our properties that border Housing Authority properties for creating some new 1 bedroom units as part of the HOPE VI process before we lose any existing units, so that there is not much of a displacement challenge.

Mr. Nash responded to various questions/comments from Council, some being, but are not limited to: is there a deadline for applying for the HOPE VI funds; how many projects do you think will come forward seeking HOPE VI funds; how many opportunities are there nationwide for HOPE VI funds and does the Housing Authority feel like our applications will be successful; and how much did the City participate in the HOPE VI study.

In response to Councilwoman Cape regarding the funding proposal to design a HOPE VI project, Mr. Nash said that the Housing Authority would like split the approximately $200,000 cost with the City. The Housing Authority would also use whatever development funds they have available to put in their share, along with staff resources. Mayor Bellamy also hoped the Housing Authority would contact Buncombe County as well.

Councilman Mumpower explained why he felt public housing is a very dangerous place to live in Asheville, and even though progress is being made, it continues to be a playground for drug dealers, users and their supporters. In addition, he was concerned that the mixed use model, as it can be realistically implemented, has not been demonstrated to him to succeed.

In response to Mayor Bellamy, Mr. Nash said that the leader of the feasibility study was Mr. Larry Holt. He explained Mr. Holt's experience and success levels with the HOPE VI initiatives.

Mayor Bellamy felt that we are fortunate to have a citizen (Mr. Holt) in our community that has had a proven success rate with HOPE VI initiatives. She said that she has visited Charlotte, Greensboro, Raleigh and Atlanta to see first hand the success of the HOPE VI developments. She noted the last Council voted to support police officers to work with the Housing Authority, noting that we are moving forward. Regarding the long-range planning for Aston Park, she felt having our senior citizens in a high rise is not the best model, especially when emergencies arise. If HOPE VI is not the tool to address this problem, then we need to address it another way. She felt there is an opportunity for the Housing Authority to partner with Mission Hospitals for a good Master Plan for the area, which addresses both needs, e.g., another entrance for Lee Walker, improvement of that corridor, etc. She suggested the Housing Authority continue to work with Mountain Housing Opportunities on Aston Park in that their plan calls for some redevelopment with the garden apartments. She did hope that the Housing Authority will continue to look at Pisgah View. She was pleased with this first step as it is a great vision for our community. She was also pleased that the Housing Authority is involving the community in this process. She suggested they look at the successful models of mixed income affordable housing in our community.

When Mayor Bellamy asked when they could update Council next, Mr. Nash said that they will report back on their progress to Council in the next 30-60 days.

C. HOMELESS INITIATIVE UPDATE

Ms. Amy Sawyer, Homeless Coordinator, provided Council with the following report on implementation of the 10-Year Plan to End Homelessness.

In November 2007, the City of Asheville, in partnership with Buncombe County, became the lead agency for the implementation of the 10-Year Plan to End Homelessness. The Plan entering its 4th year of implementation through the efforts of the Homeless Initiative project, which supports the City's goal of providing sufficient, safe, and affordable housing opportunities for all citizens.

There are 4 areas of focus for the Homeless Initiative:

1. Coordination of homeless and mainstream resources:

Workgroups of the Homeless Coalition, a partner of the Homeless Initiative, are currently focusing on the following actions:

- Ongoing meetings between homeless support staff and staff from the Buncombe County Jail and Mission Hospitals.
- Development of a community protocol to limit discharge to homelessness.
- Negotiations with landlords to work with potential tenants whose credit is challenged due to homelessness.
- Legal and credit support from local agencies to help potential tenants repair bad credit and build housing stability.
- Coordination of available housing resources so that people in a housing crisis can understand all of their options as soon as possible.

In summary, the Homeless Coalition Action Group focus is (1) coordination between homeless outreach staff, hospital, jail; (2) community protocol to limit discharge to homelessness; (3) landlord recruitment, negotiation with landlords; (4) legal and credit support from agencies to help re-build credit; and (5) coordination of available housing resources to help people in housing crisis.

2. Data Collection

Agency Surveys:

Through an award from the North Carolina Coalition to End Homelessness (NC ICCHP), the Homeless Initiative is currently working with two researchers to collect Agency Surveys to evaluate housing outcomes and complete a "map" of the Homeless Service system. To date, three agencies out of thirteen have provided agency surveys.

Point in Time Count:

The Homeless Initiative, along with the Homeless Coalition, facilitates a Point in Time Count at least once a year. Facilitation includes staff training, volunteer recruitment, data collection, and data analysis. This year's count occurred on January 28, 2009.

The Point in Time Count offers a "snapshot" of the homeless population. This national annual count supported by the US Department of Housing and Urban Development aims to count all homeless people in the community on one specific night. Facilities and agencies providing treatment, emergency, transitional, or permanent housing and/outreach services count and interview every person they work with. While agencies are making strides to input data into HIMIS, at this time a paper Point in Time tally sheet still is used to report how many people were counted on January 28.

Point In Time Count: January 28, 2009

Since 2008:

- Total population increased by 5%
- Total people experiencing chronic homelessness decreased 25%
- Total covered in HMIS increased 38%.

Unsheltered or in emergency or transitional housing:
555 total

52 children and 34 caretakers, 34 households

77 Single Women
355 Single Men
37 adults in hospitals or treatment facilities

21% are experiencing chronic homelessness
31% are experiencing mental illness
44% have a diagnosable substance use disorder
29% are veterans
<1% with HIV/AIDS
18% victims of domestic violence

Permanent, Supportive Housing:
231 total

31 children and 28 caretakers, 20 households

100 single men
72 single women

100 people who were *formerly* experiencing chronic homeless

In summary:

- **Total number of people counted was 555 -** This represents an increase of 5% from January, 2008.
- **The total number of people experiencing chronic homelessness was 115 -** This represents a 25% decrease from January 2008.
- **The average percent of people counted using HMIS was 48% of the total number of people counted.** This represents an increase of 36% from last year.

HMIS Data Collection:

With increased data now in the system, training has been offered to Homeless Initiative staff which will give staff the ability to easily and efficiently access system-wide reports. These reports will help the community better understand what services are accessed by people experiencing homelessness, what the outcomes are, and what gaps still exist. Additionally, the Homeless Initiative will be able to assist local agencies in better understanding how to use HMIS for their own reporting needs.

In summary, (1) agency surveys (a) voluntary; (b) any agency working with people experiencing homelessness urged to respond; and (c) will provide information to local, state, and federal decision makers; and (2) HMIS (a) monthly reports provide regular data quality evaluation; (b) Homeless Initiative staff has ability to collect system-wide reports; and (c) 2-1-1 and HMIS to share data.

HMIS Data Sharing:

In order to provide high-quality, integrated information and referral services, United Way's 2-1-1 of WNC (2-1-1) and Carolina Homeless Information Network (CHIN) plan to work together to share a single health and human services community resource database. This data sharing partnership will enhance the capability of HMIS by giving homeless service providers a streamlined way to access the 2-1-1 database of community services. This partnership is on track to be implemented this spring. A community announcement will be made when the partnership is formalized.

In summary, the agencies that are currently signed up to use HMIS include the Asheville-Buncombe Community Christian Ministries, Buncombe County Department of Social Services, City of Asheville, Homeward Bound of Asheville, On-Track, Pisgah Legal Services, Salvation Army – Asheville, and Western North Carolina Community Health Services! The Housing Authority of the City of Asheville is an agency that is signing the HMIS contract.

3. Funds Management & Development

McKinney-Vento Funds:

The Asheville-Buncombe County Homeless Coalition is happy to announce that our community has received a total of $878,592 through the Housing and Urban Development Continuum of Care/McKinney-Vento Grants.

Funds from the Community Development Block Grant (CDBG) allowed Pisgah Legal Services to complete the grant application with support from Homeless Initiative staff. Below is a breakdown of the award:

A-Hope Center & Safe Haven: outreach and emergency housing:	$ 182, 886
Interlace: Transitional Housing for victims of domestic violence	$ 265,602
Bridge to Recovery: Permanent Housing	$ 166,404
Shelter Plus Care: Permanent, Supportive Housing	$ 263, 700

Our community has accessed all Continuum of Care grant funds that Asheville-Buncombe is eligible to receive. No new programs were funded, and existing programs are full to capacity. While the Continuum of Care award makes a great impact, funding from other sources is necessary to meet our existing community need.

Homeless Prevention Funds:

The City of Asheville has been designated as an entitlement community for Homeless Prevention Funds from the president's Reinvestment and Recovery Act. The community is slotted to receive $509,460. The U.S. Dept. of Housing & Urban Development (HUD) is expected to provide communities with guidelines for the funding within the next few weeks. A public meeting is scheduled to provide details about funding guidelines on April 1, 2009, at 11 a.m. at the Public Works Building.

4. Effective Use of Housing and Services Resources to Move People out of Homelessness

Permanent, Supportive Housing is working in this community: a preliminary report from the Jordan Institute for Families at UNC-Chapel Hill followed participants of the Housing Support Team program (HST) for twelve months. The HST pilot program serves homeless individuals with severe and persistent mental illness. Until their enrollment in the program, participants heavily utilized public systems such as hospitals, mental health hospitals, jails, prisons and homeless shelters.

Under the guidance of the program, participants have reduced their use of these public systems. In Asheville and Buncombe County, a 32% reduction in service costs (e.g., jail, prison, emergency room, and mental health inpatient services) was documented after participants entered the program.

In the two years that the pilot program has existed in Buncombe County, 74 individuals have been housed. The retention rate is 91%, meaning that just 9% of the people who accessed the program were unable to stabilize their housing. People in the program have seen improvements in mental health, a reduction in behaviors related to substance abuse, and an increase in income. Unfortunately, for some participants, disability applications are still pending or underemployment limits access to affordable housing. Subsequently, 29 adults and 7 children continue to receive funding through the program in order to afford rent. Additionally, the program was funding supportive services that help everyone in the program maintain their housing.

The Housing Support Teams program is a $2.1 million, 26-month pilot project of the NC Department of Health and Human Services, funded through the state mental health trust fund since 2007. This program is the first state funding directed towards homelessness. Of the 2.1 million, Asheville-Buncombe was granted $350,000 to implement HST.

This program has flourished in three North Carolina counties: Buncombe, Durham, and Guilford. Without continued funding the Housing Support Teams program will end on June 30, 2009.

The program's end will mean a loss of stability for participants currently enrolled in the program and inhibit the implementation of successful best practices interventions embraced by the Housing Support Teams program. In Buncombe County, the Western Highlands Network is the lead entity, and Homeward Bound has served as the project manager. Partners of the project include the Asheville Housing Authority, Pisgah Legal Services, and numerous mental heath providers.

In summary, (1) research indicates 32% reduction in costs to community; (2) program has shown a 91% retention rate; (3) 74 individuals accessed the program since 2007, including children; (4) first dedicated homeless funding from North Carolina ever; and (5) program at risk of ending, funding for the program ends in June.

The Homeless Initiative implements the City's 2008-09 Strategic Plan goal of affordability by supporting initiatives that will end homelessness, the Continuum of Care Plan and the 10-year Plan.

City staff recommends that City Council accept this annual update report on progress to date on the implementation of the 10-year Plan to End Homelessness.

Mayor Bellamy was pleased with the relationship between the Western Carolina Rescue Ministries and Housing Authority where the Rescue Mission's recipients of services are fixing up Housing Authority units in order for more people to be housed quicker.

Councilman Mumpower explained how he felt the model for the 10-Year Plan is basically opportunity without responsibility. He recalled Police Chief Hogan stating that his officers had not reported a significant difference in the impact of homelessness and related misbehaviors issues downtown. He felt we are duplicating the model that failed in public housing many years ago in that when you give people something for nothing, you create a hostile dependence and it robs people of their dignity and their future.

In response to Councilwoman Cape, Ms. Sawyer said that the HMIS system will supply information on the root cause of homelessness. She said with the HMIS system, we can see what the population needs are and the make-up of the population.

Councilman Miller was pleased with the success seen in the point in time count.

Vice-Mayor Davis felt these statistics are important and we are addressing homelessness; however, he expressed some concern with the accuracy of the point in time count in that the count was taken only once on a rainy night.

Councilman Newman said that there has been an objective academic look at how well the Housing First strategy does work. A lot of discussion took place about how implementation of the Plan would lower the costs for police, health care, and other burdens that taxpayers have to carry that are related to chronic homelessness. We do have a 32% reduction in cost to taxpayers as a result of implementing this program. He felt that was a key finding. It does take money to fund the programs, but it also saves money.

Councilman Russell noted some success stories as well from the Western Carolina Rescue Ministries.

In response to Councilman Mumpower, and with the consensus of Council, City Manager Jackson said that he would provide Council with a report on March 27 regarding the number of calls for fire or police service in the downtown area since implementation of this program.

Councilman Newman noted that the Report entitled "The Cost Effectiveness of Housing Support Teams: The Experiences of Persons Enrolled in the First Three Months" e-mailed to all of Council by Ms. Sawyer is a good place to start for those who are interested in looking at the cost of these programs and the documented cost savings they produce, not only for the City of Asheville, but for various public institutions that are involved in providing services to homeless people.

Councilman Miller said that if we are going to look at the cost of police or fire service, we also need to look at the productivity that people are now giving back to the economic vitality.

Mayor Bellamy agreed with Councilman Miller in that we are not getting data from the Western Carolina Rescue Ministries, A-B Community Christian Ministries, A-HOPE, Mountain Housing Opportunities, etc. about their successful programs. The total population increase of 5% can relate to our current economy. If we want a comprehensive look at this, we will need to have a comprehensive report scheduled.

D. ECONOMIC STIMULUS PACKAGE UPDATE

Assistant to the City Manager Lauren Bradley introduced Ms. Brenda Mills, who has been reassigned as the project manager for the American Recovery & Reinvestment program. Mr. James Lee will be reassigned to assist Ms. Mills in the management of the Minority Business Program. Ms. Bradley then updated Council on the following application for the economic stimulus package.

RESOLUTION NO. 09-53- RESOLUTION APPROVING FOUR WATER PROJECTS KNOWN AS AUTOMATED METER READING SYSTEM, PUMP STATION METERS, PUMPING SYSTEM INSTALLATIONS TO REDUCE ENERGY AND WILLIAM DEBRUHL WATER TREATMENT PLANT BACKWASH LAGOON TO BE SUBMITTED AS PART OF THE ECONOMIC STIMULUS FUNDING FROM THE DRINKING WATER STATE REVOLVING FUND

Ms. Bradley said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council consideration of a Governing Board Resolution and Certification Statement to the Public Water Supply Section in support of the

four water projects submitted for economic recovery funding from the Drinking Water State Revolving Fund.

At the City Council meeting on February 24, 2009, Council approved through consensus staff submission of four Drinking Water State Revolving Fund applications to NC DENR's Public Water Supply Section. These four projects include an Automated Meter Reading (AMR) System, Pump Station Meters, Pumping System Installations to Reduce Energy, and the William DeBruhl Water Treatment Plant (WTP) Backwash Lagoon. In order to move forward with the processing of these applications, the Public Water Supply Section is requiring from applicants a Governing Board Resolution and Certification Statement by March 31, 2009. These projects are part of City Council's strategic plans to create jobs to aid in economic recovery, improve city infrastructure, and promote the city's green and sustainability initiatives.

Pros:

- Approval of these projects will ensure continuation of the application process. If awarded, Water Resources could realize significant savings in project costs.

Cons:

- If the Resolution and Certification Statement are not approved, the application process and funding potential for these projects will not move forward, pushing these projects out into later fiscal years until the necessary funds could be allocated.
- Approval does not guarantee the state will approve any or all of these projects.

There is no fiscal impact at this time for City Council to approve this list of projects. If these projects are approved by the state, the Water Resources Department may be required to provide at least 50% of the funds. At that time, staff would reallocate funds from completed and/or existing capital projects in order to meet any potential grant obligations. A decision has not been made on how North Carolina will allocate the recovery funds, so the amount is unknown at this time. Staff will keep City Council informed as more information about the funding process becomes available.

Water Resources staff recommends that the Mayor and City Council approve Governing Board Resolution and Certification Statement for the four approved water projects known as Automated Meter Reading (AMR) System, Pump Station Meters, Pumping System Installations to Reduce Energy, and the William DeBruhl Water Treatment Plant Backwash Lagoon.

Councilman Mumpower personally did not believe we should be using other people's money to pay for our water system, especially money that is borrowed from China and Japan and money our grandchildren will be required to pay back.

After a brief discussion, initiated by Councilman Mumpower, about whether the City has anything at the local level requiring the use of the e-verify system for any economic stimulus projects, City Manager Jackson said that this is an area of uncertain legal status, providing Council with the School of Government's Local Government Law Bulletin entitled "Do State and Local Immigration Laws Violate Federal Law."

Councilman Newman noted that Council voted in support of using the e-verify system for economic stimulus projects. He understands that our City Attorney is researching that particular issue regarding our ability to require that. And, if that is not permissible, that our staff is looking at permissible ways to achieve Council's goal. He suggested City Attorney Oast provide Council with updates on his research.

Mayor Bellamy felt it was important for staff to focus on giving Asheville the authority to be able to designate our contracts to local contractors.

City Manager Jackson said that they have spent an extensive amount of time on this issue. One path is to get into the business of regulating immigration, which is clearly not advisable. The second path of regulating business licenses (requiring certain verification of their employment) is an area that has potential for us and based upon the advice we have received to date, is worth pursuing. He said he would report back to Council].

After Mayor Bellamy read the resolution and received no public comment, Councilwoman Cape moved for the adoption of Resolution No. 09-53. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 465

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ZONING A PORTION OF PROPERTY LOCATED AT 380 LONG SHOALS ROAD TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3716 - ORDINANCE TO ZONE A PORTION OF PROPERTY LOCATED AT 380 LONG SHOALS ROAD TO CENTRAL BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:44 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of zoning a portion of property located at 380 Long Shoals Road to Central Business District. This public hearing was advertised on March 13 and 20, 2009.

Ms. Tuch said that there are a number of interrelated actions that have resulted in the zoning and jurisdictional patterns that currently exist. The actions are summarized and listed in chronological order below:

- Schenck Parkway and a portion of the area now commonly referred to as Biltmore Park Town Center came into the City's corporate limits in 1999 through a voluntary annexation – this included the Volvo plant and adjacent WLOS property and was zoned CI.
- The City's extraterritorial jurisdiction (ETJ) was expanded in 2001 and captured the balance of the Town Center area including the subject property (380 Longs Shoals). CBD zoning was applied as this most closely resembled the existing Town Center buildings already developed under the County's jurisdiction. *Note: the CBD zoning did not get applied to the 1.86 acre portion of the subject property due to the then existing Limestone Township zoning.*
- The Master Plan and related zoning change for the Biltmore Park Town Center was approved in February 2006.
- City initiated an involuntary annexation in January 2007 for the subject property (380 Long Shoals) – annexation boundary was based on the property lines that existed at the time.
- A voluntary annexation was requested for the Town Center subsequent to the above action. This annexation became effective in April 2007 and proposed to recombine a small portion of property south of Ducker Creek with the subject property (380 Long Shoals). The voluntary annexation did not include this recombined portion of property. *Note: because the preceding involuntary action had already been filed, it was not possible to change the annexation boundary to include this portion of unincorporated property – this resulted in the current existing jurisdictional anomaly.*

The large majority of the subject property was zoned as part of the 2001 ETJ expansion. The 1.86 acre portion of the subject property had been zoned under the then Limestone Township zoning and could not be zoned until it came into the City's jurisdiction, which did not occur until recently. As a result, the City is now pursuing the initial zoning for this unzoned remnant.

In considering the most appropriate zoning classification for this property, city staff initially felt a compelling argument could be made to apply UV zoning to match the majority of the adjacent development. The property owner, however, expressed an interest in maintaining the existing CBD zoning to avoid the need to develop a UV Master Plan and, while the property is owned by Biltmore Farms, it is somewhat geographically separated by a small creek. Additionally, the tenant of the property is interested in re-establishing the retail gas sales that were removed as a result of the Long Shoals Road widening project. He would not be able to reestablish gas sales under UV zoning but, could potentially do so under CBD zoning, although the use would be subject to obtaining several variances from the Board of Adjustment. Staff feels comfortable that the variances would be supported by the Board of Adjustment due to the hardship of the road widening.

Highway Business was also considered and would be more flexible for re-establishing the gasoline pumps; however, this was generally not well regarded given the propensity for HB zoning to result in suburban style, automobile oriented development which would be in proximity to the pedestrian oriented development of the Town Center property where long-term goals would seek to have more compatible uses. In addition, this initial zoning will include an area that had been inadvertently left unzoned. A separate rezoning application could be considered on a portion of the property at a later date should a mutually agreeable solution be worked out between tenant and owner.

After considering the unique context and the desires of both the property owner and tenant, staff felt the most appropriate zoning designation would be CBD.

The Planning and Zoning Commission reviewed this application at their March 4, 2009, meeting. The tenant and his legal counsel informed staff shortly before the meeting that they would be in attendance. There was, therefore, insufficient time to notify the property owner of their intended attendance. The tenant's legal counsel initially requested that the Commission delay the zoning action allowing them further time to hold conversations with the property owner regarding a possible HB zoning designation.

While the Commission was sympathetic to the desire of the tenant to re-establish their gasoline sales, the discussion revealed that delaying action would adversely impact the tenant in his efforts to establish a grandfathered use. All non-conforming uses that cease for any reason have a maximum of 365 days to re-establish the use. In this case, the property supporting the use is unzoned and the use cannot be grandfathered until it is zoned. Delaying zoning action reduces the window to (1) establish the grandfathered use, and (2) make application to re-establish this use which must be accomplished by May of this year.

Ultimately, the Commission supported the staff recommendation of CBD Zoning, but stated on record that they supported the re-establishment of the retail gasoline sales use but did not want to delay zoning action (for the "grandfathering" reasons stated above). The tenant and legal counsel acknowledged that the Commission's decision may be the best course of action under these unique circumstances. The Commission vote supported the staff recommendation, 7:0.

Pros:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

- Provides the greater flexibility for both the tenant and the property owner (compared to UV zoning).

Cons:

- Expands CBD zoning outside of the City's central business area.
- Requires a Board of Adjustment variance to re-establish the gasoline pumps.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Mr. Paul Zurich, property owner, spoke in support of the zoning. He said they would support the tenant being able to get the appropriate variances to re-install the gas pumps on their current site.

Mayor Bellamy closed the public hearing at 6:50 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3716. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 212

B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON 1498 SAND HILL ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 3717 - ORDINANCE TO REZONE PROPERTY LOCATED ON 1498 SAND HILL ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Bellamy said that the Asheville City Council held a public hearing on this matter and January 27, 2009, and tabled consideration due to concerns expressed by a neighboring property owner. The neighboring property owner and the applicant have reached an agreement on the applicant's future plans for the property. The applicant requested to return to Council for reconsideration in light of this agreement. The request remains for a standard rezoning from RM-16 to Institutional.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property located at 1498 Sand Hill Road from RM-16 Residential Multi-Family High Density District to Institutional District. She said that the public hearing was advertised on March 13 and 20, 2009.

Mayor Bellamy opened the public hearing at 6:53 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to rezone property located at 1498 Sand Hill Road from RM-16 Residential Multi-Family High Density District to Institutional District. This public hearing was advertised on January 2 and 9, 2009.

Ms. Cogburn said that the subject property is located off of Sand Hill Road (NC 112) just past the intersection with US 19/23. Access to the property is via a private road, Chapel of Faith Drive. The property is 38.8 acres in size and is used as a cemetery with related operations/ buildings. The property is currently zoned RM-16 (Residential Multi-Family High Density District)

and is in the City of Asheville's extraterritorial jurisdiction. The petitioner seeks a rezoning to Institutional.

The property is bordered by various uses and zoning district designations. To the west is the Vulcan Quarry operation (zoned Industrial); to the north are a variety of commercial, residential and institutional operations (zoned CBII and RM-8); to the east is vacant property zoned Urban Village for the proposed Main Street at Enka Village; and, to the south are multi-family dwellings (zoned RM-16).

The property is bordered by creeks and streams, although only one stream is located on the property at the northern property line. A rail line is located immediately north of the property between the northern property line and US19/23. The property is mostly flat.

Although the rezoning results in the loss of multi-family zoning, as there is presently a cemetery on the property, it is highly unlikely that any such development would be proposed. More intense uses than are present would be allowed under either zoning district. The rezoning does allow for additional development of the cemetery operations on site.

Pros:

- Allows for more intense development in an area off a major corridor.
- Conforms to the City's goal of allowing appropriate non-residential uses in suitable locations.

Con:

- None noted.

Based on the analysis provided in this report, staff and the Planning & Zoning Commission find this request to be reasonable. This rezoning was recommended for approval by a 5-0 vote by the Planning & Zoning Commission. One person (the property manager) spoke in favor of the rezoning. Since the Planning & Zoning meeting some concerns have been expressed by owners of the Urban Village District property adjoining this property.

Ms. Cogburn said that she received a call from the previously opposing neighboring property owner, FIRC Group, and even though they are unable to attend the meeting, they authorized her to report that they are no longer going to oppose the rezoning based upon a private contract concerning the location of the pet crematory.

Mr. Patrick Bradley, Family Counselor from Forest Lawn Cemetery, explained how they are now going to relocate the crematory on the far side of the Vulcan quarry. He then spoke about pet crematories in general.

Mayor Bellamy closed the public hearing at 6:57 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3717. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 215

V. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3707 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS CROWNE PLAZA RESORT AT 1 RESORT DRIVE FOR A MASTER PLAN COMPOSED

OF THREE PHASES TOTALING 364,700 SQUARE FEET OF NEW FACILITIES, CONSISTING OF (1) DETAILED APPROVAL OF PHASE I THAT INCLUDES A 61,500 SQUARE FOOT EXPANSION OF THE EXISTING SPORTS CENTER FACILITY WITH A REQUEST FOR MODIFICATION TO REQUIRED SETBACKS; AND (2) CONCEPTUAL APPROVAL OF PHASES II AND III THAT INCLUDE A 123,200 SQUARE FOOT MIXED USE BUILDING AND A 180,000 SQUARE FOOT CONDO/HOTEL BUILDING RESPECTIVELY

Mayor Bellamy said that due to the 4-3 vote on this matter at the public hearing and adoption on first reading on March 10, 2009, the matter needed a second reading.

In response to Mayor Bellamy's request to City staff to if they could find a date when the N.C. Dept. of Transportation (NCDOT) expects to have a final decision regarding the plan for the I-26 Connector, Assistant Director of Transportation & Engineering Ken Putnam said that provided Council with the following update on the anticipated schedule for the I-26 Connector project (City Exhibit 4). The information should be considered tentative and accurate as of this date but it is subject to change.

The subject project is following the "merger process" which is a shared decision-making process designed to streamline project development and permitting by establishing a project team to ensure that all laws and rules are followed. The process establishes a series of concurrence points (total of seven) that require agreement of the team for a project to move forward. This process has been used successfully on about 240 projects throughout the state and it has consistently reduced project time and improved project quality. The anticipated schedule is listed as follows:

Jun 2009	Concurrence point meeting to solidify Alternate 4B as a viable alternate and to bring it up to the same level of review as the other alternates.
Aug 2009	The supplemental draft environmental impact statement including Alternate 4B should be completed and released for public review and comment.
Sep 2009	The corridor public hearing meeting should be held to discuss the supplemental draft environmental impact statement.
Oct 2009	The post public hearing meeting should be held.
Dec 2009	Concurrence point meetings to select the preferred alternate and to optimize the design and benefits of the project while reducing the environmental impacts should be held.
Oct 2010	The record of decision (ROD) and the design public hearing should occur.
FY 2011	Right-of-way acquisition should begin.
FY 2013	Construction should begin.

Councilman Mumpower asked for guidance from the City Attorney regarding Council support of the property owner proceeding with his project even though NCDOT has yet to pick a final connector project being in conflict with Council's endorsement of Alternate 4-B which plan would seriously impact the viability of this project.

City Attorney Oast said that if the location for the connector has been decided on finally, that would be a concern for Council. And, if the NCDOT had begun the property acquisition

process, that would also be a concern. But at this point in time, the project is in the path of several of the alternatives. Regarding condemnation, he felt if it was determined that someone upgraded their property in anticipation of getting more money, that would be an element the courts would consider in awarding damages in a condemnation case. If that is a concern, it would be up to the NCDOT to raise it.

City Attorney Oast said that it was his understanding, from the Planning & Development Department and the applicant, that this is one phase of a plan that has been in process for several years. In the face of NCDOT plans that are at this point indefinite, Council needs to consider the proposal on its merit.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that he could think of no condition that Council could attach to the permit requiring any employees hired by the applicant must be legal citizens, as that is not a land-use related issue.

In response to Councilman Mumpower, Mr. David Matney, attorney for Mr. Dennis Hulsing, owner of the Crowne Plaza Resort, said that Mr. Hulsing never knowingly has hired an illegal immigrant. He said that he could not, however, guarantee there are none working for him but if there are, he doesn't know about it and he does not want that.

Mayor Bellamy was concerned that if Council approves this conditional use permit, that the community might think Council's support of Alternate 4-B is diminished and Council is supporting a different route.

Regarding Mayor Bellamy's concern, City Attorney Oast said that development is already on the property and Council is considering an approval required by an ordinance to a project that will enable the applicant to complete their plan for a project already in progress. He did not think this project should enter into the consideration of what is or is not an appropriate route.

In response to Mayor Bellamy, City Attorney Oast said that Council's record could reflect that the consideration of this conditional use permit is not meant to be any change in position of the alternate that Council's support.

Councilman Newman asked that the minutes reflect that he remains very supportive of Alternate 4-B and hope that is what plan is chosen by the NCDOT.

Mr. Matney and Mr. Hulsing explained how these plans were well in the works before Council voted to endorse Alternate 4-B. Even though they understood Council's support of Alternate 4-B, they would like the authority to proceed with this project.

Councilman Miller spoke in favor of the proposal.

In response to Councilman Mumpower, City Attorney Oast said that this is a land use issue and with the plan for the connector being as indefinite as it still is, that Council does have an obligation to evaluate the plan on its merit.

Mayor Bellamy confirmed Council's commitment to support Alternate 4-B for the I-26 Connector. She wanted to make it clear that if this project is approved, the approval does not detract from Council's support for Alternate 4-B.

Councilman Mumpower asked that the minutes reflect that he voted against the support of Alternate 4-B.

Councilman Newman moved for the send and final reading of Ordinance No. 3707, granting a conditional use permit for the project identified as Crowne Plaza Resort at 1 Resort Drive for the proposed 3-phase Master Plan with approval of the proposed setback modifications,

subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) Bridge reconstruction may require review by the Army Corps of Engineers; and (7) No building permits shall be issued until a solution is devised concerning resolution of the property line/building code matter. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Cape voting "no."

ORDINANCE BOOK NO. 25 – PAGE 194

Legislative Update

Mayor Bellamy said that she has just returned from a N.C. League of Municipalities Board of Director's meeting in Raleigh and provided Council with copies of the legislative update. She advised Council that there are 12 potential employers coming to our state. She asked staff to contact the Department of Commerce to let them know what we have in our inventory as far as available industrial land as well as our current contact information. She briefly reviewed the bills and asked that City Attorney Oast review the update and make sure that our community is not going to be hurt in this legislative session.

At 7:20 p.m., Mayor Bellamy asked to be excused from the remainder of the meeting because she had been travelling on City business since 4:00 a.m. and was exhausted. Therefore, Councilman Mumpower moved to excused Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Russell.

Mayor Bellamy said that later during the meeting Council will be making an appointment to the School Board. Even though she did not participate in the interviews, she thoroughly reviewed the applications and has personal knowledge of the individuals. In the event of a tie vote, she left her vote with Vice-Mayor Davis. As the liaison to the School Board she looked forward with working with whomever Council appoints to that important position.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried unanimously.

At 7:20 p.m., Vice-Mayor Davis called for a 20-minute recess.

B. BUDGET PLANNING

Staff Report

Chief Financial Officer Ben Durant said that the purpose of this staff report is to provide an update on the status of Fiscal Year (FY) 2009-10 Budget Process, including the fees and charges recommendations that were discussed at the March 17 Finance Committee meeting.

During the 1st Quarter Financial Report, which was presented to City Council in November 2008, staff provided its initial budget forecast for the 2009-10 fiscal year which projected a $5.0 million General Fund deficit. Between November and January, staff worked to develop a set of budget balancing strategies to address this $5.0 million forecasted deficit.

In February, staff presented to Council an updated budget forecast for the General Fund which included estimated dollar savings associated with each of these budget balancing strategy. With full implementation of these strategies, staff forecasted that the budget deficit in the General Fund could be reduced to $375,000.

Initial Forecasted Gap	($5,000,000)
Eliminate Merit Pay (Salary Freeze)	$750,000
Annexation Gain	$325,000
Reduce Housing Trust Fund Transfer	$300,000
Re-Engineering/Mgmt. Streamlining	$1,000,000
Reduce Transit Fund Transfer	$500,000
Increase Cost Recovery from Fees	$500,000
Reduce Fund Balance from 19% to 18%	$1,000,000
Additional Cost Savings Opportunities	$500,000
Council Strategic Priorities	($250,000)
February Forecasted Deficit	($375,000)

Updated Budget Information

Since the February Council meeting, staff has refined the estimates for the proposed budget strategies as well as made additional technical adjustments as updated information has become measurable and available for both revenues and expenditures.

Revenue Update

The strategy of Increased Cost Recovery from Fees was referred to the Council Finance Committee, and their recommendations for fee adjustments will be presented tonight. If the full Council approves the Finance Committee's fee recommendations, it will add an additional $700,000 in revenue to the FY 2009-10 General Fund budget. In addition to the General Fund fee adjustments, the Committee also endorsed staff's recommendation for a 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds. He reviewed the full set of fee recommendations and the minutes from the Finance Committee's March 17th meeting in which the fees were reviewed.

Since the February Council meeting, staff has also received an additional month of sales tax revenue from the State of North Carolina. January sales tax revenue was down 13.0% compared to January 2008, and sales tax revenue for the year is now down 4.7%. At the February meeting, staff had estimated that sales tax revenue would end the current fiscal year down 3.1%. Staff has now lowered that estimate to 4.7% based on the latest data. As a result, the budget gap has increased by $300,000.

Expenditure Update

In late February, staff received updated cost estimates for the City's FY 2009-10 street lighting budget as well as information from Buncombe County regarding the City's share of FY 2009-10 costs for joint programs such as CJIS/CDE, Crimestoppers, and the Police ID Bureau. The updated costs for street lighting and the City-County joint programs both exceeded staff's original estimates in these areas. These additional costs, along with some other minor technical adjustments added approximately $337,000 to the budget gap.

Current Budget Projection

The chart below shows the current budget gap once the original budget strategies were refined and the additional technical adjustments were made. At the moment the General Fund FY 2009-10 budget is out of balance by $812,300. This gap assumes that the full Council at its April 14 meeting will approve $700,000 in fee recommendations endorsed by a majority of the Finance Committee. The value of any fees not approved will add to the current budget gap.

February Budget Gap	($375,000)
Increased Utility & County Partnership Expenses	($337,300)
Reduction in Sales Tax Revenue Estimates	($300,000)
Additional Revenue from Fees & Charges	+ 200,000
Current Budget Gap	($812,300)

The budget gap assumes Council's adoption of fees and charges recommendations.

Mr. Durant said that staff will continue to work internally to further refine our strategies to address the adjusted gap and balance the budget in a meaningful and prudent way. In addition, staff has presented Council with the fees and charges that the Finance Committee has endorsed and will ask for consideration on those at the April 14 meeting.

Discussion occurred regarding how to address the budget gap as well as the process going forward.

Councilman Mumpower spoke against seeking short-term relief through Fund Balance in that there are flags that indicate this resource may be important going forward. He suggested staff review the budget in terms of what is necessary vs. nice or special projects. In addition, because personnel is where all the dollars go, he supported Council leading the way and reducing their salary as a model for senior management staff and others.

Finance Committee Recommendations

Councilman Russell, Chair of the Finance Committee, noted that the Finance Committee will be meeting on Friday, March 27 to (1) continue review of budget balancing strategies (a) service prioritization; and (b) compensation options; and (2) establishment of outside agency funding levels.

Councilman Russell felt there are three big budget issues – (1) salaries/payroll; (2) Fund Balance; and (3) property tax base. Council is clear that they do not support raising taxes. He wanted to make it clear that the Finance Committee will not give direction but will ask Council for consensus so the body can give direction to the Chief Financial Officer and City Manager to lead us through the budget adoption. If projections continue to drop and Council chooses to give direction to reduce salaries that direction needs to be soon in order for staff to begin re-engineering immediately. He was not opposed to going into Fund Balance to get through this tough time as he is optimistic about the future of Asheville.

City Manager Jackson said that on April 14, staff will ask for Council to act upon the fees and charges. Between now and then the Finance Committee will discuss other budget balancing strategies, such as service prioritization and compensation options. Council will also be asked on April 14 to review the recommendations from the Finance Committee on those items. On that date, staff will seek Council's direction on their major building block assumptions in order for staff to build the budget. The budget will then come back to Council in mid-May and the process will start in earnest, with adoption of the budget in June.

Councilman Newman noted that he does not like, nor never did like, the recycling fee – especially increasing it. Everyone pays property taxes, but this is a fee increase targeted at families who live in Asheville.

C. GREENLIFE GROCERY/MAXWELL STREET TRAFFIC CONTROL

Assistant Director of Transportation & Engineering Ken Putnam said that the purpose of this staff report is to provide an update regarding traffic related issues along Maxwell Street, rezoning plans, and traffic enforcement.

On Tuesday, August 28, 2007, City Council directed staff to meet with Greenlife Grocery staff to look at the possibility of adding on-street parking along Maxwell Street immediately adjacent to the Greenlife Grocery property. As a result of that meeting, we determined that two on-street parking spaces could be added and the work (signs installed) was accomplished on September 13, 2007.

On October 15, 2007, the Greenlife Grocery's local attorney called City staff to let us know that their private garbage hauler could not pick up the store's garbage because on-street parking was now allowed on both sides of the street. City staff then contacted the private garbage hauler to confirm their concerns and to try and identify any possible alternatives. After these discussions and further review by staff, the decision was made to remove the two recently installed on-street parking spaces and, this work was accomplished on October 30, 2007.

During the early part of 2008, City staff, including the City's Neighborhood Coordinator, began meeting with a couple of concerned citizens to discuss the decision to remove the two on-street parking spaces and to determine if any type of compromise could be reached. At the end of this process, which included two additional meetings with the private garbage hauler, City staff and the private garbage hauler agreed that one of the on-street parking spaces could be reinstalled without causing a negative impact. This parking space was reinstalled during the early part of May 2008 and until recently, City staff has not received any complaints.

On March 11, 2009, the Asheville Police Department responded to two calls regarding a parking issue resulting in a ticket for parking in the wrong direction and a potential towing of the vehicle. Before the vehicle was actually towed, the owner of the vehicle appeared and the owner of the vehicle and the towing operator agreed upon a compromise in the towing fee.

Typically, on-street parking is encouraged along city-maintained streets, especially along residential streets, because it enables citizens and/or visitors to park in front of their homes and it serves as probably the best traffic calming measure that is available. Section 19-140 of the Code of Ordinances states that a minimum 10-foot street width for free movement of vehicular traffic must be maintained and no vehicle should be parked in such a manner to create a street width less than 10 feet. As a general rule, City staff allows on-street parking on one side of a street with a minimum pavement width of 17 feet and both sides of a street with a minimum pavement width of 24 feet. The average pavement width of Maxwell Street is 25 feet; therefore, on-street parking is allowed on both sides of the street except in the immediate area of Greenlife Grocery.

Transportation and Engineering Department staff routinely drives by the site to observe existing conditions and it is reasonable to conclude that the trucks primarily using Maxwell Street are accessing the loading dock that is located on Maxwell Street. In addition, the larger trucks that are accessing the internal loading dock only use Maxwell Street to maneuver into the loading dock. Obviously, if the access point onto Maxwell Street were closed virtually all of the truck activity related to Greenlife Grocery would be eliminated along Maxwell Street.

Transportation and Engineering Department staff subsequently met with the Asheville Police Department on site and agreed that the single on-street parking space located in the

immediate vicinity of Greenlife Grocery should be marked on the street to clearly define its location and to supplement the existing signs. This work has been accomplished.

Planning & Development Director Judy Daniel said that Greenlife Grocery has no near term plans for modifications to their property. City staff spoke with their management recently and was informed that the economic downturn has affected their business, and they will not be moving forward in the near term with the modifications that would change the location of the loading dock. They cannot be compelled to proceed with a rezoning, and they are operating as authorized in terms of zoning compliance.

Councilman Newman wondered if a person is being penalized twice for one violation – given a ticket and being towed – is normal practice. Police Chief Hogan explained that incident involved two different officers arising out of two different calls at different times in the day, with the judgment of the second officer making the determination that the car was parked so far to the edge that it was obstructing the flow of traffic.

In response to Councilman Newman, City Attorney Oast said he would investigate the appeal process on the towing violation and report back to Council. Regarding the parking citation, Police Chief Hogan said that the appeal process would depend on which form the ticket was written on – a uniform citation form (which is a criminal violation) or the City's civil citation form. He said that he would be happy to direct the person to the correct appeal process if they contact him.

VI. NEW BUSINESS:

A. ORDINANCE NO.3718 - BUDGET AMENDMENT FOR THE REMOVAL OF EXISTING STREET LIGHTS FOR THE BILTMORE PARK PHASE I DEVELOPMENT FUNDED WITH REVENUE FROM BILTMORE FARMS

Public Works Director Mark Combs said that this is the consideration of a budget amendment, in the amount of $33,913, to appropriate revenue and budget expenditure accounts associated with the removal of existing streetlights for the Biltmore Park Phase I development.

Biltmore Farms has requested the City to authorize Progress Energy to remove existing street lights on their Biltmore Park Phase I project to enable installation of new streetlights conducive to their development plans. Authorization to Progress Energy by the City is necessary because the accounts are in the City's name.

Street lights are installed by Progress Energy and monthly charges are incurred for a specific term Since the existing streetlights are being removed prior to the term end, penalties are applicable. The calculation provided by Progress Energy for the removal of twenty (20) poles and associated lights is estimated at $33,912.76. Biltmore Farms has provided the necessary funds prior to authorization for removal by the City to Progress Energy, to cover all costs. Funds are shown in the street light removal line item.

This action complies with the City Council Strategic Operating Plan in that street lighting provides a safe environment for the public and reduces carbon emissions.

Pros:

- Removal of the existing street lights will allow the new street lights to blend with the new development.
- The street fixtures are being swapped out from dual head to single resulting in reduction of carbon emissions.
- No cost to the City.

Con:

- None identified.

There is no fiscal impact.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the removal of existing street lights for the Biltmore Park Phase 1 project.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3718. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 217

B. RESOLUTION NO. 09-54 - RESOLUTION AUTHORIZING THE PURCHASE OF WATER TREATMENT CHEMICAL FROM SOLE SOURCE VENDOR AMERICAN DEVELOPMENT CORPORATION TO ENSURE A MORE EFFICIENT WATER TREATMENT PROCESS AT THE WILLIAM DEBRUHL WATER TREATMENT PLANT

Interim Water Resources Director Robert Griffin said that the Water Resources staff requests that the Mayor and City Council recognize American Development Corporation as the sole source for the water treatment chemical liquid Polyaluminum Hydroxychlorosulfate, or DelPac 2020, in mini-bulk form and compatible mini-bulk storage tank system and authorize Water Resources to purchase them from said vendor for the estimated annual amount of $35,000.

North Carolina General Statutes allow purchases without formal bidding when a product is only available from one source of supply.

Water Production staff contacted five (5) chemical vendors in the region to see if they produce and sale DelPac 2020 in the mini-bulk form since that is the form needed for use at the William DeBruhl Water Treatment Plant in Swannanoa. While other companies produce DelPac 2020 in a drum or large bulk tank, the only chemical company to produce DelPac 2020 in the mini-bulk form is the American Development Corporation. The William DeBruhl Water Treatment Plant currently uses the drum method, which requires employees to transport the chemical up a large hill and manually feed the chemical. This method is very labor intensive and difficult. Since the dose of chemical needed to treat water at the William DeBruhl WTP does not warrant a large bulk tank, the most viable and efficient solution is to use the mini-bulk form.

Staff has determined that the treatment plant chemical liquid Polyaluminum Hydroxychlorosulfate, or DelPac 2020, in mini-bulk form and compatible mini-bulk storage tank system is needed to ensure less labor intensity and a more efficient water treatment process at the William DeBruhl WTP. After contacting various chemical vendors, the American Development Corporation has been identified as the sole source manufacturer of the chemical in the mini-bulk form. As part of the chemical procurement, the vendor supplies a mini-bulk storage tank that is required with the purchase of the chemical. The vendor's mini-bulk storage tank will be used for as long as the City purchases this chemical in mini-bulk form from them. The storage tank system and maintenance of it are included in the price, which equates to approximately $35,000 annually.

Staff will work with the City's Purchasing Department to ensure future purchases of this chemical in mini-bulk form follow all appropriate procurement requirements.

These projects are part of City Council's strategic plans to comply with state and federal requirements for the water treatment process.

Pro:

- Recognizing American Development Corporation as the sole source manufacturer of the water treatment chemical DelPac 2020 and authorizing the purchase from this vendor will ensure better efficiency in the water treatment process and replace the labor intensive use of drums by utilizing mini-bulk storage.

Con:

- If the purchase of mini-bulk DelPac 2020 is not authorized from the sole source vendor American Development Corporation, Water Resources staff will have to continue to treat water at the William DeBruhl WTP from drums, which is very labor intensive and not the most efficient way to treat the water.

Cost of the mini-bulk water treatment plant chemical DelPac 2020 and compatible mini-bulk storage tank system, which is approximately $35,000 annually from the Water Resources Department / Water Production Division Chemical Operations Line Item.

Water Resources staff recommends that the Mayor and City Council recognize American Development Corporation as the sole source for the treatment chemical liquid Polyaluminum Hydroxychlorosulfate, or DelPac 2020, in the mini-bulk form and compatible mini-bulk storage tank system and authorize Water Resources to purchase them through the City's Purchasing procurement process from said vendor in the amount of approximately $35,000 annually.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-54. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 466

C. ORDINANCE NO. 3719 - ORDINANCE REGULATING NON-CONSENSUAL TOWING FROM PRIVATE PARKING LOTS

City Attorney Oast said that this is the consideration of an ordinance regulating non-consensual towing from private parking lots.

For several years, City Council and City staff have been receiving complaints from individuals whose vehicles are towed from private parking lots. The vehicles in question are parked in private parking lots without authorization from the person in control of the lot, and are towed without consent of the vehicle owner. Sometimes, tow trucks are patrolling the lots for unauthorized parkers, and the tow is initiated almost as soon as the vehicles are parked. This practice is known variously as non-consensual towing, predatory towing, and trespass towing.

These incidents usually occur in the downtown or Biltmore Village areas, where visitor traffic is heavy and parking is at a premium. Not unusually, the incidents occur at night and on weekends, when private lots are largely empty. The complaints include reports of: vehicles being towed with pets trapped inside, vehicles being towed away even though the vehicle owner encounters the tow operator in the parking lot, fees for towing and storage being unreasonably high and arbitrary, the tow operator accepting cash only (no credit cards), vehicle storage areas being remote and unsafe, tow operators not responding to calls to retrieve vehicles, denying access to vehicle to retrieve personal property (including medicines). In addition to these complaints, the police recently completed a "sting" operation where two cars that had paid to park on a designated lot were towed. The tow operators have been charged criminally.

On the other side of this situation are the owners of the lots and the lessees of the spaces. Asheville has a substantial population of downtown residents, workers, and resident/workers, and they all depend on the availability of the space that they pay for or own in order to go about their daily business. Also, businesses depend on the availability of their parking to provide customers access to their stores or offices, and justifiably believe that they ought to have the ability to keep unauthorized parkers off their lots without having to install physical barricades or fences.

Over the years, Council has taken an incremental approach this issue beginning with simply requesting lot owners or businesses to barricade or post their lots with signs. In 2003, Council began to require the posting of lots in the downtown and Biltmore Village areas with signs prohibiting parking, and stating that unauthorized parkers will be towed. It is unknown how many incidents of unauthorized parking have been deterred by these efforts, but clearly incidents are continuing to occur.

Another factor in this equation is the tow operators. While there have certainly been legitimate complaints about non-consensual towing, most tow operators perform a sometimes necessary service for lot owners who request it. There have been reports of occasions when tow truck drivers engaged in removing a vehicle parked without authorization have been verbally abused and/or physically threatened. In addition, the operators have on occasion not received payment for the tow because stop payment orders are issued on personal checks or credit card authorizations are withdrawn, which has led some of the operators to require payment in cash only.

Non-consensual towing is really a matter between the lot owner, the vehicle owner, and the tow operator, and does not necessarily involve the City. However, when issues of public safety and the "peace and dignity" of the City arise, the City has a basis in State law for regulation. Due to the complex interplay of local, State, and federal law on this issue, determining how to structure and implement such regulations has required considerable investigation, and is continuing to evolve. Under federal law, local governments may regulate the price and other aspects of non-consensual towing as a matter of consumer protection. Within these limitations, cities in North Carolina and elsewhere have with increasing frequency been regulating nonconsensual towing.

The draft ordinance draws from ordinances that have been adopted in Raleigh and Wilmington. The main features of the ordinance are:

1. It applies only in the downtown and Biltmore Village areas.
2. It establishes a fee schedule for towing and related matters (see note below).
3. It requires the release of a vehicle if the vehicle owner encounters the tow operator in the parking lot.
4. It establishes some standards for the storage lot to which the vehicle is removed.
5. It requires the tow operator to notify the police if a tow is performed, and to respond to calls within a specified time.
6. It requires that vehicle operators be allowed to retrieve personal property from the vehicle.
7. It requires the tow operators to accept credit and debit cards, but prohibits persons from cancelling payments. He asked that Section 9 of the draft ordinance be amended to read "Failure or refusal by a vehicle operator to pay any of the fees assessed pursuant to this section is a violation of this section."
8. It prohibits interference with a tow operator performing a tow.
9. Violations of the ordinance are subject to civil and criminal penalties; repeated violations are subject to increasing civil penalties.

Note: The $100.00 "base fee" used in the draft ordinance is based on the Raleigh ordinance, as is the 50% "release fee." The rate schedule could also be established in the Fees and Charges manual, or could be keyed to the rate for police-initiated tows, which are negotiated periodically. Research into rates is continuing.

This item is consistent with the Strategic Operating Plan in that it supports the goal of improving public safety downtown; and is a form of community policing.

This item was reviewed by the Public Safety Committee on March 17, and their comments have been incorporated into the draft where possible. A proposal to license tow operators is being explored, but may require additional review as a business regulation.

The fiscal impact is that there may be some additional costs for administration and monitoring compliance, not likely to be offset by collected fines.

Pros:
- Regulates problematic activity while recognizing interests of parties
- Establishes reasonable/predictable fees
- Promotes safety

Con:
- Increases administrative burden on already-thin City staff

Adoption of the proposed ordinance is recommended, with delayed effective date to permit notification of interested parties.

City Attorney Oast responded to Councilman Miller on why the ordinance applies only within a 10-mile radius of the Central Business District and Biltmore Village.

In response to Councilman Miller, City Attorney Oast explained how the $100 base fee was suggested. He said that Council can establish that fee annually in the fees and charges manual. In fact, in the initial draft of the ordinance he suggested that the base fee be negotiated by the Police Department from the wrecker rotation list because that is a fee that has been negotiated with the tow truck operators and presumably they have had input into how much work is involved. That fee can be set a number of ways, but the $100 base fee seemed reasonable.

Vice-Mayor Davis' concern of Senator Nesbitt's $75 fee is that the tow operators who are doing a legitimate service need to be fairly compensated. Today's non-negotiated fees are higher than that and seemingly $100 was a fair price.

Councilman Miller questioned whether the fee for storing a towed vehicle should begin to accrue at 24 hours instead of 12 hours. City Attorney Oast said that most people will know their vehicle has been towed within 12 hours.

Councilman Kelly questioned if there was discussion in making the escalated civil penalties higher in order to stress the importance of this issue. City Attorney Oast said that we don't have escalated penalties often, but when we do, these are consistent with them. Since Council is getting into this matter in an incremental way and the issue really is between the private lot owners and the vehicle operators, he suggested that if these civil penalties do not achieve the required effect, then Council might consider increasing them.

In response to Councilman Mumpower, City Attorney Oast said that he did not speak with the tow operator association; however, he has spoken with people who own and operate parking lots.

City Attorney Oast responded to Councilman Mumpower regarding the language on existing signs.

There was a brief discussion, initiated by Councilman Mumpower, regarding credit and debit card payments. In summary, City Attorney Oast suggested Section (5) of the ordinance be amended to read "Any tow service that engages in a trespass tow shall accept at least two nationally recognized credit or debit cards in payment for any fee established in this ordinance."

Councilman Mumpower questioned the $25 a day storage fee and whether Council can put a cap on the accrual of those daily fees. City Attorney Oast said that Council can cap that amount; however, they may be getting into aspects of the tow operator where the responsibility falls on the person who owns the vehicle to do something about it than it does on the tow operator to contact them. Vice-Mayor Davis noted that tow operators have limited lot sizes and they don't want people to be encouraged to leave the vehicles for any length of time.

When Councilman Mumpower questioned whether Council could address issues regarding kick-backs, City Attorney Oast didn't know how we could regulate that practice, other than what we already do through criminal law.

There was a brief discussion, initiated by Councilman Mumpower, regarding whether the City wants to get into the business of a vehicle operator failing or refusing to pay any of the fees, or leaving that between the vehicle operator and the tow service. In summary, City Attorney Oast suggested that Section (9) of the ordinance be amended to read "Removal of a vehicle that is not a trespass vehicle from a private lot without the consent of the vehicle operator shall be a violation of this section."

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved to adopt Ordinance No. 3719, with the following amendments: (1) Section 5 be amended to read "Any tow service that engages in a trespass tow shall accept at least two nationally recognized credit or debit cards in payment for any fee established in this ordinance." and (2) Section (9) be amended to read "Removal of a vehicle that is not a trespass vehicle from a private lot without the consent of the vehicle operator shall be a violation of this section." This motion was seconded by Councilman Russell.

Councilwoman Cape supported Councilman Miller's suggestion that the ordinance apply to the entire City, not just for a 10-mile radius of the Central Business District and Biltmore Village. Councilman Russell explained why he could not support that amendment, with City Attorney Oast explaining that the ordinance is being applied to areas where we can require proper signage.

There was a brief discussion regarding Councilman Newman's request that predatory towing of vehicles properly parked have significant penalties. In summary, City Attorney Oast suggested Section (9) of the ordinance be amended to read "Removal of a vehicle that is not a trespass vehicle from a private lot without the consent of the vehicle operator shall be a violation of this section, and shall subject the offender to civil penalties."

Councilman Miller asked for City Attorney Oast to continue his research on the issue of licensing tow operators.

Councilman Mumpower amended his motion to adopt Ordinance No. 3719, with the following amendments: (1) Section 5 be amended to read "Any tow service that engages in a trespass tow shall accept at least two nationally recognized credit or debit cards in payment for any fee established in this ordinance." and (2) Section (9) of the ordinance be amended to read "Removal of a vehicle that is not a trespass vehicle from a private lot without the consent of the

vehicle operator shall be a violation of this section, and shall subject the offender to civil penalties in an amount three times the amount specified in Appendix B." Councilman Russell accepted the amendment.

City Attorney Oast noted that this ordinance will not end non-consensual towing in Asheville, but if Council adopts this ordinance, they will have done as much as they can do and will have addressed the issues we have received complaints about.

A property owner at 144 Biltmore Avenue cited several incidences he has encountered with people parking illegally in his parking lot. He said that his lot has had probably 10 of the regulated no-parking signs and people have destroyed them in various ways. He supported adoption of this ordinance.

Mr. Ronnie Davis, Davis Automotive and Towing in west Asheville, spoke in favor of the ordinance, however, he felt it should be applied City-wide. He would welcome the opportunity to be on a committee to work through some concerns raised. Regarding acceptance of credit or debit cards, his company does accept that, however, he suggested MasterCard or Visa be the accepted cards.

In response to Councilwoman Cape, Mr. Davis said that he receives no compensation from the property owner of the 4 lots they monitor in town. He said that they average about 3 cars per week from the 4 lots they monitor.

After a brief discussion, City Attorney Oast suggested Section (5) of the ordinance be amended to read "Any tow service that engages in a trespass tow shall accept at least two nationally recognized credit or debit cards (such as MasterCard or Visa) in payment for any fee established in this ordinance."

Councilman Mumpower moved to amend his original motion to adopt Ordinance No. 3719, with the following amendments: Section (5) be amended to read: "Any tow service that engages in a trespass tow shall accept at least two nationally recognized credit or debit cards (such as MasterCard or Visa) in payment for any fee established in this ordinance."; and (2) Section (9) of the ordinance be amended to read "Removal of a vehicle that is not a trespass vehicle from a private lot without the consent of the vehicle operator shall be a violation of this section, and shall subject the offender to civil penalties in an amount three times the amount specified in Appendix B." Councilman Russell accepted the amendment.

When Mr. Davis said that their trucks do not have portable terminals to swipe the credit cards, it was suggested the trucks be provided with inexpensive manual printers.

Councilman Miller stressed that it is not okay to park illegally no matter the length of time being parked.

The amended motion made by Councilman Mumpower and seconded by Councilman Russell carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 219

D. RESOLUTION NO. 09-55 - RESOLUTION APPOINTING A MEMBER TO THE ABC BOARD

Vice-Mayor Davis said that the term of Barbara Field expired on November 13, 2007, and City Council extended her term until April 1, 2009.

At the March 10, 2009, meeting, it was the consensus of Council to interview Wilford Lack and Albert Anderson. Dr. Anderson called and asked not to be considered for a vacancy at this time.

Vice-Mayor Davis said that Council has received an e-mail today from ABC Board Chairman Charles Worley who requested that (1) due to her invaluable architectural services during their construction of 2 new ABC stores, that her term be extended through the completion of construction (approximately 3 months); or (2) her vacancy be filled with someone that has a professional planning/ design/construction type of experience as their long range plans call for more construction over the next year or so. If Council does not have an application on file to meet their needs, he requested the vacancy be re-advertised.

Councilman Mumpower, liaison to the ABC Board, spoke about the rarity of extending terms and would not support another extension. In addition, he felt it was unfair to extend the interview process after interviews have been conducted. Therefore, Councilman Mumpower moved to appoint Wilford Lack as a member of the Alcoholic Beverage Control Board, to serve the remainder of Ms. Field's original 3-year term, term to expire November 13, 2010, or until his successor has been appointed. This motion was seconded by Councilman Newman and carried unanimously.

It was noted that Mr. Lack's unexpired term on the Civic Center Commission will be advertised accordingly.

RESOLUTION BOOK NO. 31 – PAGE 469

E. CONSIDERATION OF A RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis said that the term of Sharon West, as a member of the Civil Service Board, expired on May 21, 2008.

At the March 10, 2009, meeting, it was the consensus of Council to interview Bridgette Odom, Davidson Jones and Beatrice Brown.

On March 24, 2009, Ms. Odom and Ms. Brown were interviewed. Mr. Jones did not respond to requests for an interview.

Due to a mid-process grievance hearing, City Attorney Oast recommended City Council delay action on making the appointment until after the outcome of the grievance, which should be within a week. He noted this is a delay that Council could not have anticipated.

Councilman Mumpower was impressed with both interviews and even though there is only one position open, he hoped the other candidate would be willing to serve on a board of equal importance.

It was the consensus of Council to delay action on this item until April 14, 2009.

F. RESOLUTION NO. 09-57 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Davis said that the term of Allison Jordan, as a member on the Asheville School Board, expire on April 1, 2009.

At the March 10, 2009, meeting, it was the consensus of Council to interview Sarah Sparboe Thornburg, Peggy Dalman and Honor Moor.

Regarding Mayor Bellamy's absence, City Attorney Oast said that since Mayor Bellamy is absent, her vote will not count.

Councilman Mumpower felt the School Board should be elected, not appointed. Even though he felt all three were strong candidates; it was his opinion the School Board needs people that speak up and are strong change agents. Since he did not sense that from any of the candidates, he withheld his vote.

After other Council members spoke highly of the strong candidates, Sarah Sparboe Thornburg received 1 vote; Peggy Dalman received 3 votes; and Honor Moor received 1 vote. Therefore, Peggy Dalman was appointed as a member of the Asheville School Board to serve a four-year term, term to begin on April 1, 2009, and expire on April 1, 2013, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 471

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 20 – March 12, 2009: Nathan Ownbey (Water), Charter Communication (Water), Lisa Metcalf (Parks & Recreation), Ann Debrule (Water), Geneva Fate (Water), Swannanoa Cleaners (Streets), Jean Sponseller (Water), Eric Froiland (Street) and Yvonne Stillwell (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton, representing Asheville-Buncombe Citizens for Quality Government, spoke about the need for quality education.

IX. ADJOURNMENT:

Vice-Mayor Davis adjourned the meeting at 9:33 p.m.

Magdalen Bowleson
CITY CLERK

MAYOR

Tuesday – April 14, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower (left meeting unexcused at 9:28 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

Assistant City Manager Richardson recognized (1) Jason Mann, Stephanie Osbourn, Dave Michelson, Tony McDowell and Richard Grant employees who were instrumental in obtaining approximately $300,000 for the state reimbursement for utility franchise fee; (2) Mark Combs, Steve Henderson and Wendy Simmons for their implementation of the new Roll Out Trash Can Program at Pisgah View apartments; (3) Sara McHone, Chad Pierce, Brad Davis, Leslie Carriero, Ron Kerns, Ivan Thomas, Nanci Farmer, Florie Presnell and Audran Stevens for their input into the Building Safety Department's ISO Certification, which auditor noted that the City of Asheville is a model organization for processes, education, training, and documentation; (4) Detective Kevin Taylor and Detective Yvonne Cobourne in the involvement in the cold case file of the death of Sandra Proffitt leading to the Asheville Police Department charging Terry Luther Spivey in the 1990 homicide; (5) Ken Putnam, David Foster, Dave Michelson, Jason Mann, Chad Pierce, Jeff Reble and Trisha Hardin for their efforts involving a public information outlet to notify the community about street closures; and (6) Gordon Reis – Parks and Recreation; David Rutledge – Police; Clarence McAfee – Fire; Patricia Hensley – Water; Beverly Ann King – Finance; David Anders – Fire; and Flavious Jackson (Transit Authority) who have retired with 30 years of service.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

Mayor Bellamy welcomed Ms. Edna Johnson as the new General Manager to the Transit Authority.

B. PROCLAMATION PROCLAIMING APRIL 2009 AS "AUTISM AWARENESS MONTH"

Vice-Mayor Davis read the proclamation proclaiming April 2009, as "Autism Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Jean Alvarez, representing the Autism Society of North Carolina, who briefed City Council on some activities taking place during the month and thanked City Council for their support.

C. PROCLAMATION PROCLAIMING APRIL 2009 AS "JAZZ APPRECIATION MONTH"

Councilwoman Cape read the proclamation proclaiming April 2009, as "Jazz Appreciation Month" in the City of Asheville. She said that the proclamation would be sent to the WNC Jazz Society.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "B" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 24, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S SMART GROWTH IMPLEMENTATION ASSISTANCE PROGRAM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION NO. 09-58 - RESOLUTION ACCEPTING ALLIANCE COURT, HEART DRIVE, MACHEN ROAD, RIDGEFIELD BOULEVARD AND RIDGEFIELD COURT AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept three existing state-maintained streets as city-maintained streets and two privately-maintained streets as city-maintained streets, all from the recently annexed areas of the City of Asheville.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The recently annexed areas include the Ridgefield Business Park area and the Airport Road area. These areas were challenged through the Court system and the City prevailed.

SR 3624 (Ridgefield Blvd) from NC 191 (Brevard Road) to NC 191 (Brevard Road) is a state-maintained street that has an average width of 27 feet and 54 feet with 2-foot curb and gutter, a length of 0.83 mile, and a right-of-way width of 50 and 105 feet.

SR 3625 (Ridgefield Court) from SR 3624 (Ridgefield Blvd) to its dead-end is a state-maintained street that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.24 mile, and a right-of-way width of 45 feet.

SR 3644 (Machen Road) from SR 3527 (Bradley Branch Road) to its dead-end is a state-maintained street that has an average width of 18 feet with 4-foot grass shoulder, a length of 0.11 mile, and a right-of-way width of 45 feet.

Alliance Court from SR 3625 (Ridgefield Court) to its dead-end is a developer constructed street (privately-maintained) that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.05 mile, and a right-of-way width of 50 feet.

Heart Drive from SR 3624 (Ridgefield Blvd) to its dead-end is a developer constructed street (privately-maintained) that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.18 mile, and a right-of-way width of 60 feet.

As a part of the Annexation Services Plan, the subject streets were inspected by Transportation and Engineering Department staff and Public Works Department staff and the general street conditions were determined to be satisfactory and any maintenance issues will be handled as part of the City's routine maintenance funding.

Typically, state-maintained streets that are entirely within the city and are classified as local type streets make good candidates to become city-maintained streets. Local type streets primarily provide access to property and many of these streets are found in residential communities.

Following City Council's approval of this resolution and approval by the North Carolina Department of Transportation for Ridgefield Blvd, Ridgefield Court, and Machen Road, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City. In addition, this action complies with the Annexation Services Plan for the Ridgefield Business Park area and the Airport Road area that was approved by City Council on April 26, 2005.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access and connectivity in a residential community and a professional business park.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to $6,326 per mile compared to the City's maintenance cost of $18,189 per mile.

Staff recommends that City Council accept the subject streets as city-maintained streets.

RESOLUTION BOOK NO. 32 – PAGE 2

D. RESOLUTION NO. 09-59 - RESOLUTION AUTHORIZING THE CITY MANAGER TO WAIVE THE ANNOUNCEMENT REQUIREMENTS AS SET FORTH IN N.C. GEN. STAT. SEC. 143-64.31 TO PROVIDE ENGINEERING SERVICES FOR RANKIN AVENUE PARKING GARAGE

Summary: The consideration of a resolution authorizing the City Manager to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center deck was built in 1976. Rankin Avenue and Wall Street Garages were constructed in 1988. These parking decks have deteriorated and require restorative maintenance. This maintenance typically consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs. The City of Asheville commenced a multi-year program to accomplish restoration of the garages in 2007. The restoration work was completed in Civic Center garage in 2008. Our capital program anticipated restoration work on Wall Street Parking Garage in fiscal year 2009 and in Rankin Avenue Parking Garage in fiscal year 2011.

Parking Services sent out a Request for Proposal to engineering firms for the restoration of Wall Street Parking Garage. The scope of work included a detailed assessment of the condition of the facility, preparation of working drawings, preparation of bid package for general contractors, and supervision of the restoration work. Five firms responded to the request for proposal. Based on qualifications, Walker Parking Consultants was selected to perform the work.

The Fiscal Year 2009 budget includes $500,000 in debt service for the proposed parking garage at 51 Biltmore Avenue. We will not need to make this debt service payment and would like to use this money to move ahead with the renovations to the Rankin Avenue Parking Garage. We requested that Walker Parking provide us with a fee to perform the design analysis for the Wall Street and the Rankin Avenue Garages. The fee is $82,000 and $34,750 for Wall Street and Rankin Avenue Garages respectively for a total fee of $116,750.00. City Council approved awarding the contract to Walker for the design of both parking garages on February 24, 2009, with the understanding that staff would need a waiver from the announcement requirements for the design of the Rankin Avenue Garage.

Staff is requesting authorization to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

Pros:

- Combining the engineering services for both Rankin Avenue and Wall Street garages significantly reduces the overall cost than if they were done separately.
- The advantage of this to the City is by correcting problems in the deck now will prevent more costly repairs later and will extend the useful life of the parking facilities.
- Precludes the City from having to fund a large debt service and restoration project in one fiscal year.

Con:

- Completing both garages at the same time can be administratively cumbersome but is not insurmountable.

Funds were approved in the Fiscal Year 2008-09 Operating and Capital Improvement Plan budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

RESOLUTION BOOK NO. 32 – PAGE 4

E. RESOLUTION NO. 09-60 - RESOLUTION AUTHORIZING EXECUTION OF EASEMENT FOR POWER LINE AT WNC AGRICULTURAL CENTER (AIRPORT ROAD)

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the Western North Carolina Agricultural Center (herein "WNCAC")

The land on which the WNCAC is located is owned by the City of Asheville. It is leased to the State of North Carolina, specifically, the Department of Agriculture and Consumer Services, which uses it for the WNCAC. A new facility, the "Arts and Crafts Center," is being constructed on the property, and this new facility requires electrical service. The new lines would run from Airport Road, east across the south edge of the parking lot to the transformer. The easement

area would include 10 feet for the line, with the line being in the center, and 10 feet around the enclosure for the transformer.

This installation has been approved by the Department of Agriculture, which requested it. Such improvements are within the scope of and contemplated by the lease.

This action complies with the City's Strategic Operating Plan in that it contributes to an existing partnership with the State for the operation of a regional facility, and promotes the Asheville area as an arts and crafts center.

Pros:
- Facilitates development and use of WNCAC
- Promotes arts and crafts heritage

Cons:
- None noted

No direct fiscal impact for City; marginal impact on State.

Adoption of the resolution is recommended

RESOLUTION BOOK NO. 32 – PAGE 5

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 09-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S SMART GROWTH IMPLEMENTATION ASSISTANCE PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for U.S. Environmental Protection Agency's Smart Growth Implementation Assistance Program.

The EPA has issued a call for proposals via their annual Smart Growth Implementation Assistance (SGIA) Program. This program is available to communities that want to develop in ways that reflect the principles of smart growth in order to foster economic development, protect environmental resources, enhance public health and meet other social and community goals. As a governmental agency and community that has embraced and supported smart growth principles, Asheville is eligible to serve as a primary applicant and submit a request. Successful applications are awarded technical assistance in the form of a multi-day visit from a team of experts organized by EPA and other national partners to work with local leaders. Team members will be nationally known experts in disciplines to be determined by the community's unique needs expressed in the application documents. City staff (Planning, Economic Development and Transportation) has collaborated with private partners including Mountain Housing Opportunities and the Asheville Design Center, to submit an application for assistance. Applications are due by April 23, 2009, and require support from elected officials.

The City of Asheville and its partners will ask for technical assistance in exploring policy options that maintain the community's vehicular mobility via major transit corridors while exploring options for neighborhood revitalization through corridor re-development and infill development focused on mixed uses, multi-modal transportation and the inclusion of affordable, accessible housing. This policy analysis will address the problems that Asheville's highway corridors have effectively created and our comprehensive plan and current practices fail to correct: disconnected neighborhoods and a sprawling, suburban development pattern around the city's urban core.

The analysis will be guided by the community goal of integrating transportation and land use as an economic development vehicle. The focus area will be Tunnel Road and US 70 east where need and opportunity appears to be the greatest; however, emphasis will be placed on developing policy that can be adapted and replicated in other corridors.

The City would be the primary applicant for this proposal but will work closely with Mountain Housing Opportunities and the Asheville Design Center as co-applicants. Other community partners (or stakeholders) may include: Haw Creek Neighborhood Association; Asheville Buncombe County Christian Ministries; Pisgah Legal; River Link; the Clean Air Community Trust Fund; Land of Sky Regional Council; and the Western North Carolina Alliance.

Regarding Council's Strategic Operating Plan, the following two goals most directly addressed are: (1) Promote sustainable, high density infill growth that makes efficient use of existing resources; and (2) Ensure financial accountability by matching resources with strategic initiatives. Successful and effective policy in this area could also impact the following strategic goals: (1) Increase supply of affordable housing; (2) Support diversified job growth; (3) Promote emissions reducing transportation options; (4) Prioritize infrastructure investments that support citizen health and safety; and, (5) Develop plans with citizen participation.

This application proposal was shared with the Planning & Economic Development Committee at their March 11, 2009, meeting and was unanimously endorsed.

Pros:

- If awarded, provides free expert assistance to a challenging corridor.
- Provides opportunity for collaboration between City staff and private partners.
- Successful implementation has the potential for meeting a number of strategic goals.

Con:

- Requires time commitment on behalf of staff and private partners.

Successful applicants for the SGIA program would be required to provide equivalent in-kind services during the contract team visit, and resources must be dedicated to analysis implementation (post visit). Estimates of City of Asheville in-kind assistance include:

- Pre-award: 10 hours
- Contract team visit: 25 hours
- Post- award hours:
    - First month after visit (assistance with report preparation): 20 hours
    - First quarter after report (Council consideration of any resulting recommendations): 25 hours.

Long term resource dedication cannot be estimated at this time. There is no financial contribution by the City other than the in-kind resources listed above.

Staff recommends the adoption of the resolution authorizing the City Manager to apply for the EPA Smart Growth Implementation Assistance Program.

After Ms. Tuch was unable to specifically state the dollar amounts of the in-kind City contribution, Councilman Mumpower felt the federal government should concentrate on the responsibilities they (not the City) control and let the City handle their responsibilities, noting that the City has the expertise in smart growth principles.

After Mayor Bellamy asked for public comment, but received, none, Councilwoman Cape moved for the adoption of Resolution No. 09-57. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

RESOLUTION BOOK NO. 32 – PAGE 1

III. PRESENTATIONS & REPORTS:

A. HEALTH OF DOWNTOWN ASHEVILLE RECOMMENDATIONS

Mr. Mike Rangel, Owner of Asheville Pizza & Brewing Company, representing the Quick Action Committee, provided Council with the following background information (1) more letters, phone calls and e-mails from residents and visitors expressing concern over "Health of Downtown" received; (2) presentations to Asheville Downtown Commission and City Council by Kelly Miller in fall of 2008; and (3) four areas routinely mentioned were graffiti vandalism, towing, cleanliness and panhandling.

Council's direction was for the committee to (1) come back to City Council with quick action steps recommendations addressing the four main concerns; and (2) have City staff follow up on recommendations.

Regarding the following, (1) two Quick Action Committee meetings were held; (2) Committee included representatives from Asheville Downtown Association, Downtown Asheville Residential Neighbors, Asheville GreenWorks, Asheville Area Chamber of Commerce, Lexington Avenue Merchants Association, small business owners, and others; (3) City staff attended as a valuable tool; and (4) Councilman Miller has met several times with staff to make sure recommendations were legal and met strategic goals.

Regarding graffiti vandalism, key recommendations include quick action steps recommendations in four special areas of concentration (1) clean-up (a) City-owned property: Public Works to remove all reported graffiti vandalism on City-owned property by a specified time period; (b) City staff to work with recycling contractors, commercial waste haulers, and utility companies to remove graffiti vandalism from their properties within a specified period of time; (c) 50/50 matching grant program for property owners to help cover one-half graffiti abatement costs; (d) research and recommend to Council a possible third party to be the first responder for graffiti vandalism removal; and (e) encourage and promote more groups like Asheville GreenWorks, who are removing graffiti for property owners at cost, as well as providing graffiti removal kits for small surfaces; (2) enforcement (a) the purchase and installation of a high definition, moveable surveillance camera capable of catching graffiti vandals in the act; (b) increase the number of stakeouts; (c) CrimeStopper rewards for citizens turning in graffiti vandals; (d) make public aware of motion sensor lights as a major graffiti vandalism deterrent; (e) govern spray paint sales; and (f) more boot patrolling; (3) policy; and (4) community and education (a) officially launch "Vandal Free in 3," a voluntary community-wide program that residents and property owners pledge to do all they can to remove graffiti vandalism within 72 hours (3 days); (b) create "Vandal Free in 3" website and launch public relations campaign including press conference. Website will serve many purposes, including report graffiti vandalism; post before and after photos; graffiti vandalism removal tips; volunteer sign-ups; frequently asked questions, etc.; (c) establish a hotline to report all graffiti vandalism; (d) Shame Game: Committee recommended promoting names and photos of captured graffiti vandals. Subsequent research by staff revels conflicting viewpoints; and (e)

communicate to the community the economic impact of graffiti vandalism and how these acts increase consumer prices.

Regarding non-consensual towing, key recommendations include (1) regulate through ordinance (passed City Council on March 24, 2009); (2) convene major downtown property owners who own lots and discuss current challenges and opportunities regarding parking in private lots; (3) continue to explore feasibility of awarding parking contract to a third party parking vendor similar to other North Carolina cities; and (4) the integrated wayfinding program will be installed this summer/fall, directing drivers to City-owned parking decks. This should help in reducing the number of cars illegally parked in private lots.

Regarding cleanliness, key recommendations include (1) if dollars are available, have dedicated City staff tackle litter and weeds problem on a regular schedule; (2) Asheville GreenWorks to encourage monthly clean-ups by Adopt-A-Street sponsors; (3) more trash cans in Central Business District and at bus stops; and (4) make sure enough resources are available to keep Asheville's new "living room," Pack Square Park, clean.

Regarding panhandling, key recommendations include (1) re-launch "Spare Change for Real Change" effort; (2) increase number of "Spare Change" receptacles; (3) pursue City's strategic goal of establishing a "nuisance court" that can effectively deal with panhandlers; and (4) promote widely and encourage residents to call the Asheville Police Department at 252-1110 to report panhandling when witnessed.

In summary – Recommended Next Steps: (1) Ask staff to identify recommendations which can be implemented immediately with no budget impact; (2) Ask staff to identify recommendations which need budgetary funding for implementation; and (3) Ask staff to identify recommendations which need local ordinance adoption for legal implementation.

He said that to be successful, we must be diligent and focused on all four strategies.

Mayor Bellamy thanked Mr. Rangel for allowing the City to place their recycling center on his property as well as allowing the community to use his parking lot for the tailgate market.

Councilman Miller moved to direct City staff (1) to identify recommendations which can be implemented immediately with no budget impact; (2) to identify recommendations which need budgetary funding for implementation; (3) to identify recommendations which need local ordinance adoption for legal implementation; and (4) to report back to Council on May 26, 2009. This motion was seconded by Councilman Mumpower.

When Councilman Mumpower expressed concern over the length of time to report back to Council since the report was originally given to Council in October, Mayor Bellamy said that Asheville has been working throughout that time, citing the adoption of the non-consensual towing ordinance, kicked off the cleanliness campaign for April 25 with Asheville GreenWorks, continuing to work with the N.C. Dept. of Transportation on various projects, etc.

Mr. Rangel and Councilman Miller responded to various questions/comments from Councilwoman Cape, some being, but are not limited to: what entities are envisioned with the 50/50 matching grant program for property owners to help cover ½ of the graffiti abatement costs; is anyone aware of any grants that might be available for graffiti abatement; explanation of the first responder for graffiti removal; explanation of a third party parking vendor relative to the non-consensual towing ordinance; and suggestion of making a concerted effort to create relationships with clients of A-HOPE, ABCCM, etc. in order to make them feel a part of the community and perhaps participate in an Adopt-A-Street program.

Mayor Bellamy said that the Homeless Task Force has discussed this issue and the recipients of services from the Rescue Ministries and Homeward Bound have started cleaning up around their areas.

Councilman Newman updated Council on the nuisance court concept, which is moving forward. He felt it was possible to have the program running in the new fiscal year which will bring more accountability to the people who are being chronically arrested.

Councilman Russell was pleased to see the hotline to report graffiti vandalism and the use of volunteers.

Councilman Mumpower (1) suggested the City remove graffiti off their own property in three days (as is the same for property owners); (2) spoke against the 50/50 matching grant program in that the costs for that program would be difficult to determine; (3) supported the first responder relationship for graffiti removal as the costs of the initial equipment is defined; (4) spoke against governing spray paint sales due to complexity of enforcement; (5) spoke in support of a significant reward program for citizens turning in graffiti vandals; (6) supported a specific page on our website identifying all types of people that abuse our community; and (7) suggested information be placed on the Spare Change for Real Change boxes of the intent behind the boxes and a phone number to call if anyone is abused.

Ms. Susan Roderick, Executive Director of Asheville GreenWorks, spoke in support of the nuisance court and urged Council to continue their support of police officers.

Councilman Miller thanked representatives from Asheville GreenWorks, Mr. Rangel and all the Committee members for their hard work on this Committee and their on-going commitment to improve the health of downtown.

The motion made by Councilman Miller and seconded by Councilman Mumpower carried unanimously.

B. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-61 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE SARDIS ROAD AREA SANITARY SEWER LINE PROJECT

RESOLUTION NO. 09-62 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE AIRPORT ROAD AREA SANITARY SEWER LINE PROJECT

RESOLUTION NO. 09-63 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS PROJECT

RESOLUTION NO. 09-64 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE ROSS CREEK STORMWATER IMPROVEMENTS PROJECT

RESOLUTION NO. 09-65 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS

FUNDING FOR THE VICTORIA ROAD DRAINAGE IMPROVEMENTS PROJECT

RESOLUTION NO. 09-66 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE OLD TOLL ROAD STORM DRAIN REPAIR AND STABILIZATION PROJECT

RESOLUTION NO. 09-67 - RESOLUTION APPROVING APPLICATION TO THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES HIRING RECOVERY PROGRAM

Assistant to the City Manager Lauren Bradley updated Council on the following application for the economic stimulus package. She said that as part of city staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of Governing Board resolutions in support of applications for ARRA funding for six infrastructure projects from the Clean Water State Revolving Fund and for the salary costs of 12 full-time, sworn police officers from the Office of Community Oriented Policing Services (COPS) Hiring Recovery Program (CHRP).

Clean Water State Revolving Fund

At the City Council meeting on February 24, 2009, Council approved through consensus staff submission of letters of intent to apply for ARRA funding for six projects from the Clean Water State Revolving Fund. These six projects include a Sardis Road Area Sanitary Sewer Line, Airport Road Area Sanitary Sewer Line, Dingle Creek Stormwater Improvements, Ross Creek Stormwater Improvements, Victoria Road Drainage Improvements, and Old Toll Road Storm Drain Repair and Stabilization. At its March 26, 2009, meeting, the City Council Finance Committee reviewed the proposed projects and authorized staff to submit applications for funding. The Finance Committee also recommended that City Council approve a resolution in support of these applications, which is required as part of the application process. These projects are part of City Council's strategic goals to create jobs to aid in economic recovery and enhance the sustainability of city infrastructure.

Pros:

- Approval of these projects will ensure continuation of the application process. If awarded, the City of Asheville could realize significant savings in project costs.

Cons:

- If the resolutions are not approved, the application process and funding potential for these projects will not move forward, and the full project costs will be the City's responsibility.
- Approval does not guarantee the state will approve any or all of these projects.

There is no fiscal impact at this time for City Council to approve the resolution supporting these applications. If the projects are approved by the state, the CWSRF will award a zero percent interest loan, and forgive half the principal, to complete the projects.

Staff recommends that the Mayor and City Council approve resolutions for the six approved clean water projects known as Sardis Road Area Sanitary Sewer Line, Airport Road Area Sanitary Sewer Line, Dingle Creek Stormwater Improvements, Ross Creek Stormwater Improvements, Victoria Road Drainage Improvements, and Old Toll Road Storm Drain Repair and Stabilization.

Office of Community Oriented Policing Services (COPS) Hiring Recovery Program

At its March 26, 2009, meeting, the City Council Finance Committee authorized staff to submit an application to the COPS Hiring Recovery program for funding for entry-level salaries and benefits for 12 new full-time, sworn police officer positions. If awarded, the grant provides 100 percent funding for salaries and benefits for a period of three years (36 months). Grantees are then obligated to retain all positions awarded under the CHRP grant for a period of one year (12 months) following the conclusion of grant funding.

Pros:

- In order to meet City Council's strategic goals and projected community needs in public safety over the next four years, it is anticipated that the Asheville Police Department will need additional sworn personnel. This grant opportunity will allow the city to realize the benefit of additional officers over the next three years at no additional cost to the city.
- Additional officers will allow the Asheville Police Department to create a Downtown Patrol Unit, which has been identified as a priority based on results from the recent citizen survey indicating a need for greater law enforcement and crime prevention efforts in the downtown area.

Con:

- If the resolution is not approved, the application process and funding potential for these projects will not move forward, and the city will add public safety personnel incrementally as local funding allows.

There is no fiscal impact at this time for City Council to approve the Resolution supporting the COPS application. If Asheville receives funding for 12 officers, the grant funding requested for years 1-3 would total approximately $1,645,668 with no local match. At the end of three years, the city would be responsible for funding the full salary cost for the 12 officers totaling between approximately $578,160 and $652,109, depending on promotions and salary increases. In addition, the city will be responsible for purchasing uniforms, equipment and vehicles for the personnel hired under the COPS program in the first year, totaling $202,400 total for 12 requested officers.

Staff recommends that the Mayor and City Council approve the resolution authorizing the City Manager to apply for COPS funding under the American Recovery and Reinvestment Act program to increase the number of sworn police officers by twelve.

Vice-Mayor Davis wondered if there could possibly be a reduced stormwater fee for taxpayers if the stormwater projects are approved. Director of Transportation and Engineering Cathy Ball responded that these stormwater projects are not funded now and thus would not impact the fees currently charged.

In response to Vice-Mayor Davis, Ms. Ball said that the planning components on the four stormwater projects are complete and all these funds would be for the construction work.

Councilman Mumpower felt City government is responsible for all of these projects and the federal government should concentrate on their responsibilities which local governments cannot control, e.g., immigration enforcement.

Councilwoman Cape was very hopeful that the City receives funding on these projects as clean water is so essential to our children's future and to the future of our nature.

Mayor Bellamy said these infrastructure projects have been in need of addressing for many, many years and was pleased to see Council supporting these grants.

Police Chief Bill Hogan responded to various questions from Councilman Mumpower regarding the need for additional police officers and how the Police Department had plans to incrementally increase police positions due to the demands in downtown.

Councilman Mumpower spoke against the grant for additional police officers in that police enforcement is a City responsibility. He did, however, acknowledge that Council has done an excellent job in responding to the requests of Police administration for manpower and other forms of support. But, he reiterated that federal government is neglecting their responsibilities which local governments cannot control, e.g., immigration enforcement.

Councilman Newman noted that no part of the City's budget has received a greater percentage of our budget than public safety and this is a high priority.

Councilwoman Cape said that the federal government is doing what we ask – help with job creation.

Mayor Bellamy asked for public comment, but received none.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-61. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-61 - RESOLUTION BOOK NO. 32 – PAGE 7

Councilwoman Cape moved for the adoption of Resolution No. 09-62. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-62 - RESOLUTION BOOK NO. 32 – PAGE 8

Councilwoman Cape moved for the adoption of Resolution No. 09-63. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-63 - RESOLUTION BOOK NO. 32 – PAGE 9

Councilwoman Cape moved for the adoption of Resolution No. 09-64. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-64 - RESOLUTION BOOK NO. 32 – PAGE 10

Councilwoman Cape moved for the adoption of Resolution No. 09-65. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-65 - RESOLUTION BOOK NO. 32 – PAGE 11

Councilwoman Cape moved for the adoption of Resolution No. 09-66. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-66 - RESOLUTION BOOK NO. 32 – PAGE 12

Councilman Newman moved for the adoption of Resolution No. 09-67. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-67 - RESOLUTION BOOK NO. 32 – PAGE 13

RESOLUTION NO. 09-68 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE FEDERAL AVIATION ADMINISTRATION GRANTS

This is the consideration of a resolution authorizing the Mayor to execute several documents for funding opportunities for the Airport Improvement Program.

The Asheville Regional Airport Authority (ARAA) has several funding opportunities that will require the approval of the City and Buncombe County. The turnaround time to have these grants fully executed will be very short. As such, the ARAA is requesting that the City approve the acceptance of such grants and authorize the Mayor to execute these grants when they are received. Because we do not have them in advance of the request, the authorization for the Mayor's execution includes approval by the City Attorney.

The grants that the ARAA anticipate receiving and requiring approval are as follows:

1. ARAA is in the pipeline to receive $7.5 Million in stimulus funding that is dedicated to Airport improvements. This amount could be more based on final bids received and if additional stimulus funding becomes available due to other airports not being able to have their projects ready to accept a grant. This is a 100% grant with no local match requirement. This grant requires a Sponsor Certification with the grant application once bids have been received, and then execution of the final grant. It is requested that the City approve the acceptance of the stimulus funding grant if offered by the Federal Aviation Administration (FAA), and authorize the Mayor to execute the necessary documents.

2. ARAA will be receiving a second Airport Improvement Program (AIP) grant this year, which will be approximately $2.7 Million. This is a traditional 95% grant with a 5% local match. ARAA has the budgeted funds necessary for the local match. It is requested that the City approve the acceptance of the AIP grant when offered by the FAA, and authorize the Mayor to execute the necessary documents.

3. ARAA will have an opportunity to receive "fall-out" Fiscal Year 2009 AIP grant funds from the FAA in an amount yet to be determined. This will be a traditional 95% grant with a 5% local match. ARAA has the budgeted funds necessary for the local match. It is requested that the City approve the acceptance of the AIP grant when offered by the FAA and authorize the Mayor to execute the necessary documents.

The combination of funds will be utilized for the renovation of the Terminal A-Gates area, the renovation and upgrading of the roadway leading into the general aviation area, purchase of a new Rapid Intervention Vehicle, and the construction of new aircraft parking apron and a taxiway connector. The City will not be responsible for any of the matching funds, or for carrying out the terms of the grant agreements. Compliance will be the responsibility of the ARAA.

This action complies with the City's Strategic Operating Plan in that it contributes to the development of a multimodal transportation program, supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center.

Pro:
- Facilitates development of Airport

Con:
- None noted

None to the City

Staff recommends adoption of a resolution authorizing the Mayor to execute several funding opportunities for the Airport Improvement Program, subject to approval of the City Attorney.

Airport Director David Edwards explained that there is the potential for the Airport to receive additional stimulus funds; therefore, he asked that the proposed resolution be amended so as to be flexible in the dollar amounts.

Councilman Newman recognized Mr. Edwards for his great work at the Airport and wished him well in his new position in Greenville, South Carolina.

In response to Councilman Mumpower, Mr. Edwards said that the Airport has approximately $5 Million in reserve funds which is set aside to fund the Airport budget for 12 months.

Councilman Mumpower spoke against the motion in that the Airport has made major improvements, but at a time of major economic crisis (with $5 Million readily available) he felt to accept money from the federal government is irresponsible.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-68, as amended. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 14

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS WESTMORE APARTMENTS LOCATED ON WESTMORE DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND CI COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 72-UNIT APARTMENT COMPLEX

ORDINANCE NO. 3720 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS WESTMORE APARTMENTS LOCATED ON WESTMORE DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND CI COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 72-UNIT APARTMENT COMPLEX

Mayor Bellamy opened the public hearing at 6:22 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Westmore Apartments located on Westmore Drive

from RM-16 Residential Multi-Family High Density District and CI Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 72-unit apartment complex. This public hearing was advertised on April 3 and 10, 2009.

The site consists of five separate parcels located at 64 Westmore Drive with a combined area of approximately 5.518 acres. Four of the lots are zoned RM-16 with the remaining parcel (a portion of a larger parcel – recombination required) currently zoned CI – all lots are undeveloped. Adjacent parcels are similarly zoned CI and RM-16 as well as RS-8 to the north. This site is immediately adjacent to the ETJ to the west and to Deaverview Apartments to the East.

The applicant, Mountain Housing Opportunities (MHO), is proposing to construct a multi-family complex that will consist of seven (7) buildings ranging in size from 10,445 to 12,534 square feet. The buildings are all 2-3 stories in height (26'6" – 36' to top of roof peak) and contain 10-12 units each (a mix of 1, 2, 3 and 4 bedrooms) to reach the total of 72 units.

Access to the site is proposed from Westmore Drive, which was created through a major subdivision approval in 2005 and connects with Deaverview Road. A total of 94 parking spaces are provided (4 HC spaces) to serve the residential units and all spaces are located around the 2-way private looped-drive (which is essentially a circular parking area). A 6' sidewalk is proposed to circle the looped-drive and should connect to the existing sidewalk along Westmore Drive.

The project will be required to comply with applicable landscaping and open space standards, including a type A (20') property line buffer around the western and southern boundaries. Approximately 38,000 square feet of open space will be provided throughout the site (exceeding the minimum requirements of the ordinance) as well as more than 72,000 square feet of Tree Save Area. Additionally the site design proposes a central courtyard with a playground.

The site is at elevations over 2220' but has a slope of just under 15% - therefore steep slope regulations do not apply. There are several retaining walls placed throughout the project area, two of which have heights of 26' – 30' and will require additional landscaping/screening.

All 72 of the apartments in this project will be offered at rents affordable to those below 60% annual median income (AMI). This affordability is assured for 30 years under federal and state programs. Verification of rents and tenant income qualification will be provided to the City of Asheville Community Development Department at the time of initial occupancy as required by the Housing Trust Fund loan guidelines.

The proposal has been granted $470,000 in Housing Trust Fund monies and is awaiting approval of tax credits from the NCHFA (North Carolina Housing Finance Agency) as well as final approval of $225,000 in HOME grant funding.

A conditional zoning is being requested due to the fact that recombination of the parcels would result in a split-zoned lot. Both current zoning designations (RM-16 and CI) permit a similar density of approximately 16 units per acre. Given the acreage of the property, 96 units could be constructed. The development proposes 72 units, a density of approximately 13 units per acre.

This proposal was evaluated by the Technical Review Committee (TRC) on March 16, 2009, and was approved with conditions as outlined in the TRC staff report. The Planning & Zoning Commission unanimously approved the project on April 1, 2009 (5-0). No members of the public spoke regarding this project at either meeting.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural features and topography of the site as well as the surrounding area. Although most of the existing vegetation will be removed, the site is not heavily vegetated to begin with. Appropriate landscaping and open space will be provided to that is fitting and compatible with the residential neighborhoods surrounding this location. There are no significant topographic features on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development is not expected to injure the value of adjoining or abutting properties. The use proposed is similar to adjacent parcels (residential). Although Westmore Drive is platted for single-family detached housing, Deaverview Apartments (adjacent to the east) consists of multiple multi-family buildings as well.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   Although a portion of the site and adjacent parcels are currently zoned CI, the uses on the developed portions of those lots are residential. Other uses in the immediate vicinity are also residential, with a mix of single-family and multi-family structures. Therefore the proposed use on this site is complementary to the neighborhood. Likewise, the number of residential units allowed is the same for both RM-16 and CI so there is no conflict with regards to density. The scale of the structures is similar to the adjacent existing multi-family development (Deaverview Apartments). Overall, this proposal should be compatible with the area in which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The *Asheville City Development Plan 2025* encourages a Smart Growth development pattern by recognizing the need for higher density residential infill projects located along transit lines (Rt. 15). With 72 units, this project is not only meeting that goal but also addresses what the *Plan* calls "the number one economic development problem for this community": lack of affordable housing. All units within this development will be offered as affordable rentals for households with less than 60% area median income for a 30-year period.

   City Council's goal of *sustainability* is realized by these projects that encourage high-density growth in an area with existing infrastructure as well as this project's location along a transit route (Rte. 15). The development proposes for all of the units as affordable (rental) and Energy Star rated, aligning with Council's priority area on providing *affordable* and *green* housing opportunities for all citizens.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This proposed development is located near major road facilities and along a City bus route (#15). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The project offers 100% affordable housing units, aligning with City Council's goals.
- Higher density development furthers the goals and objectives of the comprehensive plan.
- The proposed development provides housing in a transit-served area.
- The project will be designed to qualify for Energy Star rating.

Con: None noted.

Based on the above findings, staff recommends approval of the conditional zoning as requested by the applicant, with the standard conditions.

Mr. Scott Dedman, Executive Director of MHO, spoke in support of the conditional zoning, noting that they are requesting 72 safe, attractive and affordable apartments in a convenient neighborhood near jobs, schools, shopping and transportation. He explained how this development will serve working families in a broad income wage – from approximately $14,000 - $34,000 annually. As these are initial income levels to the apartments, as their incomes go up, their rent does not. He explained there is a market need of approximately 1,400 units just in this part of Asheville. They perform a strict credit and criminal check screening. These privately owned apartments will pay full property taxes. The Mayor's affordable housing plan calls for 500 similar workforce housing apartments per year and this is a small step toward that goal. He was pleased to note that the design for the apartments will look as dignified as any other nice apartment building. They have a strong professional management company that performs a strict screening of applicants.

Mr. Chris Day, representing Civil Design Concepts, spoke in support of the conditional zoning explaining many of the smart growth characteristics of the project. He then explained how the project meets many of the sustainability goals of the City. He felt this project will be a great addition to the west Asheville area.

When Mr. Fred English spoke in opposition of using taxpayer dollars to build this project, Mr. Dedman explained the funding package. Councilwoman Cape also explained the concept of the Housing Trust Fund.

Mayor Bellamy closed the public hearing at 6:33 p.m.

Mr. Dedman responded to various questions/comments from Councilwoman Cape, some being, but are not limited to: concerns expressed of more low income housing in west Asheville; description of types of jobs people have that will be living in this development; explanation of

workforce housing; reasons for building apartments in specific areas; note that this project is not low income housing, but workforce housing; and when MHO is looking at areas to build, do they take into consideration the number of children added to the particular school district.

Councilman Newman said that this proposal was reviewed by the Regional Housing Consortium, which is represented by local governments from Madison County, Transylvania County, Henderson County, and Buncombe County, and this was one of two projects unanimously agreed upon, which is an indication of how well the project was regarded.

In response to Councilman Mumpower, City Attorney Oast said that regarding the seven conditional use standards, Council needs to consider the appropriateness of the project on its own merits. The source of money to finance the development should not be weighed in consideration of the project.

Mr. Dedman responded to Councilman Mumpower's concerns about concentrating a high density development beside one (Deaverview Apartments) that is not working in terms of drug activity and crime. He gave examples of a number of large scale rental apartments they have built and are managing successfully.

City Attorney Oast cautioned Council about acting in reliance on the continued operation by MHO, as the property could change hands.

In response to Councilman Miller, Mr. Dedman said that MHO has developed 337 apartments in the City of Asheville and if this project is approved, will add an additional 72 units.

Mayor Bellamy, former employee of MHO, said that MHO is an organization that resolves problems. She cited an example of the apartments they built behind Claxton Elementary School. When problems arose, instead of walking away, they worked with the Police Department to have an officer live rent-free in those apartments in terms of patrolling and working with that community. In addition, they built apartments in the West End/Clingman Avenue area when there was no redevelopment in new housing over 50 years. It is now a vibrant neighborhood.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3720 to conditionally zone the project identified as Westmore Apartments located on Westmore Drive from RM-16 Residential Multi-Family High Density District and CI Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 72-unit apartment complex, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 223

V. UNFINISHED BUSINESS:

A. PACK SQUARE CONSERVANCY

MOTION TO ACCEPT THE PACK SQUARE CONSERVANCY'S BUDGET AND APPROVE THE DESIGN CHANGES

Mayor Bellamy introduced the Pack Square Conservancy's new Board Chair Guy Clerici, who in turn introduced the new Executive Director Gary V. Giniat. Mr. Giniat briefly reviewed with Council the following executive summary on Pack Square Park:

Pack Square

The Conservancy is in the final weeks of construction on Pack Square. Rainy weather in late March and early April cost the crew a week of construction time, but work is proceeding rapidly nevertheless. The major tasks that remain in the square include landscaping, paving the street in front of the Biltmore building, completing work in front of Pack Place and the Asheville Art Museum, putting the finishing touches on brickwork throughout the square, and installation of granite pavers and Hoss Haley's bronze and stone fountain in Oates Plaza.

Once the contractor has completed construction, City representatives will inspect the square and notify the Conservancy if there are areas of concern. Once work in the square is completed to the satisfaction of all parties, the Conservancy will officially turn Pack Square over to the City of Asheville.

The Conservancy will announce a date for an opening celebration for Pack Square in the near future.

Roger McGuire Green

Work in the green has been running slightly ahead of schedule and may be completed by the end of July, weather permitting. The pillars for the pergola at the back of the stage are in place. The crew is building seating walls on the south side of Splasheville and continues to install granite veneer on sections of the stage, the seating walls and the fountain.

The workers are preparing to install brick pavers on the forecourt of the stage. Bright blue tiles by Weaverville ceramicist Kathy Triplett will be woven into the pattern of the brickwork. The foundation for the Veteran's Monument was completed two weeks ago and work is beginning on the upper portion of the structure.

Reuter Terrace

Work is about to begin in Reuter Terrace in the middle of the park. This section of the park will have a terraced lawn overlooking the main stage and will offer comfortable seating for main-stage events. Reuter Terrace will have extensive hardscape, including Visitors' Plaza, which will include decorative paving and movable furniture, a small stage, and a water feature. The 4,600 square-foot park pavilion will be located on College Street on the north side of the site.

The early work in Reuter Terrace will focus on hardscape and landscape. Work on the pavilion will begin somewhat later in order to avoid conflicting activities on the small site. Once work gets underway, the Conservancy will be able to develop a more accurate estimate of the completion date for this final portion of the park.

While updating Council on the construction of Pack Square Park, Mr. Giniat described the following four areas of changes and the reasons for those changes: (1) modified forecourt to compliment new museum design; (2) increased size of pavilion; (3) reduced size of water feature; and (4) added Veteran's Memorial.

Mr. Giniat said that Council has been provided with the Pack Square Conservancy's budget vs. actual as of February 28, 2009; their balance sheet as of February 28, 2009; and their Profit & Loss sheet of January through February 2009. Their current budget is $20 Million and that does not include the $2 Million endowment they are attempting to raise. So, when the Conservancy turns the Park over to the City they have funds for capital improvements to help with special maintenance. To date they have spent almost $12 Million on the project. He said they still have to raise an additional $3.9 Million and some of that is for the pavilion.

Mr. Giniat then requested approval of the Pack Square Conservancy's budget. In addition, he requested approval of design changes that have been made in Pack Square Park.

In response to Ms. Regan Evans, co-owner of Windows on the Park, Mr. Giniat said that the total footprint of the pavilion has not changed.

Mr. Fred English was pleased to note that the veterans group raised the money necessary for the veterans' memorial, but voiced concern over the rising costs of this Park – from $6 Million to now $20 Million.

Mayor Bellamy recalled that when this project was approved, Council said they wanted very little interaction as far as City dollars paying for this initiative going forward. The City has not invested $2-3 Million of local tax dollars; however, the City does have oversight of the federal dollars that have been garnered. But again, those dollars are not City tax dollars.

When Councilman Miller acknowledged that he serves in a volunteer capacity on the Pack Square Conservancy Board, City Attorney Oast said that there was no disqualifying conflict of interest for him participating in this matter.

There was a brief discussion, initiated by Councilman Newman, about the City's authority to approve the Conservancy's budget when that approval has not been regularly sought during the course of the project. City Attorney Oast said that the agreement reads, in part "PSC shall coordinate capital funding for the Project and submit a budget for the Project to the City and County for approval, which approval shall not be unreasonably withheld or delayed." Any approval authority we have would be really over the use of public funds, which the agreement contemplates to a certain extent. Regarding the design approval, it was his opinion that approval by the City and County is required.

In response to Councilman Mumpower, Mr. Giniat said that he has not received any concerns about the design changes. In fact, the changes in the forecourt were done as a result of working with people around the park.

Councilman Russell moved to approve the design changes. This motion was seconded by Councilwoman Cape.

In response to Councilman Newman, Assistant City Manager Richardson said that the City, County and the Conservancy are looking at a request for proposal to see how much it will cost next fiscal year to bring the park on line for day to day operational maintenance. The agreement calls for the City and County to share those costs. At budget time, the City and County will report back to their respective bodies for direction. In addition, Chief Financial Officer Ben Durant said that the City has put an initial placeholder in our budget of $100,000 for operational upkeep.

Discussion surrounded the on-going maintenance of the Park. Councilman Newman was excited about the Park but was concerned that because the costs have tripled since the project began, that might have an affect the operating costs. Assistant City Manager Richardson responded and Mr. Durant said that staff will be assessing the impact of the on-going operating

costs on this capital project (and all our capital projects) and will report back to Council as needed.

Councilman Miller said that Mr. Tim Marshall provided a major plan for maintenance, operations, security, programming and other costs. Now that the Park is coming on line in various stages, it allows us an opportunity to look at the recommendations made 4-5 years ago by Mr. Marshall and ask what is realistic.

Vice-Mayor Davis offered a friendly amendment to the motion that we accept the budget and approve the design changes as presented.

Councilwoman Cape noted this was an incredible initiative by a group of citizens in our community to do something amazing. The unknowns have been faced all along, but she felt sure we will look back on this great project.

Councilman Russell accepted the friendly amendment and moved to amend his motion to (1) accept the Conservancy's budget as presented; (2) approve the design changes as presented; and (3) waive the fee for the veterans' memorial dedication. Councilwoman Cape agreed to the amended motion. Said amended motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-69 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ESTABLISH PARK RENTAL FEES FOR PACK SQUARE PARK

Cultural Arts Superintendent Diane Ruggiero said that this is the consideration of a resolution amending the Fees and Charges Manual to establish park rental fees for fees for Pack Square Park.

The use of Pack Square Park for outdoor special events has been limited due to park construction. Once complete, the park is destined to become one of the premier downtown event locations for organizations and event organizers. The first section of the park, Pack Square, will soon be complete and scheduled to open in late April or early May. Roger McGuire Green and Reuter Terrace are scheduled to open in the summer, but may not be immediately available for event use in order to protect the new turf. Staff is preparing to begin issuing outdoor special event permits for Pack Square section of the park.

Staff recommends separating park rental areas into four sections: Pack Square, Reuter Terrace, Roger McGuire Green and City/County Parking Lot. All use will follow the guidelines in the Outdoor Special Event Guide.

Please note as it pertains to the Outdoor Special Event Guide:

- Fees are charged from the time of event set-up to event break-down, not just the hours of the event.
- Priority for use is given in order to: 1) City of Asheville events; 2) Co-sponsored events; 3) Non-profit organizations whose event is of interest to the community; 4) Non-profit organizations whose event is of interest to the organization; 5) Commercial ventures and events organized for profit.
- Additional fees may be incurred for police support, fire/medic support, street closings, permits for tents, additional equipment needs, etc.
- Where available, park rental fees include electrical outlets and water supply.

Proposed Pack Square Park rental fees:

- Pack Square: $100 per first three hours, $25 for each additional hour

- Reuter Terrace and Roger McGuire Green: $500 per first three hours, $100 for each additional hour.

Note: Until the pavilion in Reuter Terrace is built, Reuter Terrace and Roger McGuire Green will be rented as one area. Once the pavilion is complete, the rental fee for the areas will be reassessed. Use of Roger McGuire Green includes use of the stage. Use of the stage may require use of the City/County Parking Lot.

Staff gathered public comment on the proposed park rental fees via three venues: 1) presentation to the Pack Square Conservancy Board on April 1, 2009; 2) public meeting with businesses surrounding the park on April 3; and 3) posting on the City of Asheville website for public comment. No specific issues or concerns were received via feedback.

This action complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it assures that administrative policies promote effective provision of community festivals and events.

This item was scheduled for review by the Recreation Advisory Board at its regular meeting on April 13 for their recommendation.

Pros:

- Allows the community affordable use of Pack Square Park
- Allows for permitting of the space to begin in conjunction with park construction completion
- Allows for better fee consistency across all City parks

Cons:

- Fees will not recover all operating costs Pack Square Park rental
- Heavy use of Pack Square Park could have an impact of the infrastructure, which may drive operational expenses higher in the future.

The fiscal impact of this action will be that park rental will generate revenue to offset operating cost.

Staff recommends City Council adopt a resolution amending the Fees and Charge Manual to establish park rental fees for Pack Square Park.

Ms. Regan Evans, co-owner of Windows on the Park, expressed concern over the way the Pack Square venue is drawn. The entire area should be split in half and there be a permitted area on North Pack Square and a permitted area on South Pack Square. Therefore, someone from the Pack Place side could host an event on the small green space in front of their building and Windows on the Park could host an event on the small green space on their side of Pack Square. If the area stays as one large area, only one event could be held. She asked Council instruct City staff to be lenient with their permitting process for the Pack Square area.

Ms. Ruggiero said that if someone gets a permit for Pack Square, it is the same as someone would rent for any one of our other parks. It just includes that use of the space. Street closings will be an additional fee charged through the Street Division. And, since there are parking meters along a portion of that street, Parking Services charges an additional fee to close each one of those meters if the event is on a weekday or a Saturday. Regarding permitting the entire Pack Square area, she said staff will definitely work with event organizers on a case by case basis if there are overlapping request for use, but it will depend on the scale of the different events, the event itself and the requirements for alcohol.

Councilman Russell supported event organizers not having to pay for the entire Pack Square area if their event is in a small area.

In response to Councilwoman Cape, Ms. Ruggiero said that just until the pavilion on Reuter Terrace is built, Reuter Terrace and Roger McGuire Green will be rented as one area. Once the pavilion is complete, the rental fee for the areas will be reassessed. We don't want to encourage event organizers to use just one of those spaces until the construction is completed in the middle section.

Councilman Miller agreed with Councilman Russell in that there should be some flexibility on the east corner of Pack Square.

In response to Councilman Miller, Ms. Ruggiero noted that a lot of the Pack Square area is sidewalk and currently we do not allow event organizers to block sidewalk access. In looking at the Pack Square as a whole, staff looked at what is the available usage space within that area.

In response to Councilman Miller, Ms. Ruggiero explained how costs for events that have been relocated to Dr. Martin Luther King Jr. Park are comparable to the events at the Reuter Terrace and Roger McGuire Green.

In response to Vice-Mayor Davis, Ms. Ruggiero said that they did not solicit comments from the Asheville Downtown Association because they hold co-sponsored events and their fees are waived through the co-sponsored event process. However, when the spaces are all opened, they will meet with all event organizers and solicit their feedback.

Councilman Mumpower suggested that after a period of time staff report back to Council with specific figures as to the actual recovery costs. Even though City taxpayers haven't invested much in the Park (other than infrastructure which would have had to be replaced), the City has agreed to take over maintenance of that Park, which will be a substantial cost to the community.

Councilman Russell supported letting the event organizers actually see the available spaces in the Pack Square area, but he does believe there should be some flexibility.

In response to Councilman Mumpower, Ms. Ruggiero said that once they get some feedback from all the event organizers as to what type of usage and the demand for that space, it will give staff a better idea of how they need to look at the space.

Councilman Mumpower wondered if Council should ask staff to come back with a specific proposal for sub-space rental or should Council build something into the language of the proposal that gives staff the flexibility to adjust for sub-space rental until staff can bring back a specific proposal. Ms. Ruggiero said that she could bring back a specific proposal on sub-space rental if that is Council's wish.

In response to a co-owner of Windows on the Park, Ms. Ruggiero explained that currently in our parks that have underground irrigation systems, we do not allow tents to be staked into the ground because there is the risk of puncturing the underground irrigation system. We ask that event organizers use weighted buckets to hold down their tents. Regarding pavers, they are not looking at permitting tents in the hardscape area due to the risk of damaging the public art.

Mayor Bellamy supported three separate rental fees – Pack Square, Reuter Terrace and Roger McGuire Green. She also supported waiving the veteran's memorial dedication ceremony fee.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved to adopt the proposed permitting fees, subject to (1) after completion of the pavilion, there be three separate rental fees (Pack Square, Reuter Terrace and

Roger McGuire Green); (2) staff bringing back a specific proposal on sub-space rental of the Pack Square area, with flexibility given to the rate structure; (3) waive the fee for the veterans' memorial dedication; and (4) staff report back to Council in 12-month for a review of the proposed rate structure. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 8:00 p.m., Mayor Bellamy announced a 20-minute recess.

B. BUDGET PLANNING

ORDINANCE NO. 3721 - ORDINANCE ADOPTING FISCAL YEAR 2009-10 FEES AND CHARGES, EFFECTIVE JULY 1, 2009

Chief Financial Officer Ben Durant said that the purpose of this staff report is to provide an update on the status of Fiscal Year (FY) 2009-10 Budget Process, including the budget balancing strategies that were discussed at the March 27 Finance Committee meeting. Staff is also requesting that Council take action at this meeting on the FY 2009-10 proposed fee adjustments.

Fees & Charges

The proposed FY 2009-10 fee adjustments have been reviewed by the Council Finance Committee, and their recommendations for fee adjustments have been provided to Council. If the full Council approves the Finance Committee's fee recommendations tonight, it will add an additional $700,000 in revenue to the FY 2009-10 General Fund budget. In addition to the General Fund fee adjustments, the Committee also endorsed staff's recommendation for a 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds. Staff is requesting that Council take action tonight on the fee recommendations so that the additional revenue from the fee adjustments can be included in the Manager's Proposed Budget, which is scheduled for presentation to Council on 5-12-09.

Budget Update

At the March 24th Council meeting, staff presented an update on the status of the FY 2009-10 budget which showed a remaining General Fund budget gap of approximately $800,000.

The following table summarizes the steps in the budget process that brought us from the initial fall General Fund budget forecast, which projected a $5.0 million deficit, to the March 24th report which showed a remaining budget gap of $800,000.

Initial Forecasted Gap	($5,000,000)
Eliminate Merit Pay (Salary Freeze)	$750,000
Annexation Gain	$325,000
Reduce Housing Trust Fund Transfer	$300,000
Re-Engineering/Mgmt. Streamlining	$1,000,000
Reduce Transit Fund Transfer	$500,000
Increase Cost Recovery from Fees	$700,000
Reduce Fund Balance from 19% to 18%	$1,000,000
Additional Cost Savings Opportunities	$500,000
Increased Utility & County Partnership Expenses	($325,000)
Reduction in Sales Tax Revenue Estimates	($300,000)

Add in Council Strategic Priorities	($250,000)
March 24 Budget Gap	($800,000)

At the March 27th Finance Committee meeting, staff presented to the Committee a set of specific strategies to address this remaining budget gap of $800,000. Those strategies were:

1. Apply Police Byrne Grant to Municipal Building security	$150,000
2. Drawdown available transit funding in current year	$500,000
3. Reduce General Fund overtime	$150,000

The Committee endorsed staff's recommended strategies, and staff is prepared to answer any questions that the full Council may have regarding these strategies.

Staff also indicated to the Committee that work was still being done to finalize the $500,000 in additional cost savings opportunities which was included as a placeholder in our initial budget balancing plan. Since the March 27th Finance Committee meeting, staff has completed a package of recommendations that will achieve this additional $500,000 needed to balance the budget. Recommendations include:

1. Eliminate General Fund subsidy to the Golf Fund	$150,000
2. Reduce brush collection to once per month	$140,000
3. Discontinue Civic Center skating and hockey	$ 50,000
4. Reduce budget for building security enhancement	$100,000
5. Apply Energy Block Grant to administration	$ 60,000

If revenues decline further, options include (1) additional service reductions; (2) additional fund balance appropriation; and (3) reduce deferred compensation.

Staff recommends that Council adopt the Finance Committee recommendations regarding fees & charges and provide additional direction regarding the remaining budget.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: explanation of the fee cost recovery; and was there any discussion about (1) reducing Council's or management staff's salaries, (2) re-thinking some of Council's decisions, such as the performing arts venue on Depot Street; or (3) outside agency funding reductions; does staff feel that the revenue picture is likely to improve.

Councilman Mumpower felt that if Council approves the Finance Committee's recommendations regarding fees and charges, it would represent a tax increase. He suggested we resist the temptation of reaching into our Fund Balance.

In response to Councilman Newman, Public Works Director Mark Combs pointed out an error in the full cost recovery for recycling charges – it should be $2.63/household/month. When Councilman Newman asked what the logic is behind charging for one solid waste service and not another, Mr. Combs said that we City of Asheville performs sanitation services in-house and we contract out the recycling service to a third party. Councilman Newman hoped that Council would not increase the recycling fee in that it's like a property tax since it only affects families who live in the City. He supported either not increasing the recycling fee or set it as a long term goal to not charge for this type of service, especially since recycling is viewed as a basic service people expect to receive.

Vice-Mayor Davis said that the Civic Center Commission did confirm the discontinuance of skating and hockey at the Civic Center. He explained how there are greater costs associated with skating, especially the outdated equipment. Regarding the water rate increase, the City's

consultants advised Council a few years ago that had the City incrementally raised water rates, we wouldn't have had such a difficult time in repairing the water system. Therefore, he supported moving forward with implementing that increase.

Councilwoman Cape recalled Council giving direction not to reduce the Housing Trust Fund. Mr. Durant said staff's initial recommendation was to transfer the entire $600,000 of Housing Trust Fund monies. He felt the subsequent direction from Council was to cut it in half and not eliminate the entire transfer. Councilwoman Cape was not in support of reducing the Housing Trust Fund.

After Mayor Bellamy asked for public comment, but received none, she said that members of Council have been furnished with a copy of the ordinance and it would not be read.

Councilman Russell moved to (1) approve the General Fund fees and charges recommended by the Finance Committee; (2) approve the 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds; (3) direct staff to continue with the strategies proposed; and (4) set as a long-term goal to not charge for recycling services. This motion was seconded by Councilman Miller.

Councilwoman Cape agreed with Councilman Newman that the City needs to look how we handle trash and solid waste and make a concerted effort to see what is the best way to encourage the proper disposal of solid waste. She felt that raising the recycling fee is the necessary thing to do, and for us to afford recycling pick-up at all, we need to have full cost recovery on it. She asked if the General Fund fees and charges could be voted on separately from the water rate increase.

Mayor Bellamy explained the discrepancy between the consultants recommended 3% incremental water rate increase vs. the 4% incremental water rate increase in the water bond documents. She also asked if the General Fund fees and charges could be voted on separately from the water rate increase.

Councilman Russell moved to amend his motion to (1) approve the General Fund fees and charges recommended by the Finance Committee; (2) direct staff to continue with the strategies proposed; and (3) set as a long-term goal to not charge for recycling services. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"

Councilman Russell moved to approve the 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 228

C. LEGISLATIVE UPDATE

ORDINANCE NO. 3728 - ORDINANCE AMENDING ORDINANCE NO. 3719 REGARDING TRESPASS TOWING FROM PRIVATE PARKING LOTS TO CLARIFY THE EFFECTIVE DATE OF ON OR AFTER JUNE 1, 2009

City Attorney Oast said that this is the consideration of an ordinance amending Ordinance No. 3719 adopted on March 24, 2009, regarding trespass towing from private parking lots to clarify the effective date of on or after June 1, 2009.

Mayor Bellamy said that members of Council have previously been furnished with a copy of the ordinance and it would not be read.

After Mayor Bellamy asked for public comment, and none was received, Councilman Russell moved for the adoption of Ordinance No. 3728. This motion was seconded by Councilman Mumpower and carried unanimously.

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City Attorney Oast said that this is an update on legislation of interest to the City of Asheville from the 2009 N.C. General Assembly

The 2009 North Carolina General Assembly convened on January 9 for its "long" session. The deadlines for filing local bills were March 11 (Senate) and April 1 (House). The deadlines for filing Public (non-local) bills was March 25 (Senate) and April 8 (House). The deadline for filing bills related to appropriations and finance is May 6 for the House. The "crossover" deadline, the day by which bills must pass out of one chamber or the other in order to remain eligible for consideration in this session is May 14.

The City requested introduction of some local acts, and we have been following other general legislation. This report will cover the status of our local legislative requests, and summarize other legislation of interest.

A. Local Legislation

1. Non-consensual towing (HB 500). At the City's request, a bill regarding regulation of non-consensual towing in Asheville was introduced in the House by Representatives Goforth, Fisher and Whilden. This was requested in case it was needed to bolster our local efforts to deal with this issue. Since Council adopted the non-consensual towing ordinance on March 24, I have requested that our delegation not pursue adoption of this bill, or the bill introduced by Senator Nesbitt (SB 551) to cap the rate for non-consensual towing at $75.00. Raleigh and Wilmington have similar ordinances, and it appears that the federal law specifically permitting local regulation, together with the general police power, is sufficient.

2 Force Account Suspension (HB 747). This is the bill that will allow us to work with Buncombe County to complete the street paving and other work around the new jail with City work forces. Initially, some local contractors objected to this bill, seeing it as the "foot in the door" for further similar requests. Once the unique features of this project were explained, and that we did not plan to seek other similar local bills in this legislative session, the opposition was withdrawn and to Council for revision. This bill passed the House on first reading and has been re-referred to a committee

3. Property disposition (HB 502). This is the bill that would clarify our ability to place conditions on the sale of real property. This bill has encountered no trouble, and has passed the House.

4. Sullivan Act revisions (SB 552). This would allow the City to use up to 5% of water system revenues to make repairs/do construction on non-water infrastructure, in connection with water system work. Council requested other revisions as well, particularly with regard to making water service available in connection with voluntary annexation, but these were not included in the bill. Members of the local delegation have been advised that the City will continue to press for revisions to the Sullivan Acts. However, especially in view of Statewide efforts to limit annexation (see below – Rep. Goforth is study commission co-

chair), the bill in its current form is likely all that we can reasonably expect to get in the 2009 session. This bill was introduced in March.

5. Assessments for Energy Improvements (HB 1015). A bill has been introduced this week that would authorize the City to implement a program that would allow for the financing of energy conservation improvements made by homeowners to be financed through an assessment process. This would apply to such things as facilities for the generation of solar power, but is not limited to solar power. In essence, the City would pay for the equipment to be installed, and the cost of this work would be collected over time (10 years, usually) by the City in annual assessments. Water and sewer improvements are frequently financed in this way, and there is already a statutory framework. As drafted, this bill applies only to the City of Asheville, but could attract attention from other localities.

6. Civil Service (SB 556). A bill has been introduced a bill to revise the Asheville Civil Service law. Among other things, the bill would restrict the ability of former employees to serve on the Civil Service Board (CSB), would require that the CSB meet monthly, and would require that the City provide whatever administrative support the CSB needs, including legal assistance, at City expense. The bill contains a number of other provisions that go to details of process and that appear to be redundant or duplicative of State law, such as a requirement to observe the Open Meetings law.

   Many of these revisions have been proposed previously, and they were covered in a presentation made to the Council at a work session in October of 2008. Council has established a commission made up from various segments of the business community to review the current Civil Service law and recommend any changes, including whether the law continues to meets its objectives. This study commission has been meeting and gathering information, and will have some recommendations soon. The commission members are aware that a bill has been introduced.

   As a staff, we are formulating responses and recommendations on SB 556, and our timetable is necessarily driven by the legislative calendar. We will make the local delegation aware that the work of the study commission is progressing and, at Council's direction, will pass the commission's recommendations along to members of the local delegation.

B. GENERAL LEGISLATION. As of the date of this report, well over 2000 bills have been introduced, and there is one day left before the deadline for introduction of "public" or general bills passes. This is a lot to review and keep up with. As you might surmise, much attention in the legislature has been devoted to the current economic situation, governmental responses to it, and how to handle the federal stimulus initiatives. The State's budget has also taken up considerable attention. There have been certain areas of particular interest to municipalities – including Asheville – when there has been considerable activity.

1. Annexation. As you may know, municipal annexation has been the subject of a legislative study over the past year. Rep. Bruce Goforth co-chaired the legislative study commission. A conservative estimate is that over 20 bills have been introduced, not limited to specific cities, that would affect the ability of municipalities to engage in involuntary annexation. Other bills affect particular entities. The proposals include annexation moratoria, a requirement for a vote by property owners in the areas proposed for annexation, stricter qualifications for annexation, and increased requirements for provision of municipal services.

Of particular note, a bill that has been endorsed by the League of Municipalities (and was prepared with the League's assistance) has been introduced that is a measured response to many of the issues that have been raised. Because Asheville has been involved in some contested annexations, our input and comment was solicited (along with other municipalities) by the League.

He provided Council with an excerpt from correspondence from the League of Municipalities, summarizing the recommendations of the legislative study commission. He also provided Council with a copy of information from the League identifying particular issues, and the League's proposed response to it.

2. Immigration. There have been several bills introduced that deal with immigration in some substantive way. Most of them focus on the public contracting and work status verifications, and would require the use of some mechanism – like e-verify – as a condition of the award of public construction projects. Not surprisingly, many of these bills are also connected with the use of federal stimulus money. Of particular note is the proposed "North Carolina Illegal Immigration Reform Act" (SB 337), which appears to address the issue in a comprehensive way, requiring verification of work authorization of all local government employees, and to require public contractors to use federal work authorization verification program (which would include e-verify).

   A recent presentation at the UNC School of Government indicates that this particular area of the law – local regulation of immigration, including requiring e-verify as a condition of public contracts – is anything but settled. While it is clear that federal immigration law preempts State and local regulation in this area, the degree of this pre-emption is somewhat unresolved. However, with all of the public and governmental interest in illegal immigration, work eligibility for public projects, and the level of legislative activity, it seems probable that something will be done at the State level this year on this issue, and that the ability of local governments to regulate in this area will be affected and clarified.

3. Road maintenance issues.

   a. Bills have been introduced in both chambers (HB881 / SB 1001) under the somewhat innocuous name of "Transportation Corridor Mapping Changes." These bills are being advanced by the State Department of Transportation. If adopted, these measures would (1) allow the State to delay distribution of Powell Bill funds, (2) would make Powell Bill distributions discretionary rather than mandatory, and (3) would add approximately 22,000 miles of roads to local maintenance responsibility without increasing the amount of the distribution (an unfunded mandate).

   b. Secondary road maintenance. A bill has been introduced in the Senate (SB 758) that would, if adopted, transfer the maintenance responsibility for secondary roads to counties. The concerns with this bill are (1) that it would be a partially funded mandate, and (2) that it would leave road maintenance decisions up to the counties, with some potential for inconsistency. Interestingly, when the State took over maintenance of the secondary road system from the counties in the 1930's, one of the reasons was to address issues of inconsistent and inadequate maintenance. He provided Council with a memorandum to the N. C. Metro Mayors Coalition that provides some more detail on these bills, and a letter from the Coalition chair to the Speaker of the House.

He also provided the following information to Council from Public Works Director Mark Combs. Street maintenance means overlays (resurfacing) (a) potholes, reconstruction of sub-surface; signals; signs and markings; storm drain systems/erosion control; sidewalks; mowing and landscaping; tree maintenance; street lighting; litter administration; conduits; easements, encroachments; force majeure events; bridge maintenance; and conduit/utilities oversight.

Regarding Powell Bill funding, the state provides each year "...for the purpose of maintaining, repairing, constructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter..." (N.C. Gen. Stat. sec. 136-41.2). Regarding funding (a) 1 ¾ cents per gallon motor fuel tax; (b) disbursement is 75% based on population and 25% based on street mileage; (c) Powell Bill is dependent upon fuel taxes – more streets = dilution of the Fund; and (d) increases in City-maintained mileage is incrementally small (because 75% of disbursement is based on population).

Regarding Senate Bill 1001 and House Bill 881, there are 400 miles City-maintained streets and 147 miles maintained by NCDOT for a total of 547 miles of City or NCDOT maintained streets. The following is a NCDOT breakdown of streets in Asheville (a) 32 miles are "limited access" road ways (I-240, I-26, 19-23); (b) 40.5 miles are U.S. Highways"; (c) 12 miles are "N.C. Highways"; and (d) 62 miles are "State Roads" and "other". The City likely to get 50-60 miles of roads.

Asheville spends $17,100 per linear mile per year on streets. Asheville received $5,964 per linear mile in Powell Bill funding.

If the City is forced to maintain 55 miles of streets:
- Cost ($17,100 per L/mi.) = 55 x $17,100/mi = $940,500
- Powell Bill reimbursement (est.) = 55 x $5900/mi = $324,500

FINANCIAL IMPACT TO ASHEVILLE = $616,000

Regarding the potential impact to Asheville Citizens, 66% of maintenance costs will shift to Asheville tax payers.

4. Miscellaneous issues. There have been bills introduced that address several issues of interest to municipalities, some of which are of particular interest to Asheville or Western North Carolina.

   a. Fuel supply / emergencies. Some bills have been introduced in apparent response to the fuel shortage situation that affected parts of the country in the fall of 2008, following the hurricanes that closed down some Gulf Coast oil refineries. WNC was particularly affected. Some of these are study bills.

   b. Several bills have been introduced that would encourage the use of energy efficiency measures; some are local bills, and some are general law bills. These include relaxing restrictions on the placement of equipment, and providing incentives for incorporating efficiency measures into building projects.

   c. A bill has been introduced that would extend times for the validity of certain land use approvals. This is similar to what Asheville has already done on the local level.

d. Several bills have been introduced that address ethics for governmental officials. These include proposals to the State ethics rules applicable to local government, and to broaden the circumstances under which a local governing board member should be recused from a vote.

He said that copies of these bills, and other information where available, can be provided.

This report is primarily for information purposes. If Council directs, resolutions or letters can be prepared, or more information obtained.

Councilman Newman said that he shared with City Council earlier this year a proposal for revisions to the Sullivan Acts that would allow Asheville to use water resource funds to improve public infrastructure directly related to water line construction projects and allow Asheville to grow through the process of Voluntary Annexation.

At this time, Councilman Mumpower raised a point of order. Mayor Bellamy said that Councilman Newman has the floor and is in the middle of a statement. Once Councilman Newman puts the question on the floor, it would be the appropriate time for Councilman Mumpower to raise a point of order.

When Councilman Mumpower continued to raise a point of order, City Attorney Oast said that the Mayor is the presiding officer and as she pointed out, Councilman Newman is in the middle of a statement. He felt the appropriate time to address a concern is after Councilman Newman puts the question on the floor.

Councilman Newman continued in that he requested Council to affirm the proposal to settle the Sullivan Act dispute. As indicated in the legislative information prepared by City Attorney Oast, there has been a bill introduced by our legislators that addresses the infrastructure funding but not the Voluntary Annexation policy. He e-mailed to Council this morning the proposal.

He believes that Asheville's inability to grow through Voluntary Annexation is one of the single greatest threats to the economic health and viability of Asheville, in the near term and especially over the long term. The lessons of history are clear on this point. Cities that cannot grow die. And if the only way that Asheville can grow is through the poisonous and litigious process of Involuntary Annexation, we will never be able to grow in a manner that is healthy for our community or the region.

After Council's previous discussion and approval of the below proposal, he and Vice-Mayor Davis and Mayor Bellamy met with Senator Nesbitt and Representatives Goforth and Whilden. There was agreement on most of the items included in the proposal. The major substantive difference of opinion was on the issue of whether there should be a strict prohibition on Voluntarily Annexation of new developments that are non-contiguous with the city limits.

The proposal below is identical to the one approved by Council earlier this year, except for the two underlined sections. One change clarifies the size criteria for new developments that will require a Voluntary Annexation Agreement -- 16 residential units or 10,000 sq. feet of commercial facilities. The other change addresses the issue of non-contiguous properties.

Proposal to settle the Sullivan Act dispute:

Proposal:

- City of Asheville agrees there will be no differential rates charged for water customers inside and outside the city limits.
- The Sullivan Acts will be modified to allow Asheville to operate under the Voluntary Annexation policies that apply to all other cities in North Carolina. Asheville is open to policies to assure Voluntary annexation will not be abused. Potential policies could include:
    - No more than 5% of the city properties could be non-contiguous with the primary city limits unless specifically authorized by state legislation (such as the airport property). Existing state law allows cities to have up to 10% non-contiguous.
    - No properties could be Voluntarily Annexed into the city unless they are within one-half mile of the city limits. However, Asheville could still require other developments that more than a half mile from the city limits to sign an Voluntary Annexation agreement with the city if they wish to connect to city water lines, so that the city can bring them in to the city once the city has grown outwards to the point that the development is within one-half mile of the city.
    - Developments of less than 16 residential units or 10,000 square feet of commercial space would not be required to enter into a Voluntary Annexation Agreement with Asheville in order to access municipal water services.
    - No existing customers of the water system could be required to sign an annexation agreement as a condition of continuing to receive water service. The policy would apply only to new developments.
    - New developments that are located closer to another incorporated town or city than Asheville could not be required to sign a Voluntary Annexation Agreement with Asheville unless there is a "sphere of influence" agreement between Asheville and the other town or city.
- Members of the legislative delegation have indicated they may be unwilling to allow Asheville to Voluntarily Annex any properties that are not physically contiguous with the city limits. There are significant new developments being constructed very close to the city limits that should be incorporated into the city but which, due to topography or the presence of other unbuildable lands, are not contiguous with the city limits. While the City Council is open to policies that strictly limit annexations that are non-contiguous, an outright prohibition is poor public policy and Council does not support it. However, it would be even more disappointing to not include any Voluntary Annexation policy in the revisions to the Sullivan Act because there is a difference of opinion about this specific point.
- Asheville will not be allowed to divert Water Funds to the General Fund. However, up to 5% of Water Funds may be used for infrastructure improvement projects directly related to water line replacement (such as improving streets or sidewalks torn up during the line replacement process).
- City and County continue discussions about opportunities to work together to be partners on infrastructure and facilities that serve the larger region. The previous water agreement included the following City/ County Partnerships:
    - County reimbursed Asheville about $1.7 million annually for law enforcement services provided outside the city limits that are not provided in the city.
    - The County was financially responsible for the Nature Center, McCormick Field and the golf course.

The Sullivan Acts II and III. In 2004, the City Council decided to dissolve the Water Agreement that had governed management of the system since the early 1980s. In response, members of the legislative delegation passed Sullivan Acts II and III.

Sullivan Act II prohibits the city from charging differential water rates.

Sullivan Act III prohibits the city from using Water Funds for any purposes unrelated to management of the water system and prohibits Asheville from using Voluntary Annexation of new developments that wish to access City water services.

Benefits of the proposed settlement: The proposed settlement represents a compromise. Neither party gets everything they wish. However, it does address the core concerns identified by the City, County and legislators over the past several years.

Benefits of the settlement to Asheville:

- The water system will be managed by the City, which has demonstrated good stewardship of the system over the past several years, investing tens of millions in long overdue water infrastructure repairs.
- Voluntary Annexation will allow the city's tax base to grow as the area urbanizes.
- The city will have additional funds to upgrade streets and sidewalks as part of the process for replacing old water lines.

Benefits of the settlement to non-city residents:

- Assurance that water rates will be no higher for non-city customers than for those who live in Asheville.
- Assurance that for all existing customers, water cannot be used as a condition for annexation into the city.
- Assurance that payments made for water services cannot be diverted to the City's General Fund.

Benefits to the water system:

- Assurance that the infrastructure will be fixed as funds cannot be diverted to non-water system programs.

Councilman Mumpower felt it was extremely inappropriate to offer a last-minute proposal outside the established Council agenda. He also suggested that it was inappropriate for Council to discuss what amounts to a $1 Billion surrender plan without ample notice to the public and some opportunity to discuss alternatives. He challenged the Council's actions if this item moves forward and suggests that it was an intentional effort to conceal giving up full control of a $1 Billion City asset in the dark.

Councilman Newman responded that on this agenda (which is publicly advertised) is a legislative update. Changes to the Sullivan Act is already a part of this established agenda. As this was a complicated set of issues, he felt it was important to put some specific language on paper which was shared with members of the public and staff prior to this meeting. He felt Council is addressing an item which is part of the agenda.

Councilman Mumpower felt Councilman Newman was manipulating the public in that he felt the issue is hidden under the legislative update. There is no identifiable reference of the issue of our water system. He has no concern about Councilman Newman offering a proposal, but has problems with the timing. If there had been an interest in discussing proposals tonight, he would have added his own proposals.

Mayor Bellamy said that she has received Councilman Mumpower's agenda request for time to discuss other options regarding our water system and it will be scheduled as we do other agenda requests.

In response to Councilman Mumpower about the concerns raised earlier and about the addition of last minute documents outside of the Council agenda, City Attorney Oast said that because this is a regular meeting of Council, it's possible for things to be added to the agenda, just as he added the amendment to the non-consensual towing ordinance. It appears to what is being asked by Councilman Newman is to re-affirm a position that has already been taken, with some refinements.

When Councilman Mumpower asked if there was anything else he could do to intercept what he believes is inappropriate, City Attorney Oast said that he is not aware of anything other than to note the concerns raised.

At 9:28 p.m., Councilman Mumpower said that he personally was not willing to conduct the City's business in this manner and left the meeting unexcused.

Mayor Bellamy said that Council will continue with the business they were elected to do.

Vice-Mayor Davis felt it was appropriate to amend the language presented to our state legislators earlier. He didn't feel we are surrendering our $1 Billion City asset as we still have ownership and control of that system, although we can't use it to the degree that other municipalities can.

Councilman Miller felt that Council gave clear direction to Mayor Bellamy, Vice-Mayor Davis and Councilman Newman to meet with our local delegation on water issues. He felt it was incumbent upon Council to have dialogue with our legislators and continue to press these issues.

Mayor Bellamy said that since the City has lost the Sullivan Act lawsuits, we believe that it's important that we work with our state legislators on the larger issue of using our water system to the best degree that we can. We have put major emphasis on fixing our water system and are letting our legislators know of that priority. We are asking them to consider how Asheville can grow as a community. Councilman Newman is asking for a reaffirmation of our commitment that we, as a City, feel this is important for us to move forward.

Councilman Newman noted that his proposal was e-mailed out to members of the media at the same time it was e-mailed out to City Council.

Councilman Newman moved to communicate to our legislative delegation our prospective on the revisions to the Sullivan Act consistent with the language in the proposal outlined above. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Russell voting "no."

VI. NEW BUSINESS:

A. ORDINANCE NO. 3722 - BUDGET AMENDMENT FOR REIMBURSEMENT FOR OVERTIME EXPENSES RELATED TO ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE PARTICIPATION

Summary: This is the consideration of a budget amendment, in the amount of $19,000, for reimbursement for overtime expenses related to Organized Crime Drug Enforcement Task Force (OCDETF) participation.

The Asheville Police Department is an active member of the Drug Enforcement Administration (DEA) Task Force. As part of the agreement in joining, officers are authorized to work overtime which will be reimbursed by the Federal Government. The funds received vary depending upon the length and involvement in operations. In order to continue Asheville Police Department (APD) participation and long term involvement with operations, it is imperative that we continue to receive such overtime reimbursement. Based on the current operation APD has been allocated $19,000 by the US Department of Justice (DOJ) to apply toward OCDETF overtime expenses.

This action complies with the City Council Strategic Operating Plan in Fiscal Responsibility in that we are using Federal Funds to reimburse for overtime that would otherwise come from APD's Operating Budget and, 2) Safe City in that participating in the DEA Task Force

we are able to conduct long term operations that remove drug suppliers from our community, thus making Asheville a safer and more desirable community to live.

Pros:

- Provides a non-City revenue source to cover Police Department overtime expenses incurred during participation in the Drug Enforcement Administration (DEA) Task Force.

Con:

- None noted

As noted above, this grant provides a non-City funding source for a portion of APD's General Fund overtime expenses.

City staff recommends City Council adopt a budget amendment, in the amount of $19,000, to accept the US DOJ funds to offset overtime expenses for APD officers involved in OCDETF operations.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Miller moved for the adoption of Ordinance No. 3722. This motion was seconded by Councilwoman Cape and carried unanimously.

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B. ORDINANCE NO. 3723 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT PROGRAMS AND IMPROVEMENTS AT THE NATURE CENTER

ORDINANCE NO. 3724 - BUDGET AMENDMENT FROM THE URBAN TRAIL COMMITTEE TO SUPPORT MAINTENANCE AND IMPROVEMENTS TO THE URBAN TRAIL

ORDINANCE NO. 3725 - BUDGET AMENDMENT FROM FUNDRAISING ACTIVITIES TO SUPPORT THE PUBLIC ART PROGRAM

ORDINANCE NO. 3726 - BUDGET AMENDMENT FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT THE CULTURAL ARTS PROGRAM

ORDINANCE NO. 3727 - BUDGET AMENDMENT FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT RECREATION PROGRAMS AND SPECIAL PROJECTS

Summary: This is the consideration of various budget amendments for contributions to support programming and special projects as outlined below.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description of each is listed below.

- $7,500 from the Friends of the Nature Center to increase the budget to support programs and improvements at the Nature Center. The Friends of the Nature Center is a 501 (c) 3

non-profit organization whose purpose is to act as an advocate for and to raise funds to support the programs and enhancements at the Nature Center.

- $3,806 from the Urban Trail Committee to increase the budget to support maintenance and improvements to the Urban Trail. The Urban Trail Committee is a sub-committee of the Public Art Board.

- $4,363 from the fundraising activities to increase the budget to support the Public Art Program.

- $2,000 from the Asheville Parks and Greenways Foundation to increase the budget to support the Cultural Arts Program. The Asheville Parks and Greenways Foundation is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate and to raise funds to support programs and enhancements in parks, greenways and recreation programs within the City of Asheville Parks, Recreation & Cultural Arts Department.

- $33,152 from the Asheville Parks and Greenways Foundation to establish a budget to support recreation programming and special projects.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pros:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

The fiscal impact for these actions will Increase the City's Fiscal Year 2008/09 capital improvement budget by $8,169, and special projects budget by $42,652.

Staff recommends City Council to adopt budget amendments authorizing the City Manager to increase the budgets for 1) Nature Center by $7,500, 2) Urban Trail by $3,806, 3) Public Art Program by $4,363, 4) Cultural Arts Program by $2,000; and to establish a budget for recreation programs and special projects by $33,152.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Miller moved for the adoption of Ordinance No. 3723. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 239

Councilman Miller moved for the adoption of Ordinance No. 3724. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 241

Councilman Miller moved for the adoption of Ordinance No. 3725. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 243

Councilman Miller moved for the adoption of Ordinance No. 3726. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 245

Councilman Miller moved for the adoption of Ordinance No. 3727. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 247

C. RESOLUTION AUTHORIZING THE CITY TO EXERCISE EMINENT DOMAIN TO CONDEMN AND ACQUIRE PROPERTY FOR THE WESTON ROAD WATER BOND PROJECT

At staff's request, this item was pulled from the agenda for consideration.

D. RESOLUTION NO. 09-70 – RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY EVENT

Summary: This is the consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day event on April 18, 2009.

Lake Eden Arts Festival has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Earth day event coordinated by Mountain Roots Management and allow for consumption at this event.

The Asheville Earth Day event will be held on Saturday, April 18, 2009 from 11:00 a.m. to 10:00 p.m. within the boundaries of Martin Luther King Jr. Park and will be free and open to the public.

Pro:

- Allows fundraising opportunity for Lake Eden Arts Festival

Con:

- Potential for public safety issues.

There is no fiscal impact for the City of Asheville.

Staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day event located at Martin Luther King Jr. Park on April 18, 2009.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-70. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Mayor Bellamy voting "no".

RESOLUTION BOOK NO. 32 – PAGE 18

E. RESOLUTION NO. 09-71 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS FOR SERVICE TO AND FROM BLACK MOUNTAIN

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Veteran's Administration Hospital, and multiple residential areas. The service operates five times a day, six days a week. All financing will be provided by the State (maximum of $287,398), the Town of Black Mountain ($13,500), Mountain Mobility ($4,000), and Fare Box Revenue (approx. $20,000). The total budgeted cost for Fiscal Year 2009 is $324,898 which also covers the pass through funding to Mountain Mobility for the operation of their route in Black Mountain. These funds are currently programmed in the City budget, with no City funds being expended. Ridership on this route in Fiscal Year 2008 was 42,902, 18% more riders than the prior year.

NCDOT has notified the City that future funding for Intercity routes may be discontinued beginning next fiscal year if the routes do not follow definitions provided in FTA Circular 9040.1F which defines Intercity routes under section 5311(f).

Staff is working with the Institute of Transportation Research (ITRE), NCDOT and HDR, the Transit Master Plan consultants, to determine the changes needed to comply with the circular.

HDR has proposed under the master plan an express service that will connect Weaverville and Black Mountain with the Greyhound terminal, addressing the requirement for limited stops and meaningful connections with intercity service; staff is working on the details: final destinations, stops along the route, and scheduling; cost implications if the routes are extended to connect other urban areas and changes to the buses to accommodate luggage.

This proposal will be presented to NCDOT and ITRE consultants for consideration by the end of the month.

This action conforms with the (1) City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva; (2) City Council Strategic Operating Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and (3) City Council Strategic Operating Plan in the Green Focus Area to Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

The City of Asheville will receive $324,898 for intercity route operations between Asheville and the Town of Black Mountain. These funds are currently programmed in the City budget, with no City funds being expended.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

Director of Transportation and Engineering Cathy Ball responded to a question raised by Councilwoman Cape.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-71. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 21

F. RESOLUTION NO. 09-72 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS FOR SERVICE TO AND FROM WEAVERVILLE

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Weaverville.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Weaverville. The Asheville Transit System operates said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Weaverville along US 25 Business with stops at UNCA, along Merrimon Avenue, in downtown Weaverville, at the Rose's Shopping Center, Arvarto, and other locations along the route. The service operates five times per day, six times per week. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The total budgeted cost for Fiscal Year 2009 is $158,835. The State of NC is providing $143,335 for this Intercity Project. The Town of Weaverville has budgeted $10,000 to this route. The balance of $5,500 is expected from farebox revenues. There are no City funds in this operation, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes. Ridership on this route in FY 2008 was 13,935, 5% less than last's year ridership (14,678).

NCDOT has notified the City that future funding for Intercity routes may be discontinued beginning next fiscal year if the routes do not follow definitions provided in FTA Circular 9040.1F which defines Intercity routes under section 5311(f).

Staff is working with the Institute of Transportation Research (ITRE), NCDOT and HDR, the Transit Master Plan consultants, to determine the changes needed to comply with the circular.

HDR has proposed under the master plan an express service that will connect Weaverville and Black Mountain with the Greyhound terminal, addressing the requirement for

limited stops and meaningful connections with intercity service; staff is working on the details: final destinations, stops along the route, and scheduling; cost implications if the routes are extended to connect other urban areas and changes to the buses to accommodate luggage.

This proposal will be presented to NCDOT and ITRE consultants for consideration by the end of the month.

This action conforms with the (1) City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva; (2) City Council Strategic Operating Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources, and Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion; and (3) City Council Strategic Operating Plan in the Green Focus Area to Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

The City of Asheville will receive $158,835 for intercity route operations between Asheville and the Town of Weaverville. These funds are currently programmed in the City budget, with no City funds being expended.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Weaverville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-72. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 22

G. OAKLEY POLICE RESOURCE CENTER REPLACEMENT

RESOLUTION NO. 09-73 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE FOR GREEN BUILT MODULAR HOME

RESOLUTION NO. 09-74 - RESOLUTION AUTHORIZING THE DEMOLITION OF CITY-OWNED PROPERTY LOCATED AT 711 FAIRVIEW ROAD

Assistant City Manager Jeff Richardson said that this is the consideration of a (1) resolution to authorize the Mayor to enter into an interlocal agreement with Asheville-Buncombe Technical Community College (AB Tech) to purchase a student built energy efficient modular

home replace a 100 year old Police Resource Center in the Oakley community; (2) resolution authorizing the demolition of City-owned property located at 711 Fairview Road.

Mr. Richardson was pleased to recognize two of our partners from AB Tech - Mr. C. Max Queen, Vice-President of Risk Management and Operations, and Mr. Vernon Daugherty, Dean of Engineering and Applied Technology.

Phase I analysis, for near term priority areas, showed significant constraints in the following facilities (1) City Hall (all floors) – impacts Customer Service Division, development services, internal support services; (2) Public Works Building (Department of Public Works and Building Safety) – impacts development services and Public Works administration operations; (3) Municipal Building (Police and Fire) – impacts downtown public safety operations; (4) Oakley Police Community Center – inadequate space with critical building code issues; (5) Parks Maintenance Facility (Aston area property) – inadequate space to maintain location and achieve redevelopment goals; and (6) Hunt Hill Purchasing Facility (McCormick Heights area) – inadequate space to maintain location and achieve redevelopment goals.

During the 2007 budget planning process, the City Council allocated a one-time infusion of $500,000 into the City's Capital Improvement Fund. Subsequently, through its master facility planning process, the City determined the Oakley Police Resource Center was a first priority of all existing City buildings as needing immediate restorative repair, as the house is structurally unsafe. This decision was made after the City contracted with a structural engineer to review the house, as well as requesting an internal Building Safety Department inspector walk-through. It was determined as result of these site assessments that the police resource center is in need of a minimum of $30,000 of immediate restorative maintenance in order to keep the house in usable condition. Additional significant investment was identified to modernize much of this house's outdated design features, which are not suited to accommodate the volume of police staffing traffic that occurs daily at this site.

The Oakley Police Community Center (1) is a 1910 residential structure with 1,200 usable square feet; (2) serves as northeast district office; (3) has 44 assigned sworn personnel; (4) has structural issues and space compatibility issues; and (5) has an estimated $30,000 for minimum restorative maintenance.

An interdepartmental project team reviewed this situation and unanimously recommended that the home be demolished and that the city pursue an energy efficient modular home replacement. The City contacted Max Queen, Vice President of Risk Management and Operations at AB Tech, to inquire about partnering to build a green modular home as a joint project, and learned that AB Tech had recently completed an energy efficient student-built modular home and was preparing to auction this home off in the near future.

Staff analysis of the replacement of the Oakley Police Community Center includes (1) $200,000 capital maintenance money available (Fiscal Year 2007); (2) modular energy efficient replacement pursued; and (3) AB Tech partnership opportunity (a) modular home available; (b) student constructed (2007-08); (c) built to NC Healthy Built standards; (d) 1,250 square feet / 1,250 unfinished basements; (e) AB Tech Carpentry Program willing to complete finish work on-site at materials-cost only (including exterior deck/porch roof); and (e) AB Tech Carpentry Program willing to finish basement at materials-cost only in future.

City staff has conferred with the Building Safety Department about the quality of this five star energy rated modular home. The Building Safety Department rates the building quality as outstanding. The Police Department staff toured the home and is impressed with the quality and features, stating that the home is perfect for their future needs.

As part of the demolition/site preparation process, the Asheville Fire & Rescue Department would like to conduct a live fire training using this structure. This will save the City

money disposing of debris from the site. In addition, staff is looking into salvaging usable items in the house before the live burn.

Interim planning steps include (1) quality inspection/review of home (building safety); (2) Police Department walk-through site review of home; (3) staff presentation to Council Public Safety Committee; (4) AB Tech staff discussion/Board of Trustees; and (5) Oakley neighborhood community meeting.

He then showed an artist's rendering of the house.

The City of Asheville and AB Tech held a community meeting on April 6 in the Oakley Community to discuss this project. One hundred letters were sent in advance of this meeting to alert homeowners of this proposed project. Twelve citizens attended this meeting, including the Oakley Neighborhood President. This project was endorsed by those citizens at this meeting.

Projected Budget:

Site Demolition Cost	$ 10,000
Home Purchase Cost	$110,000
Site Preparation/House Transport Cost	$ 57,000
Landscaping and paving/contingency	$ 15,000
Total	$192,000

This figure represents a 1,250 square foot finished home and also a 1,250 unfinished full basement.

This proposal was reviewed by the City Council Public Safety Committee on March 17, 2009, and they unanimously recommended that the project move forward for consideration.

This proposal aligns with many of the City's Strategic Plan goals to include: (1) Sustainable: (a) Expand partnerships with UNCA, AB Tech and other institutions to achieve goals in health and wellness, workforce development, and economic development, among others; (b) Develop a long-term plan to address the city's infrastructure including facilities; and (c) Supports the city council's desire to support the local economy through an effort to buy local; (2) Green: (a) Make environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations; and (3) Safe: (a) Prioritize public safety and infrastructure investments that support children's health and safety; and (b) Expand Community Policing Initiatives.

Pros:

- This project, if approved, aligns several key City Strategic Plan goals as noted above.
- This project is currently budgeted with earmarked capital money set aside in Fiscal Year 2007.
- The money paid to AB Tech will be used to fund future student built energy efficient modular home projects in this community.
- The design of this structure blends well ascetically with the characteristics of the Oakley community.
- Total square footage to include a full unfinished basement allows for necessary future growth needs in the Police Department.

Con:

- The APD North-East Patrol District will be required to temporarily be relocated to another site in the same vicinity during the timeframe that this project is completed. Estimated time to complete this project and open the new center is four months once underway.

Staff is recommending approval of the Intergovernmental Agreement with AB Tech, along with approval of demolition of the existing structure with the assistance of the Asheville Fire and Rescue Department.

Mr. Carlton Denning, Division Chief of the Safety and Training Division of the Asheville Fire Department, responded to Councilwoman Cape about the very strict federal, state and local guidelines that must be followed before a house is safe to burn. He also confirmed that a controlled burn is an excellent training for firefighters.

Mr. Queen explained how the carpentry in the modular home is exceptional and was pleased to partner with the City of Asheville.

Vice-Mayor Davis noted that this modular home is in keeping with the character of the Oakley community.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-73. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 23

Vice-Mayor Davis moved for the adoption of Resolution No. 09-74. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 24

H. RESOLUTION NO. 09-75 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis said that the term of Sharon West, as a member of the Civil Service Board, expired on May 21, 2008. Ms. West has agreed to remain on the Board until May 1, 2009.

At the March 10, 2009, meeting, it was the consensus of Council to interview Bridgette Odom, Davidson Jones and Beatrice Brown. On March 24, 2009, Ms. Odom and Ms. Brown were interviewed. Mr. Jones did not attend the interview.

Due to residency concerns, it was the recommendation of the Boards & Commissions Committee, and the consensus of City Council, that the appointment to Ms. West's seat be postponed and re-advertised.

In addition, the term of John Miall, as a member of the Civil Service Board, expires May 21, 2009. Since City Council has recently interviewed Mr. Miall and reappointed him as Chair to the Civil Service Board, it was the recommendation of the Boards & Commissions Committee, and the consensus of City Council, that Mr. Miall be reappointed to serve an additional two-year term, term to expire May 21, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 25

I. BOARDS & COMMISSIONS

It was the consensus of Council to interview Mark Allison, Harry Weiss and Abigail Emison for a vacancy on the Downtown Commission.

It was the consensus of Council to interview Rachael Bliss, Milton Simpson, John Calligan and Matthew Howard for a vacancy on the URTV Inc. Board of Directors.

In response to Mayor Bellamy, Vice-Mayor Davis said that the Boards & Commissions Committee recommended the two liaisons for the URTV Inc. Board (Councilman Russell and County Chairman David Gantt) meet with the URTV Manager and URTV Board Chair to see if they can resolve some of the problems associated with the Board.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of March 13 – April 2, 2009: Christopher Morris (Transit), Annie Jones (Fire), Randy Roland (Police), Mark Jackson (Streets), Ingrid Swayngim (Streets) and Karen Cianciulli (Traffic Engineering). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross urged the City of Asheville to get experts (forensic psychologist or forensic anthropologist) involved in solving crimes in Asheville, especially homicides. Mayor Bellamy said that Assistant City Manager Richardson would follow-up on her request.

Mr. Barry Durand thanked City Council for their earlier resolution of support for their (neighbors and others) efforts to encourage Environmental Protection Agency (EPA) restoration of soil and water quality in the area impacted by the CTS facility. He updated Council by saying that CTS is has now decided to enter into the State's voluntary remediation program, which incentive is a $3 Million liability cap. He urged Council to support the community as they lobby that the CTS facility's voluntary remediation program request be denied and that they do an appropriate, proper clean-up. They feel that is an inappropriate application of voluntary remediation.

In response to Mayor Bellamy, Mr. Durand said that this issue is on the Buncombe County Commissioners' agenda next week.

After a brief discussion, it was determined that participation in a brownfields remediation program may not be the most appropriate course of action in this instance, largely because the site was still active.

Vice-Mayor Davis noted that Congressman Shuler's office is involved and it may be appropriate to prepare a resolution of support for doing something more immediate through the Congressman's office.

Mayor Bellamy also noted that Senator Burr would be in Asheville tomorrow and they may have an opportunity to speak to him regarding this issue.

It was the consensus of Council to instruct the City Attorney to prepare a resolution, to be placed on the May 12, 2009, agenda, requesting the CTS facility's request for voluntary remediation be denied. Councilwoman Cape suggested said resolution to state that while the voluntarily compliance is good, when it applies, because it encourages people to be proactive in cleaning areas up, but in this situation, it does not apply.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:21 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 28, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

PUBLIC HEALTH EMERGENCY – SWINE FLU

Dr. Martha Salyers, Director of Region 6 Public Health Team, explained that the United States is now in a declared "Public Health Emergency". Public health officials within the United States and throughout the world are investigating outbreaks of swine influenza (swine flu). Swine flu is a respiratory disease of pigs caused by a type A influenza virus that regularly causes outbreaks of influenza among pigs. Swine flu viruses do not normally infect humans; however, human infections with swine flu do occur. Public health officials have determined that this strain of swine flu virus spreads from human to human and can cause illness. The outbreak is ongoing and additional cases are expected.

The symptoms of swine flu in people are similar to the symptoms of seasonal flu in humans and may include: Fever (greater than 100°F or 37.8°C); Sore throat; Cough; Stuffy nose; Chills; Headache and body aches; and Fatigue.

Some people have reported diarrhea and vomiting associated with swine flu. Severe illness (pneumonia and respiratory failure) and deaths have been reported with swine flu infection in people. Like seasonal flu, swine flu may cause a worsening of underlying chronic medical conditions.

People entering the United States who are experiencing symptoms consistent with swine flu and have traveled to an affected area, or have been exposed to someone possibly infected with swine flu, during the last 7 days should report their illnesses to their health care provider immediately and inform them of their recent travel.

People traveling from the United States to affected areas should be aware of the risk of illness with swine flu and take precautions.

To prevent the spread of swine flu: (1) Avoid contact with ill persons; (2) When you cough or sneeze, cover your nose and mouth with a tissue or your sleeve (if you do not have a tissue). Throw used tissues in a trash can; (3) After you cough or sneeze, wash your hands with soap and water; or use an alcohol-based hand gel; (4) If you think you are ill with flu, avoid close contact with others as much as possible. Stay at home or in your hotel room; (5) Seek medical care if you are severely ill (such as having trouble breathing). There are antiviral medications for prevention and treatment of swine flu that a doctor can prescribe; and (6) do not go to work, school, or travel while ill.

Mr. Eddy Shook, Health Services Coordinator for the Buncombe County Health Department, explained how they are in constant communication with their local care providers.

In response to Councilwoman Cape, Dr. Salyers said that if your child has flu-like symptoms, you should contact your health care provider.

Mr. Allen Johnson, Superintendent of the Asheville City Schools, explained how the Asheville City School system is coping with this public health emergency.

Mayor Bellamy thanked Dr. Salyers and Mr. Shook for this informative update. She said that the City has been posting press releases on our website.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 2009 AS "MOTORCYCLE AWARENESS MONTH"

Councilwoman Cape read the proclamation proclaiming May, 2009, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Roger Williams, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING MAY 2009 AS "DRUG COURT MONTH"

Councilman Mumpower read the proclamation proclaiming May, 2009, as "Drug Court Month" in the City of Asheville. He presented the proclamation to Ms. Norma Grivich, Coordinator for the Buncombe County Adult Drug Treatment Court, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MAY 4-10, 2009, AS "PUBLIC SERVICE RECOGNITION WEEK"

Mayor Bellamy read the proclamation proclaiming May 4-10, 2009, as "Public Service Recognition Week" in the City of Asheville. She presented the proclamation to Mr. Mike Marshall, President of the Asheville Professional Firefighter Association, who accepted the proclamation on behalf of the firefighters and law enforcement officers.

D. PROCLAMATION PROCLAIMING MAY 6-12, 2009, AS "NURSES WEEK"

Councilman Miller read the proclamation proclaiming May 6-12, 2009, as "Nurses Week" in the City of Asheville. He presented the proclamation to Ms. Lourdes Lorenz, RN, Director of Integrative Healthcare Department at Mission Hospital, and Ms. Kathy Guyette, Vice-President and Chief Nursing Hospital at Mission Hospital, who briefed City Council on some activities taking place during the week.

E. PROCLAMATION PROCLAIMING MAY 12-16, 2009, AS "SENIOR GAMES WEEK"

Councilman Newman read the proclamation proclaiming May 12-16, 2009, as "Senior Games Week" in the City of Asheville. He presented the proclamation to Recreation Superintendent Danny Hopkins, Mr. David Herbert and Mr. Charles Canter, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 14, 2009

B. RESOLUTION NO. 09-76 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH DALTON LAWN AND LANDSCAPING, AND RIVERTOP CONTRACTING INC. TO PROVIDE CONTRACTED MOWING SERVICES FOR THE CITY'S PARK SYSTEM BEGINNING JULY 1, 2009

Summary: The consideration of a resolution authorizing the City Manager to enter into contracts with Dalton Lawn and Landscaping and Rivertop Contracting, Inc. to provide city wide mowing services beginning July 1, 2009.

The purpose of the request for proposal for mowing services was to determine if grounds maintenance services for parks could be provided more cost effectively by the private sector under contract, and if so, to select a contractor to provide such services. The City of Asheville bid for mowing services was divided into five districts (East, West, North, Central and South) plus Riverside Cemetery for bidding purposes on a per cut basis with an estimated 14 cuts per year from April through October. A contractor could bid on one or more of the districts for providing mowing services but had to submit a bid for a complete district to be deemed responsive.

Dalton Lawn and Landscaping, located at 662 Bald Rock Rd., Hendersonville, NC is the lowest responsive and responsible bidder and is proposed to be selected to perform mowing services for the East, North and South Districts at a cost of $60,655.00. Rivertop Contracting, Inc., located at PO Box 1294, Black Mountain, NC is the next low responsive and responsible bidder at a cost of $33,012.00 and is proposed to be selected to perform mowing services for the West District. The Parks, Recreation and Cultural Arts Department found it more cost effective to continue to mow both the Central District and Riverside Cemetery.

Funding in the amount of $97,679.00 is proposed for contracted mowing services in the City's Fiscal Year (FY) 2009-2010 operating budget for park maintenance, and is contingent upon City Council approving the funds associated with providing contracted mowing services as part of the City's FY 2009-2010 operating budget.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the park facilities maintenance program to conduct ongoing facility maintenance. It is also consistent with the Parks, Recreation and Cultural Arts Master Plan in that it provides ongoing maintenance and care for our park system.

Pros:
- Provide funds for ongoing, core park maintenance services.
- Fulfill commitment for maintenance of park system.

Con:
- none

Regarding fiscal impact, $97,679.00 is proposed for contracted mowing services in the City's FY 2009-2010 operating budget for park maintenance, and is contingent upon City Council approving the funds associated with providing contracted mowing services as part of the City's FY 2009-2010 operating budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract to provide city wide mowing services with Dalton Lawn and Landscaping for a total of $60,655; and with Rivertop Contracting, Inc. for a total of $33,012.00 beginning July 1, 2009, contingent upon City Council approving the funds associated with providing contracted

mowing services as part of the City's FY 2009/2010 operating budget.

RESOLUTION BOOK NO. 32 – PAGE 26

C. RESOLUTION NO. 09-77 - RESOLUTION AUTHORIZING EXECUTION OF A UTILITY EASEMENT ACROSS CITY PROPERTY AT 35 BELL ROAD IN HAW CREEK FOR A NEW WATER PUMPING STATION

Summary: The consideration of a resolution granting a utility easement over city property in Haw Creek.

The City of Asheville owns approximately two acres at 35 Bell Road in Haw Creek. As part of the Town Mountain Revenue Bond Project, a new water pumping station has to be installed on this property. The best method to provide electrical power to the new water pumping station is for Progress Energy to install a new utility pole and overhead line to the site.

The easement that is being requested would be 30 feet in width, and Progress Energy would be permitted to construct and maintain its line (including poles, cables, wires, guys, anchors, underground conduits, and other pertinent facilities) and to keep the area cleared of trees, undergrowth, or any other obstructions that may endanger or hinder their operation and maintenance.

Pros:

- Allows for installation of a new water pumping station in order to proceed with the Town Mountain Revenue Bond Project.
- The new water pumping station will provide better water service to area residents.
- The new utility pole will provide electricity required to operate the new pump station.

Cons:

- May require periodic trimming / removal of vegetation within the easement area.
- The city cannot use the area in a manner that interferes with the easement.
- The city will have to ensure that future uses of the property are compatible with the easement.

This project is part of City Council's strategic plan to complete the Water Revenue Bond Projects to address capital needs and infrastructure demands.

Progress Energy is not charging the City to install and maintain the utility pole and overhead line. There is a $20.00 easement recording fee.

Water Resources staff recommends adoption of the resolution authorizing the Mayor to execute the easement, subject to approval of the City Attorney.

RESOLUTION BOOK NO. 32 – PAGE 27

D. RESOLUTION NO. 09-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FOR ANIMALS WITHIN TERRITORIAL LIMITS OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Asheville Humane Society for animal shelter services for animals within territorial limits of the City of Asheville.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the

animal shelter. The Asheville Humane Society has told City Staff that the cost for animal shelter to the City for Fiscal Year 2008-2009 will be $127,050. This cost is included in the Asheville Police Department's budget. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2009, through June 30, 2010.

Pro:

- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Con:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

The Shelter contract will cost the City $127,050 for Fiscal Year 2009-2010. This is the same amount as last year.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with the Asheville Humane Society for animal shelter services for the term of July 1, 2009, through June 30, 2010.

RESOLUTION BOOK NO. 32 – PAGE 29

E. MOTION SUPPORTING THE ASHEVILLE CITY SCHOOLS FOUNDATION REQUEST OF A $1,000 GRANT TO HELP SUPPORT THE LISTENING TO OUR TEENS SUMMIT ON JUNE 4-5, 2009

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. MOTION SUPPORTING THE ASHEVILLE CITY SCHOOLS FOUNDATION REQUEST OF A $1,000 GRANT TO HELP SUPPORT THE LISTENING TO OUR TEENS SUMMIT ON JUNE 4-5, 2009

Summary: The consideration of a motion supporting the Asheville City Schools Foundation request of a $1,000 grant to help support the Listening to Our Teens Summit, scheduled for June 4-5, 2009.

The Asheville City Schools Foundation is sponsoring the Listening to Our Teens Summit on June 4-5, 2009. This summit will be an opportunity for local service providers, business leaders, parents, students, school staff and other concerned community members to learn about what middle school students in Asheville have expressed as their needs and desires. If granted the $1,000, the Foundation is working to produce a report that will detail the project process,

results, and recommendations at a total cost of $860. The remaining funds will be used to fund the creation of a digital version of the report.

This support will serve to continue to strengthen the partnership with the City of Asheville and Asheville City Schools and its Foundation, which aligns with the City's Strategic Plan to strengthen key governmental partnerships.

Pros:

- This summit will provide Asheville City Schools an opportunity to interest with young teens, ages 11-14 years old, and to involve the Asheville Police Department and other city and community agencies to better understand and serve this age group in the future.
- Funding has been identified through unspent money from the City Council's Fiscal Year 2008-09 Travel Budget.

Con:

- This request, due to timing, was not handled in the normal manner with other outside agency requests.

This expense may be covered from Mayor and City Council unexpended travel/training funds in the Fiscal Year 2008-09 budget.

This request was reviewed by the Public Safety Committee at its April meeting and the committee unanimously recommended that it be forwarded to the Asheville City Council for further consideration.

Councilman Mumpower said he didn't have an issue with this grant, but felt this request should have gone through the established Outside Agency Funding process.

After a brief discussion, it was the consensus of Council to ask the City Manager to draft an amendment to the Outside Agency Policy to provide for infrequent, exceptional and minor allocations to agencies independent of the regular funding cycle.

At the suggestion of Mayor Bellamy, City Manager Jackson said that there are some community oriented policing dollars that could be used for this type of action, along with the City providing some in-kind services, e.g., printing.

Councilwoman Cape moved for the adoption of allocating up to $1,000 (from community oriented policing dollars and in-kind support) in order to support the Asheville City Schools Foundation Listening to Our Teens Summit, scheduled for June 4-5, 2009. This motion was seconded by Vice-Mayor Davis and carried on a 5-2 vote, with Councilman Russell and Councilman Mumpower voting "no."

III. PRESENTATIONS & REPORTS:

A. HIGHLIGHTS OF THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council (Council), introduced Chairman of the Asheville-Buncombe Community Relations Council Larry McCallum and Board member Sharon Lewis. They shared some statistics of the Asheville-Buncombe Community Relations Council and thanked City Council for their support. Some highlights include:

(1) The Council is the agency many of the very poorest citizens in the community seek out working out problems in their community. The Council works to address Police Community Problems. We have a presence in all of the Public Housing Communities. We are working with young people to resist gangs. We are working with families to assist them in going to work.

(2) The Council is involved with the Burton Street Community in the discussion about the I-26 Corridor.

(3) The Council is very involved in the West Asheville Weed & Seed Area. Through this effort bad elements are weeded out of the community and good elements are started such as After School Clubs.

(4) The Council through our Fair Housing efforts warder a disabled homeowner over $10,000 in a Fair Housing Claim. This allowed him to make a modification to his home, which allowed him to continue to live there. This was the largest Fair Housing Award in the western part of the state in the last year.

(5) The Council serves as the Fair Housing Enforcement Agency for the city and county. HUD recertified the ABCRC last year. In the HUD Monitoring Report it was noted that with such a high caseload and such a small staff, we could not close cases at an efficient rate. It was recommended that our funding be increased in order to hire an additional investigator.

(6) The Council is unable to serve the growing Latino Community due to our lack of bi-lingual staff.

(7) The Council closed 11 Housing Cases last year. This year we have already investigated 26 cases. This represents an increase of more than 100%.

(8) Last year the Council facilitated forums concerning how we accept differing points of view and immigration. The forums were held at the Unitarian Church and St. Eugene's Catholic Church. Both forums were very well attended and a wide range of views was expressed.

(9) The Council Staff facilitated workshops on Housing Discrimination, Employment Discrimination, Disabilities, Cultural Awareness, Diversity and others. We were not able to accommodate all of the requests for workshops due to the small staff.

(10) The Council hosted over 12 Mediation Sessions involving individuals, businesses, groups, organizations and Law Enforcement.

On behalf of City Council, Mayor Bellamy thanked Mr. Smith, Dr. McCallum, Ms. Lewis and the entire Community Relations Council Board and staff for their hard work and service to the community.

B. HEALTHY BUNCOMBE'S ACTIVE COMMUNITY COMMITTEE

Ms. Claudia Nix, Chair of Healthy Buncombe's Active Community Committee, updated Council on the progress of the coalition. They are a diverse group charged to promote policy and environmental changes that to enable our citizens to be more physically active and eat healthy thereby improving their health, reducing chronic disease and health care costs.

For decades health organizations focused their efforts mainly on encouraging individuals to change their behaviors and adopt healthy lifestyles. Twenty years ago 25% of the population was getting the recommended amount of physically activity; today we are still only at 25% and

related chronic diseases continued to rise. It is now clear that while personal responsibility is important; if we want people to adopt healthy lifestyles the means to do so must be accessible. This is especially true of the most disadvantaged in our community. Therefore, the shift to emphasize policy and environmental change approaches. People are more likely to use facilities instead of their cars for their short trips if they are nearby and convenient. By the same manner if healthy food choices are available and affordable, many people will choose them.

She then provided the Council with an update on our bicycle education program which was funded through NC's Eat Smart Move More Community Grants program. She provided Council with a brief background in that the bicycle education grant is the 5th grant they have received bringing $90,000.00 into our community. Briefly, the others have included:

- A mini-grant program to help middle schools support healthy eating and physical activity.
- The 2nd is a grant working with African American churches offering nutrition programs to teach healthy eating & cooking techniques as well as the MoveAbout program to encourage physical activity 150 minutes a week for 13 weeks which averages 30 min. a day. The mutual support that individuals received from their church community was very helpful in achieving results.
- Development of the Shiloh Community Garden with support from the Bountiful Cities Project was designed to make the garden sustainable, connect the water supply, purchase tools, and build a secure facility for storage. Further more the "Strong Roots Program" supported healthy lifestyles with multi-generational programs, sharing stories and traditions and publishing a cookbook.
- Last year's Downtown on the Move program was another expansion of MoveAbout focused on worksites in the central business district. A map was developed of walking routes that highlighted local errand sites, contained mileage and signage, (the green Eat Smart Move More Route signs) you see. Workers were encouraged to stay downtown during their lunch hour rather than drive to fast food restaurants.
- This year's grant was to develop a children's bicycle training program to help create a generation of physically active and safe youth and young adults. There are 2 components of this program. One is development and support of a bicycle club at Erwin Middle School. Students learn skills, how to maintain and repair their bikes, increase their level of physical activity, which builds self-esteem and confidence. The second component of the grant involves developing a bicycle rodeo program. We are using a program developed by the National League of American Bicyclist with a grant from the National Bicycle Dealer's Association. The rodeo teaches safety skills and traffic laws on a simulated streetscape and takes into consideration the development level and needs of different age groups. An Erwin Middle School staff member received national certification in Bicycle Safety Instruction and another community member refreshed her certification, giving Asheville 4 certified bicycle education instructors. We have purchased equipment, conducted two rodeo volunteer training sessions and have 40 volunteers ready to begin training children in appropriate bicycling behaviors. Our first rodeo will take place this Saturday at the YMCA's Healthy Kids Day. We will put on a total of 5 bicycle rodeos this spring. Others will be part of the Biltmore Village Earth Day Celebration, at Evergreen Charter School, Vance and Black Mountain Elementary Schools.

Beyond grant-funded initiatives, Healthy Buncombe is also involved in a number of other programs, as noted below:

(1) We trained 8 individuals to teach a bicycle and pedestrian safety module in area high school driver's education classes. So far we've worked with 228 teenagers.

(2) Two Healthy Buncombe members are certified trainers for the National Safe Routes to Schools Course that assists schools in planning safe routes programs and in applying for state and federal funds. These individuals with NC DOT brought the National Safe Routes to Schools community workshops to 4 elementary schools in Asheville and

Buncombe County. Out of these workshops, Vance Elementary received infrastructure improvements through regular city maintenance. They also received a city schools foundation grant to develop a successful pedestrian education program for their primary grade students. Emma Elementary and Black Mountain each received SRTS grants of $250,000 for infrastructure improvements around their schools and to develop encouragement and enforcement programs to make it safer for kids to walk to school.

(3) The Bike/Ped Task Force worked with the Asheville Police Dept. on an enforcement program to improve bicyclist behavior by ticketing those who blow thru red lights & stop signs, ride against traffic, ride at night without lights or those who pass autos on the right where there is no lane to do so. We hope to additional programs to ticket drivers who don't stop for pedestrians or yield to bicyclists when required. In this past year two pedestrians were hit by motorist while crossing Patton Avenue downtown.

(4) With multiple community partners we've provided free valet bike parking at the After 5 Concert Series and at the Lexington Arts Festival we parked a total of 150 bikes. Our plan is to continue this service and plan to expand our efforts to other city festivals.

(5) We've conducted two adult bicycle education clinics and a bicycle commuting workshop.

(6) Healthy Buncombe is a long-time partner in the annual Strive Not to Drive events. This program encourages people to try alternative travel during the week. The Mayor's Bike Ride is the kick-off event with a press conference. You have all been invited to ride with our illustrious Mayor Terry Bellamy to experience our bicycle facilities. The Blue Ridge Bike Club is assisting Healthy Buncombe and the city in putting on this event.

(7) Two years ago Asheville was recognized as a Fit Community with leadership from Healthy Buncombe in compiling the application. The application for re-designation was just finished and the City should hear shortly whether we receive that designation again.

Their plan is to grow and broaden our efforts this year, as well as add two additional big goals.

They would like Asheville to commit itself to a Complete Streets Initiative. This means when new roads are developed or older roads improvements all street users will be considered in the design and safety of the road not just the automobiles. This goal will help us achieve our second goal.

We want Asheville designated a Bicycle Friendly Community. The City must apply for this designation which is administrated by the League of American Bicyclist. It is given to communities who make conscientious efforts to encourage safe bicycling. Two years ago we applied for this designation to learn where we stood. The recommendations have been given to you along with an itemization of our accomplishments since then.

Earlier this month the Robert Wood Johnson Foundation reported that communities need to put more efforts toward disease prevention as a way to reduce health care costs. Central in their recommendations was the need for supportive policy and environments that make healthy lifestyles accessible to all citizens, such as spending funds on walking and biking facilities so their citizens can put physically activity into their daily lives.

They have made a lot of progress in the past two years. She hoped they can continue to expand on our progress.

On behalf of City Council, Mayor Bellamy thanked Ms. Nix for her report on their efforts and would invite her back next year to update Council on their progress.

C. ECONOMIC STIMULUS PACKAGE UPDATE

Ms. Brenda Mills, American Recovery & Reinvestment Act Project Manager, updated Council on the following application for the economic stimulus package.

Staff is seeking City Council approval of (1) a prioritized list of transportation projects for submission to the French Broad River Metropolitan Planning Organization in consideration of American Recovery & Reinvestment Act funding allocated for the Asheville urbanized area and (2) the setting of a public hearing date for May 12, 2009, for administering ARRA Homeless Prevention Funds.

Urbanized Area Transportation Funding

As part of the ARRA, the State of North Carolina will receive approximately $735 million for highways and bridges. This money is distributed by formula to each of the fourteen highway divisions in the state. Buncombe County is in NCDOT Division 13, which includes the counties of Buncombe, Madison, Yancey, Burke, McDowell, Mitchell, and Rutherford. The seven county Division will receive about $50-60 million of the state's share. The bulk of this money has been identified for highway improvements. Some of the state's highway funding is allocated by formula toward projects in urbanized areas of over 200,000 in population. The Asheville urbanized area will be allocated approximately $6 Million. Projects funded through this $6 million will be selected by the Transportation Advisory Committee (TAC) of the French Broad River Metropolitan Planning Organization (FBRMPO). In order to receive MPO consideration, the City of Asheville must submit a list of potential transportation projects by April 30, 2009.

The project list includes a range of eligible transportation projects including street resurfacing, multi-model and pedestrian improvements, and transit investments. Staff developed and prioritized the list based on existing transportation master plans, the city's capital improvement plan, and the street resurfacing schedule along with consideration for projects that met ARRA criteria, including required timeframes for project implementation.

Submission of these projects meets City Council's strategic goal to proactively pursue funding through the federal economic recovery program. It also aligns with Council's goals supporting infrastructure investment, job creation, and development of a multi-modal transportation network.

There is no financial implication for the City of Asheville to submit these projects to the FBRMPO. If awarded, the ARRA funds allocated for urbanized areas require no local match.

Pro:

- Approval of the project list will ensure its consideration for ARRA transportation funding, which requires no local match if awarded.

Con:

- If the project list is not approved, the ARRA funding potential for these projects will not move forward. In such a case, these projects will be delayed until the necessary funds can be allocated.
- Approval does not guarantee funding allocations for any or all of these projects.

Homeless Prevention Fund

As previously reported to the City Council Finance Committee, HUD has allocated $509,460 from the Homeless Prevention and Rapid Re-housing Program (HPRP) to Asheville. In order to be eligible to receive these funds, Asheville is required to complete a substantial amendment to the Consolidated Plan 2008 Action Plan. In addition, staff is analyzing the HPRP requirements to determine how the program will most benefit the community in the context of the existing Asheville-Buncombe 10 Year Plan to End Chronic Homelessness. Staff will use this analysis to develop a Homeless Prevention and Re-housing Plan, as required by HUD, to guide the administration of a community sub-grant award process.

To comply with HUD requirements, the adoption of the substantial amendment to the Consolidated Plan 2008 Action Plan must be preceded by a public comment period and a formal public hearing. Staff is asking City Council to set the public hearing date for the substantial amendment to the Consolidated Plan 2008 Action Plan for May 12, 2009.

She provided Council with a detailed schedule for administration of the Homeless Prevention Fund allocation. This schedule has been approved by the City Council Finance Committee, and the Housing & Community Development Committee has reviewed staff's work on the draft substantial amendment.

Proceeding with the necessary steps to move forward with administration of the HPRP funds supports City Council's strategic goal to end homelessness in Asheville.

Moving forward with the application process for the HPRP entitlement will allow the City of Asheville to receive $509,460, which can be sub-granted to agencies who provide homeless prevention and support services in the community. There is no local match required for this funding.

Pro:

- Setting the public hearing date for the substantial amendment to the Consolidated Plan 2008 Action Plan will allow the City of Asheville to proceed with the necessary steps to receive and administer Homeless Prevention Funds.

Con:

- If the public hearing is not set, the City of Asheville will miss HUD's deadline for receiving the HPRP allocation.

Staff recommends that City Council:

- Approve submission of the STP-DA Transportation project list to the French Broad River MPO, and;

- Set a public hearing on May 12, 2009, to solicit comments on a Substantial Amendment to the City's 2008-09 Consolidated Annual Action Plan, detailing the City's plan to establish funding guidelines and an allocation process for the Homeless Prevention and Rapid Rehousing Program grant of $509,460.

Councilman Newman felt this is a good list to put forward for these resources.

Councilman Mumpower felt all this money is borrowed and we should not lay this load on our children to repay.

Councilwoman Cape said that the money we will spend here, we will save it in the long run in terms of community health, etc. She believed we are making an investment in our community.

In response to Mayor Bellamy, Ms. Ball said that the City is in the process of evaluating the use of CNG buses since we have a CNG station. She will bring forward a recommendation to Council in the near future.

When Mayor Bellamy asked for public comments, she received none.

Councilman Newman moved to approve submission of the STP-DA Transportation project list to the French Broad River MPO. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Newman moved to set a public hearing on May 12, 2009. to solicit comments on a Substantial Amendment to the City's 2008-09 Consolidated Annual Action Plan, detailing the City's plan to establish funding guidelines and an allocation process for the Homeless Prevention and Rapid Rehousing Program grant of $509,460. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO SOLICIT COMMENTS ON THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN WHICH ALLOCATES COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS TO SPECIFIC PROJECTS FOR FISCAL YEAR 2009

Mayor Bellamy opened the public hearing at 6:22 p.m.

Ms. Shannon Tuch, Assistant Director of Planning & Development, introduced the City's new Community Development Director Jeff Staudinger.

Mr. Staudinger said that this public hearing to obtain citizen input on the Consolidated Action Plan for Fiscal Year 2009-10, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds. This public hearing was advertised on April 17 and 24, 2009.

The City expects to have available $1,494,368 in CDBG funds and $1,407,367 in HOME funds in the fiscal year beginning July 1, 2009. This amount is estimated because HUD has not yet announced funding levels for the 2009 entitlement grants. This announcement may be made before the date of the public hearing. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 38 programs are recommended for funding. Allocations are consistent with the Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME funds and some CDBG funds will assist 316 housing units Consortium-wide. CDBG funds will also benefit more than 5,600 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute over $25,000,000 of other funding to these programs, leveraging $9.78 for every $1 of HOME and CDBG funds.

He explained that some of the projected outcomes include 316 affordable housing units, 60 small businesses assisted, services for 5,600 low and moderate income households, and transit and sidewalk improvements in the City.

He reviewed with Council the summary of the annual action plan for 2009-10 as follows:

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CDBG

Entitlement Grant		1,226,681
Funds for re-allocation from completed projects:		-
Unbudgeted 2007-08 program income		62,166
Unbudgeted 2008-09 program income (estimate)		139,058
Estimated Program Income for 2009-10:		66,463
Land sales	-	
Rents	15,463	
Loan Repayments	51,000	
Total CDBG Funds Available For Allocation		**1,494,368**

Proposed Use of Funds:

Asheville Area Habitat for Humanity- Housing Services	70,000
Asheville Buncombe Community Relations Council- Fair Housing	45,000
City of Asheville Transit Improvements	50,000
City of Asheville N. Louisiana Street Sidewalks	117,000
City of Asheville- Homeless Initiative Coordinator	18,000
CCCS- OnTrack- Financial/Housing Couns. & Ed.	37,430
CCCS- Service- OnTrack- Homebase Tenant Housing Counseling	40,000
HelpMate- Domestic Violence Services	8,000
Homeward Bound- Homeless Programs	94,400
Homeward Bound- Supportive Housing Services	30,000
Housing Authority of the City of Asheville Asheville GO- Employ. & Training	95,000
Mountain Housing Opportunities- Emergency Repair Tier I	150,000
Mountain Housing Opportunities- Emergency Repair Tier II	25,000
Mountain Housing Opportunities- Housing Services	150,000
Mountain BizWorks- Micro Business Development	150,000
Mountain BizCapital- Small Business Loan Fund	26,000
Pisgah legal Services- Homelessness Prevention	30,000
Pisgah Legal Services- Resource Development	18,000
Western North Carolina Green Building Council- Weed & Seed Weatherization Svs	25,000
City of Asheville- Section 108 Debt Service	2,849
City of Asheville- Program Administration	235,268
City of Asheville- Unallocated Funds	77,421
TOTAL	**$1,427,076**

HOME PROGRAM

HOME Entitlement Grant		1,315,867
American Dream Downpayment Initiative		11,500
HOME Contingency balance		-
Funds for re-allocation from completed project		80,000
Prospect Park	80,000	-
Program Income (Asheville)		-
Total HOME Funds Available		**1,407,367**

Proposed Use of Funds:

Asheville

Homeward Bound Tenant Based Rental Assistance	40,000
Asheville Area Habitat for Humanity- Brotherton Development	79,000
Asheville Housing Authority - Tenant Based Rental Assistance	64,782
On Track- HomeBase Tenant Based Rental Assistance	20,000
Mountain Housing Opportunities – Westmore Apartments	225,000

Buncombe County

Mountain Housing Opportunities -Down Payment Assistance (DPA)	198,085

Mountain Housing Opportunities -Rural Home Rehab Program	97,183
Mountain Housing Opportunities - Self Help in Black Mtn #2	19,437
Mountain Housing Opportunities - Rehab of 212 Central Ave	25,000
Mountain Housing Opportunities - Affordable Rental Housing Predevelopment Loan	25,000
Henderson County	
Hend Co. Habitat for Humanity - Shuey Knolls Development Ph IV	125,000
Housing Assistance Corporation – Mapleton Development	100,000
Madison County	
Madison County - Homeowner Rehab	30,000
Community Housing Coalition of Madison County – Beech Glen Single-Family House	50,000
Transylvania County	
Western Carolina Community Action - Estate Apartments	100,000
American Dream Downpayment Initiative (ADDI)	
Mountain Housing Opportunities	11,500
Operating Costs	
City of Asheville Program Administration	131,587
CHDO operating expenses	65,793
Total	**1,407,367**

A summary of the draft Action Plan and notice of this public hearing was published on March 29, 2009. A 30-day comment period is required. At the end of this period, staff will ask Council to take action to approve the plan on May 12. The plan is due to be submitted to HUD by May 16.

The draft Action Plan directly relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, supports the city-owned land redevelopment process, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pro:

- The public hearing process enables the City to continue its application process for federal entitlement funding.

Con:

- There are no cons to this public hearing process.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be over $3.9 million for 2009-2010.

In response to Ms. George, Mr. Staudinger defined low and moderate income.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Mayor Bellamy said that formal action to approve the plan will be held on May 12, 2009, meeting.

B. PUBLIC HEARING RELATIVE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT WITH MANUFACTURED HOUSING COMMUNITY OVERLAY, HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3729 - ORDINANCE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT WITH MANUFACTURED HOUSING COMMUNITY OVERLAY, HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 6:29 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone properties recently annexed and located along Airport Road to RS-8 Residential Single-Family High Density District, RM-16 Residential Multi-Family High Density District with Manufactured Housing Community Overlay, Highway Business District and Commercial Industrial District. This public hearing was advertised on April 17 and 24, 2009.

The property presented to you for initial zoning is property annexed by the City of Asheville effective March 31, 2009. The properties (a total of 110 parcels) are located in the Airport, Glenn Bridge and Bradley Branch Road area. The land uses on these properties are varied. There is a mix of commercial, institutional, industrial, office, single-family residential, manufactured housing, and multi-family residential uses. Surrounding land uses are similarly varied. The zoning in the area (both City of Asheville and Buncombe County – Limestone Township Zoning) is a mix of commercial, residential, and industrial (EMP for Buncombe County).

At a meeting on April 1, 2009, the Asheville Planning and Zoning Commission recommended an initial zoning plan to the Asheville City Council for this area of RS-8 (Residential Single-Family High Density District), RM-16 with MHCO (Residential Multi-Family High Density District with Manufactured Housing Overlay), HB (Highway Business District), and CI (Commercial Industrial District) as depicted on the maps provided to Council. Staff has noted only one nonconforming use that would be created with the proposed zoning but recognizes that some development standards will not be met by the existing development.

Previously, staff had recommended to the Commission that a portion of the properties along Airport Road (east) be zoned Community Business II as they were smaller parcels and some were zoned Community Service or Residential by the County. After hearing from a number of property owners and looking at the nature of the development that exists on Airport Road, the Commission voted to propose zoning that area Highway Business. The properties that have been brought into the City along Airport Road to date have been zoned Highway Business. After hearing the comments, staff is supportive of the recommendation of the Commission.

At the Commission meeting eight individuals spoke. Six were requesting that the proposed CBII zoning area along Airport Road be zoned HB. One property owner was seeking information. Another property owner felt that the proposed RS-8 zoning area along Bradley Branch Road should be zoned CI. Staff has since received communication from another property owner on Bradley Branch Road who would like commercial zoning.

Pros:

- Supports the *Asheville City Plan 2025* goals for regional commercial corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.
- Staff has noted only one nonconforming use that would be created by the proposed zoning.

Con:

- Some existing development will not meet the City standards for the proposed zoning districts.

The Planning and Zoning Commission on April 1, 2009, unanimously (6-0) recommended approval of initial zoning as follows:

RS-8 (Residential Single Family High Density District) – PINs 9643981845 ,9643983896, 9643983997, 9643986989, 9643988901, 9643994100, 9643994221, 9643994309, 9643994381, 9643996245, 9643996422, 9643999194, 9643999226, 9653081568, 9653081658, 9653081747, 9653081838, 9653090312, 9653090417, 9653090508, 9653091010, 9653091180, 9653091294, 9653091399, 9653092504, 9653092608.

RM-16 (Residential Multi-Family High Density District with Manufactured Housing Community Overlay) – PINs 9654007733 (partial), 9654115212 (partial).

HB (Highway Business District) – PINs 9643879762, 9643970479, 9643973509, 9643974676, 9643982107, 9653292952, 9654007733 (partial), 9654115212 (partial), 9654203012, 9654204021, 9654204554, 9654206145, 9654208539, 9654208710, 9654209767, 9654300634, 9654301815, 9654302943, 9654303227, 9654304704, 9654307434, 9654307745, 9654307961, 9654308495, 9654309310, 9654314011, 9654317286, 9654318034, 9654402538, 9654403403, 9654406526, 9654406790, 9654406803.

CI (Commercial Industrial District) – PINs 9643979895, 9643989726, 9643994969, 9643996754, 9643996963, 9643997516, 9643997880, 9643998420, 9643998661, 9644806904, 9644807734, 9644807806, 9644808772, 9644816118, 9644818218, 9644902290, 9644904138, 9644906173, 9644908051, 9644908165, 9644910120, 9644910522, 9644911623, 9644912501, 9644914587, 9644917206, 9644917778, 9644919736, 9653072967, 9653080222, 9653081289, 9653082426, 9653083111, 9653084150, 9653084284, 9653084401, 965308537, 9653086851, 9653087239, 9653087443, 9653090998, 9653092802, 9654010212, 9654010585, 9654011826, 9654013591, 9654017688, 9654112511, 9654112616, 9654112907, 9654113720, 9654115212 (partial).

Staff is supportive of this recommendation.

Mr. James Diaz, co-owner of 74 Bradley Branch Road and representative of 16 other property owners in the immediate area of Bradley Branch Road, expressed his opposition to the proposed initial zoning of the RS-8, requesting that it be zoned CI. Although his property is being zoned appropriately (CI), his neighbors immediately to the south request the RS-8 properties be zoned CI as well. He felt that all of this property should be classified in a united and consistent pattern based on the general uses of the surrounding properties. As he understood the need to protect and preserve affordable housing, on this particular road the actual viability of desirable housing is unattainable. He presented Council with the following petition, signed by 16 people: "We, the owners of property along Bradley Branch Road, concur with these statements and believe that allowing our property to be zoned RS-8 would be disadvantageous to our property. By signing this petition we are in solidarity that our properties should be appropriately zoned Commercial Industrial as it will benefit us and the community at large."

Mr. Robert Coxe, area property owner whose property is being zoned Commercial Industrial (which he supported), felt the area residents whose properties are proposed to be zoned RS-8 did not receive a color copy of the map and possibly misunderstood the designation, since most of the properties in that area are business in nature. He then presented a petition to Council where Hilda Gillard Foster, owner of property along Bradley Branch Road, asked that her property be zoned Commercial Industrial.

Mr. Curtis Burge, property owner on Bradley Branch Road, said that although his property is zoning zoned appropriately (CI), he supported all the RS-8 being zoned CI.

Mr. George Morazoni supported all the RS-8 property be zoned Commercial Industrial

At 6:49 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Mumpower, Mr. Esselstyn said that prior to this meeting, the majority of the property owners in the RS-8 area (especially on the east side) were in support of the the RS-8 zoning. He was not aware of anyone on the west side (except for one property owner) who had expressed a preference for Commercial Industrial.

In response to Councilman Mumpower, City Attorney Oast said that at this meetiing Council can zone all of the properties except the RS-8 properties. There is, however, a time constraint on zoning the RS-8 properties since there is a 60-day timeframe within which to take action. To zone the RS-8 properties to a higher designation, such as Commercial Industrial, will require a new notice and public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved to approve the initial zoning of the properties recently annexed and located along Airport Road to RM-16 Residential Multi-Family High Density District with Manufactured Housing Community Overlay, Highway Business District and Commercial Industrial District, excluding the RS-8 properties, and to instruct City staff to bring back a recommendation to Council for those RS-8 properties on May 26, 2009. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 253

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE FLOODPLAIN ORDINANCE

ORDINANCE NO. 3730 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE FLOODPLAIN ORDINANCE

Mayor Bellamy opened the public hearing at 6:57 p.m.

Director of Transportation and Engineering Cathy Ball said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regarding changes to the floodplain ordinance. This public hearing was advertised on April 17 and 24, 2009.

She explained that this amendment will clarify the current ordinance as it relates (1) to change use and discontinued use so that it is aligned with the zoning ordinance; and (2) to allow the replacement manufactured homes in the flood fringe so long as the structure is elevated and secured.

Given the recent economic conditions, we have businesses that are struggling to survive. In trying to survive, some properties have realigned their business models including changes the type of business they operate. Our current flood protection ordinance, states that any change of use of a conforming building requires that the structure conform with the flood protection ordinance requiring flood proofing or elevating the finished floor elevation of the structure.

Staff is requesting a clarification that would state that so long as the change in use is allowed by the zoning district, the structure would not have to become conforming.

The second change is to align the definition of discontinued use to the zoning ordinance. Staff request that the current timeline for discontinued use be extended from 6 months to 12 months. Staff also recommends that the definition of discontinued use be clarified to exclude a discontinued use if the property is actively marketing the property and/or the utilities are continually actively operated.

The final change is to allow the replacement manufactured homes in the flood fringe so long as the structure is elevated and secured.

This request meets council's strategic goal of sustainability by reform and streamline the development review process.

The requested changes were presented to the Planning and Economic Development Committee in their March 2009, meeting. Planning and Zoning Commission approved this request unanimously at their April 1, 2009, meeting.

Pros:

- Allow more compatibility with the flood protection ordinance and the zoning ordinance.
- Allow property owners more flexibility to use their property in a viably economic manner, particularly during economically challenging times.

Cons:

- Some properties may receive money from flood damages in a future flood event.

Staff recommends that City Council approve changes to the flood protection ordinance.

Mr. Glenn Garson, area property owner, spoke in support of the changes.

Mayor Bellamy closed the public hearing at 7:01 p.m.

Ms. Ball responded to Councilman Mumpower when he asked how the amendments would decrease the vulnerabilities for businesses.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3730. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 256

At 7:04 p.m., Mayor Bellamy announced a short break.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. ORDINANCE NO. 3731 - ORDINANCE AMENDING THE ANIMAL CONTROL ORDINANCE

Police Chief William Hogan provided Council with an overview of the animal services operation, along with following information regarding the budget implications:

Ordinance amendments would create the need to fully staff Animal Services as originally formed. This would be a need for (4) full time employees. Currently, Animal Services has had to

reduce services to two (2) full time employees as well as Monday through Friday only, no weekends, and no on call to reduce overtime. After one year of assessment, an evaluation would be needed to determine if an increase of one (1) full time employee (FTE) is needed to meet service needs.

Salary and Benefits:	Entry Level: $25,396.98 annually + 26% for benefits = 1 Eliminated Position reinstituted 1 Vacant Position already budgeted	**$32,000.19**
Vehicles:	Fully equipped Animal Services Truck: $38,000.00 1 current Vehicle has 174,000 miles and 1 has 96,900 miles. Would need to replace 1 vehicle as part of current year Capital Purchases. No additional expenses expected.	
Laptop Computer:	1 Semi-ruggedized mobile computer @ $2,500.00 each	**$2,500.00**
Uniforms:	For 2 positions @ $700.00 each: $1,400.00 absorbed in current and 2010 budget	

Training, Travel and Certification: For 2 Positions @ $1,125.00 per week per Animal Services Officer. 2 weeks needed per Animal Services Officer **$4,500.00**

Total Fiscal Impact: $39,000.19

Assistant City Attorney Curt Euler briefed Council on the process and ordinance to amend the Animal Control Ordinance.

In July 2008, based on issues raised by the community regarding amending the existing Animal Control Ordinance, the Asheville Police Department in conjunction with the City Attorney's Office held a public meeting to seek public input regarding suggested changes to the current Animal Control Ordinance. The four prevalent issues brought to the meeting included: (1) reducing distance requirements for the keeping of fowl, (2) reduce the distance requirements for the keeping of bees, (3) allowing goats on a temporary basis for plant removal, and (4) to enhance the restrictions concerning the tethering of dogs on private property. In addition, staff also took this opportunity to address other important animal control issues such as dealing with injuries to people resulting from dog attacks and bear incidents within the City limits.

This background information ties into Council's Strategic Operating Plan in that an amended ordinance "could" provide a "safer" City for our citizens. Historically and currently, we encourage our Animal Services Officers to be proactive and the goal of our Animal Services Ordinance is compliance of the ordinance to ensure the safety of our citizens and their pets.

Tethering is the act of securing an animal to a fixed location so that it can only range within a set radius (i.e. tying a dog to a tree in one's backyard). Tethering has nothing to do with walking a dog on a leash and has no effect on one's ability to take his or her dog out for a walk. A segment of the City's population is requesting a complete ban on tethering dogs in the City. After researching this issue, it is staff's position that such an ordinance could increase the number of at large dogs and have a disparate impact on persons who cannot afford proper fencing. It is staff's position that it already has sufficient laws in place to deal with owners who mistreat their animals. He said that most of the jurisdictions in North Carolina that have adopted ordinances with a complete ban on tethering have grace periods so we haven't been able to determine how that has affected their operations. Staff also has amended the ordinance to allow for the installation of a T-Runner system to restrain dogs as an alternative to tethering. Staff has heard compelling arguments on both positions. Ultimately, the decision to allow or ban tethering on private property is a policy decision the governing body should make.

Another part of Council's Strategic Operating Plan includes "affordable." Reducing restrictions for the keeping of chickens and bees would allow residents to produce eggs and honey at home thereby reducing food bills. City staff has worked with City residents to relax the restrictions on having fowl within the City limits. Staff recommends that it continue permitting chicken coops and runs and such a practice could produce limited revenue. Staff also recommends continuing a licensing system to prevent persons from investing time and money in constructing coops that are not in compliance with the City ordinance. City staff supports the proposed changes to reducing the requirement for having fowl in the City with the proper staffing to ensure permitting and inspections are up to date. The staff also recommends the complete prohibition on having roosters on one's property.

He then reviewed a brief synopsis of suggested changes which includes, but is not limited to, the following:

Section 3-4:	Add definitions of Attractant, Refuse, and T-Runner
Section 3-5:	Allows the City to rescind a civil penalty if a dog owner registers his or her animal within 15 days after the issuance of a citation.
Section 3-9:	Adds, "No person shall knowingly or willingly leave or store any refuse, food product, pet food or grain in any manner which would constitute the attractant to any wild animal that causes a threat to the public health, safety and welfare of the community."
Section 3-12:	(f) Live animals known to transmit the rabies virus shall not be trapped, handled, kept, transported or destroyed except by Animal Control Officers or other authorized persons. (i) Allows the use of T-runners in lieu of a complete ban on tethering. NOTE: Council will be asked to completely ban and eliminate tethering by at least one group. (k) Restricts persons who conduct adoptions in public places to non-profit corporations whose primary place of business is within Buncombe County
Section 3-16:	Reduces the barrier for Beehives from neighboring household from 150 feet to 100 feet and requires the owner to get a permit.
Section 3-28:	(f) Allows the animal control officer to review and modify protective orders if the animal has been without incident for 24 months. (g) In cases where animals cause serious injury to persons, allows the City to seize the animal, terminate ownership rights and euthanize the animal. This decision shall be served on the owner and the owner has an opportunity to appeal prior to any action being taken place.
Section 3-29:	Requires that prior to being released from the shelter the animal is micro-chipped and the animal displays all the proper vaccination and City tags.
Section 3-36:	Allows a person to have livestock on a temporary basis on his or her property for plant removal upon the issuance of a temporary permit by the City.
Section 3-38:	Authorizes an annual fee and inspection for livestock. Mandates area be kept clean.
Section 3-50:	Prohibits roosters within the city limits. Reduces the barrier for Chicken Coops/Runs from neighboring household from 100 feet to 10 feet from all

property lines or 50 feet from the nearest residence (which ever is smaller). This is the same standard the City has used for dog kennels for since 2005 with no problems.
NOTE: Council may be asked to reduce restrictions to 25 feet by at least one group.

Section 3-51 — Authorizes the City to charge an annual license fee for fowl. Allows the City the option to conduct inspections on an as needed basis but does not mandate them.

Section 3-52 — Requires that the fowl coop and run be fully enclosed and that the fowl are kept in sanitary conditions.

Currently, the City enforces the animal control ordinance based on complaints made to the Department. Based on the existing staffing level, the City expects to continue to enforce the animal control ordinance on a complaint driven basis. In addition, as part of recent budget cuts, the Asheville Police Department had to take a hard look at staffing levels. We had/have two (2) Animal Services positions vacant and frozen. Reduction in staff obviously reduces services that can be rendered. An amended ordinance would increase calls for service and increase the number of permits to be issued from the current documented level of 11/year to an estimated 60-100/year (This number is derived from discussing the matter with chicken advocates and looking at other jurisdictions who reduced the restrictions on chickens). Thus, adopting additional enforcement provisions is cause for reconsidering animal control staffing requirements.

Pros:

- Public and citizen input were utilized in ordinance amendments.
- Suggested changes meet Council's Strategic Operating Plan in the areas of a safer city and a more affordable city.
- Promotes elimination of food sources for bears.

Cons:

- Amended ordinance would increase calls for service and need for additional staffing.
- Banning of tethering could adversely effect low income citizens and place financial burden on citizens to erect fences to confine dogs.
- Requiring fences to be erected for confinement as opposed to tethering may come into conflict with existing deed restrictions in some neighborhoods.

City staff recommends City Council adopt the revised Animal Control Ordinance as amended with the necessary staffing levels.

In response to Vice-Mayor Davis, Mr. Euler said that if a person wants more than six animals on their property, they need to get a permit.

When Councilwoman Cape asked about other cities having the flexibility of allowing tethering for 1-3 hours, Mr. Euler said it would be difficult for our officers to determine at what time the dog was tethered. He explained that our ordinance allows a person to tether the dog as long as the tether is over 50 feet and as long as the dog has access to adequate shelter, water and food. Councilwoman Cape felt the 3 hour time limit could be a complaint-driven process which could be documented by neighbors. Mr. Euler said that could be included in the ordinance if that is the wish of Council.

Councilwoman Cape wondered if we could provide a one-page informational sheet on how to build a chicken coop. She suggested that we have a process similar to the dog license permit renewal for renewal of chicken permits. She suggested a complaint-driven process, not only on the tethering portion of the ordinance, but the entire animal control ordinance.

Regarding the public nuisance section of the ordinance where "no person shall knowingly or willingly leave or store any refuse, food product, ... which would constitute an attractant to any wild animal ..." Councilwoman Cape suggested language be inserted to reflect that this is a temporary ban, not long-term as the proposed ordinance currently implies.

In response to Councilwoman Cape about it being unlawful to trap a wild animal, Police Chief Hogan said that the Police Department refers people to pest control companies that provide that service for a fee. He further explained that the reason why language is in the ordinance making it unlawful to trap a wild animals in the City limits is to comply with State law. State law prohibits the trapping and transporting of wild animals.

Councilwoman Cape was pleased to see the requirement for people to clean up after their animals.

Upon inquiry of Councilwoman Cape, Mr. Euler explained that staff tried to incorporate an either/or situation if a person does not have a 10-foot buffer lot line for a cage or pen. He explained that the cage or pen needs to be 10-feet from the outer limits of the lot; however, this setback requirement shall not be applicable where the placing of the cage or pen within the 10-foot area does not result in locating the cage or pen within 50 feet of the nearest household.

Councilman Mumpower moved to approve the animal control ordinance as recommended by staff. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt staff tried to find a point of balance with this ordinance and tried to afford people the liberty to have pets in Asheville and sources of food in a measured way that will limit intrusions on their neighbors but provide opportunity.

Councilman Mumpower understood that although this ordinance is not targeted at people trying to feed birds, the language attempted to limit bear incidents could be viewed as a heavy hand by the City. He said that drug dealers in public housing represent a much more dramatic threat and enforcement of that would be a better place to invest our energies. In response, Mr. Euler said that they did research other language and that staff was trying to target specific neighborhoods because if multiple bears continue to stay in an area, the issue of food could be a concern.

Regarding the concern of bear incidents, City Attorney Oast suggested amending Section 3-9 (a) (6) (a) to reflect that "knowingly or willingly" be a condition that exists only after the person has been told not to leave or store any refuse, etc. and they not be in violation of the ordinance until after a period of time after they have been told not to leave or store any refuse, etc. That way, you would only be in violation of the ordinance if there has been a report of a bear, or other wild animal, and you have been told to take your dog food in, secure your garbage, etc. and you still don't comply.

Councilwoman Cape asked that the suggested language begin with a phrase similar to "Having identified a situation by the Animal Control Officer ..." or "In emergency situations ..." or "If you are approached by an Animal Control Officer who has asked you to cooperate ..." City Attorney Oast said that he would craft on some language that Council could incorporate into the ordinance.

Councilman Mumpower and Councilwoman Cape accepted City Attorney's Oast suggestion of the amendment to Section 3-9 (a) (6) (a) as a friendly amendment to the main motion.

At 7:58 p.m., Mayor Bellamy explained the public hearing rules as follows, noting this is on the printed agendas: (1) applicants have up to ten minutes to complete a presentation; (2) electronic presentations are limited to agenda items with presentation materials provided prior to

the meeting by city staff, applicants, or organized opposition; (3) individuals have up to three minutes to speak to city council; (4) a person representing a group of three or more persons (not including the speaker) present in the council chamber has up to 10 minutes to address City Council; (5) public comment period for any item may not exceed one hour; and (6) additional information may be provided in hard copy and/or written form.

Ms. Peggy Irwin, representing ChainFree Asheville, provided Council with the following PowerPoint in which she said during the past six months they have freed 12 dogs from chains; developed a base of 300 people who supports them with time, labor and funds; and helped 50+ families who have received doghouses, vet services and backyard fog information.

The problem is that the current animal control ordinance allows the continuous chaining of dogs. She outlined the issues which include public safety, public nuisance, irresponsible pet ownership, cruelty and dog fighting.

Experts say do not chain. The U.S. Dept. of Agriculture (USDA) ... concluded that continuous confinement of dogs by a tether is inhumane. In 1997, the USDA ruled that people and organizations regulated by the Animal Welfare Act cannot keep dogs continuously chained. The American Veterinary Medical Association has also stated "Never tether or chain your dog because this can contribute to aggressive behavior. The Center for Disease Control concluded in a study that the dogs most likely to attack are male, unneutered, and chained. The Humane Society of the United States said "A chained animal is caught in a vicious cycle; frustrated by long periods of boredom and social isolation. He becomes a neurotic shell of his former self – further deterring human interaction and kindness. In the end, the helpless dog can only suffer the frustration of watching the world go by in isolation – a cruel fate for what is by nature a highly social animal. Any city, county or state that bans this practice is a safe, more humane community.

Myths and fears include (1) more dogs will roam the streets or be taken to shelters – A study of 12 communities show this is not true; (2) amendment will negatively affect low income people – (a) A 6 month educational period will be in place; and (b) a fence costs $300 – a lease is $3; (3) cable runners are okay – dogs still vulnerable, become entangled and aggressive; and (4) puts more workload on animal control officers – (a) other communities experience small increase then leveling off; and (b) ChainFree Asheville's partnership with City will help officers.

The solution is (1) prohibit tethering of dogs unless the owner is present – "attended tethering"; (2) require pen sizes of at least 200 feet for dogs larger than 20 pounds; and (3) implement a citizen observer program (a) has worked in other cities; (b) volunteers assist animal services officers; (c) "eyes and ears" – proactive; and (d) free.

Six reasons to enact their proposed amendments include (1) keep the public safe; (2) help decrease a public nuisance; (3) limit inhumane treatment; (4) help with dog fighting identification; (5) enhance image of Asheville; and (6) create an "Eyes and Ears" Program for the City.

ChainFree Asheville wants to work with the City to (1) help educate residents about the ordinance; (2) work with dog owners to find solutions; (3) teach people how to build fences; and (4) continue building fences and helping dogs in whatever way they can.

Ms. Jennie Mercer, representing the Steering Committee for Asheville City Chickens explained how they have gathered data from extension agents, public health officials and other municipalities that have successfully permitted chickens. They feel the ordinance is a reasonable compromise and a step in the right direction. She spoke about the benefits of family chickens as they provide nutritious, clean, inexpensive food and they are energy efficient. She then addressed some of the misconceptions of having chickens in the City, most of which have to do with larger agricultural settings. Roosters are noisy so staff clearly prohibited roosters in the City.

Hens are quiet. Commercial poultry operations have a bad odor; however, a small number of hens generate less manure than a medium sized dog and the ordinance requires the coop be clean and sanitary. She then outlined the extensive research on the fear of avian flu. Like all animals, they carry some diseases, but the rate of transmission to humans is so low as to be insignificant, particularly in a well-maintained coop. In the unlikely event of an outbreak, it is of paramount importance that flocks be permitted so that the Health Department can address this situation.

Mr. Scott Barnwell, also representing the Steering Committee for Asheville City Chickens, discussed the enforcement of the ordinance, along with the potential associated costs. A well crafted ordinance can actually lower enforcement costs. Roosters are the number one complaint in all areas that allow fowl and that is the reason they support no roosters in the City. He gave a few examples of the code enforcement violations from other cities associated with urban chickens, which was minimal. Asheville City Chickens has worked with City staff over the year on the very sincere public input process. If the ordinance is passed they hope to work with coop owners to help make sure they are in compliance with the ordinance, with continued emphasis on positive neighborhood and community relations. Some of the reasons to support hens include allowing people to produce a very healthy local food, protecting private property rights, educating our children about where food comes from, and also to support Council's Strategic Operating Plan to make Asheville a more affordable city. He urged City Council to support this proposed ordinance. He hoped Asheville City Chickens will be a resource to help provide some of the additional education outreach that is so critical to an ordinance being successfully enforced.

Mr. Fred English, east Asheville resident, supported tethering dogs and provided Council with a list of over 140 poultry diseases as he spoke against allowing chickens.

The following individuals spoke in support of banning and eliminating the tethering of dogs:

Young lady named Jennifer
Ms. Leslie Armstrong (provided Council with a list of North Carolina municipalities that have passed restricted or complete banned tethering ordinances)
Ms. Holly Newton, Asheville resident
Founder and CEO of Dogs Deserve Better and Mothers Against Dog Chaining Initiative
Mr. Mike McCreary
Mr. Bob Sinclair
Ms. Paige Henretta
Ms. Warren, Vice-President of Brother Wolf Animal Rescue
Mr. Patrick Erwin (read statement from Ms. Janice Smith)
Mr. Jim Palmer

The following individuals spoke in support of reducing restrictions for the keeping of chickens:

Mr. Brad Brock, north Asheville resident
Ms. Ashley English, author of a book on raising chickens
Ms. Diana Canter, Communications Director for the Buncombe County Republican Party (read letter of support from Chairman)

Mr. Jaquette, Owner of Wild Birds Unlimited, felt the reference to bird feeding in the City is too broad and too vague. Bird feeding is the second biggest hobby in the United States behind gardening. Asheville also is a bird sanctuary. He understands that the ordinance does not say people can't feed birds and that it's a temporary ban when there are identified bear problems, but the ordinance as written will be misinterpreted. He offered his assistance in a public education program. He understood the need behind the ordinance is to promote responsible bird feeding and through public education we can make responsible bird feeding a part of Asheville.

Ms. Cheryl Zoller felt the reference to bird feeding is too vague in the ordinance and urged Council to not ban bird feeders, but to educate the public on being responsible bird feeding.

When Mayor Bellamy asked if the section regarding bear incidents could be separated from the vote for further discussion, City Attorney Oast said Council could; however, he offered the following amendments: (1) under Section 3-7 (Powers and limitations of the Animal Control Officers), that the Animal Control Officer be empowered to issue warnings regarding the presence of bears or other wild animals in a direct area to residences to remove attractants including, but not limited to, pet food, garbage, refuse and other foods and limiting the duration of that order for no more than 60 days; and (2) delete the proposed public nuisance Section 3-9 (a) (6) (a) and in it's place insert "After receiving a warning or directive to remove attractants from a City of Asheville Animal Control Officer, leaving or storing attractants or foods in a manner contrary to such warning or directive."

Councilman Mumpower and Councilwoman Cape accepted City Attorney's Oast suggestion of the amendments to Section 3-7 and Section 3-9 (a) (6) (a) as a friendly amendment to the main motion.

Mayor Bellamy asked that if this proposed ordinance is approved that time be spent on discussing the issue of bird feeders for possible amendment. She suggested Council be provided with a 6-month review of this ordinance for possible revisions.

Councilman Newman suggested language be inserted that we recognize that we live in an area where there are bear incidents and this is in no way meant to generally prohibit or discourage bird feeders. City Attorney Oast felt the amendment accepted by Councilman Mumpower and Councilwoman Cape addresses the concerns people had about not knowing that "knowingly and willing" was and about it being a time limited prohibition.

In response to Councilman Mumpower, Police Chief Hogan said that he would be happy to meet with some of the leadership of ChainFree Asheville and create a special volunteer program. They could be in charge of recruiting and suggest ideas on how we can work together on things that they could do to help us and to protect dogs that are chained. He appreciated what they are doing in terms of building fences for people. If there is a complete ban of tethering, there will be a problem with deed restrictions in neighborhoods that prohibit fencing, but they will work with ChainFree Asheville to find some solutions.

Vice-Mayor Davis was concerned about the enforcement problems associated with these amendments, especially during this difficult budget time. He explained why he supported banning tethering, and why he could not support reducing the restrictions on fowl. He offered a friendly amendment that this be reviewed in 6 months to see how it is working from a cost standpoint, from an enforcement standpoint.

Councilman Mumpower accepted Vice-Mayor Davis' friendly amendment that this ordinance be reviewed in 6 months to see how it is working from a cost and enforcement standpoint.

When Councilwoman Cape withdrew her second to the main motion, Councilman Newman seconded the main motion with the two friendly amendments.

Councilman Miller supported the amendments proposed by staff, except he explained why he supported a complete ban on tethering dogs. Tethered dogs knock over their water, they bark constantly, and when they are left off their chains they do not know how to interact with people. There are responsibilities that come with dog ownership regardless of your income range. If there was no complete ban on tethering, he would support a 1-3 hour time limit on tethering, but the problem is enforcement.

When Mayor Bellamy questioned what the funding source was for the additional $39,000 for two more Animal Control Officers, Police Chief Hogan said that finding the funding source is the challenge.

Councilman Mumpower said it was his assumption that the people who are benefitting from changes in the ordinance would be assuming responsibility for enforcing the provisions. Police Chief Hogan said that it would help, but we can't be assured, not knowing how many people will want chickens, if that would generate sufficient funds to pay for an Animal Services Officer. In all fairness, it is an unknown of the demand that this will put on the Animal Control Officers. That is why he suggested replacing the one position that is frozen now and the one position they intended on deleting from the budget next year. He felt it would be appropriate to restore the Animal Control Services to four people and then see if it fits the need. If not, he will bring back statistics for call load. He did note that because of the two vacancies, that has eliminated the educational component for people to do the right things with their pets. We are answering calls for service and not being proactive with education.

Mayor Bellamy asked City Manager Jackson to provide Council with a copy of the fees and charges associated with this ordinance, e.g., the cost for a chicken permit, is the chicken permit an annual fee, etc.

Councilwoman Cape moved to offer an amendment to the main motion (1) to delete Section 3-12 (i) and insert the following language that there will be no tethering except with an attended leash: "Tethering is prohibited. Tethering is defined as tying or fastening a dog outdoors on a rope. This shall not include tying out or fastening a dog outdoors on an attended leash. Attended leash means that the tethered dog is in visual range of the responsible party."'; and (2) amend Section 3-9 (a) (3) to allow the cage or pen be within 35 feet (not 50 feet) of the nearest household occupied by persons other than the owner or keeper of the cage or pen; and (3) no annual inspection for chickens unless it was complaint driven, but an annual fee for licensing chickens; and (4) amend Section 3-4 to delete the definition of T-Runner.

Councilman Mumpower did not accept Councilwoman Cape's friendly amendment.

Councilman Newman suggested Councilwoman Cape offer a friendly amendment just focusing on the tethering issue.

Councilwoman Cape wondered if the City of Asheville could be held liable for training animals to be vicious and dangerous.

Councilwoman Cape moved to amend the main motion to only allow attended tethering. This motion was seconded by Councilman Miller.

Councilman Newman supported a goal that in Asheville's future we don't have chained dogs. If there is a majority of Council that supports this goal of moving in this direction in the future, Council should direct the City Manager to work towards that goal. However, if Councilwoman Cape's motion passes, he wants to make sure the resources are available to assist people who don't have the finances to build fences and that the City not enforce the ordinance against them unless the resources are there to support them. ChainFree Asheville has said they are committed to making sure that those funds will be available which will be raised by the citizens in the community who care a lot about these issues. He would support continuing the dialogue, making sure that there is some type of ongoing program in place to make sure we can support people in achieving that goal.

Councilwoman Cape wondered if we could craft the ordinance to read that individuals who are identified as having animals on tethers and who refuse the help of a community group to build fences would face the citation. If, however, the community group cannot build the fence,

then the citation is not given. City Attorney Oast responded that he would need to do additional research on this question.

City Attorney Oast said that tethering seems to be the issue, so he suggested Council move forward on the other parts of the ordinance and let staff come back to Council with a recommendation on how to address issues Council has raised.

Councilman Russell supported the main amended motion and that staff be directed to review the information available from other North Carolina municipalities that have passed tethering ordinances.

When Mayor Bellamy called for a vote on Councilwoman Cape's motion to amend the main motion to only allow attended tethering, said motion failed on a 2-5 vote, with Councilwoman Cape and Councilman Miller voting "yes" and Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower, Councilman Miller and Councilman Russell voting "no."

City Attorney Oast restated the main motion which Councilman Mumpower made and Councilman Newman seconded to approve the animal control ordinance as presented by staff, with the following amendments: (1) under Section 3-7 (Powers and limitations of the Animal Control Officers), that the Animal Control Officer be empowered to issue warnings regarding the presence of bears or other wild animals in a direct area to residences to remove attractants including, but not limited to, pet food, garbage, refuse and other foods and limiting the duration of that order for no more than 60 days; (2) delete the proposed public nuisance Section 3-9 (a) (6) (a) and in it's place insert "After receiving a warning or directive to remove attractants from a City of Asheville Animal Control Officer, leaving or storing attractants or foods in a manner contrary to such warning or directive." ; and (3) the ordinance be reviewed in 6 months to see how it is working from a cost and enforcement standpoint.

Councilman Newman moved to amend the main amended motion (1) to defer the provisions on tethering in the current ordinance until City staff reports back to Council within 30-60 days; (2) instruct staff to bring back to Council some recommendations on achieving a future goal where 24/7 tethering will not be permitted in Asheville; and (3) instruct staff to bring back some recommendations on making sure that people who do not have the resources to build a fence are not penalized as a result of this ordinance. This motion was seconded by Councilman Miller.

In response to Councilman Mumpower, Mr. Euler said that City staff has benchmarked the issue of tethering. Two ordinances (Raleigh and Durham) that have some sort of tethering ban are in grace periods so they were not able to determine how that has affected their operations.

Animal Control Officer Brenda Sears explained how she has dealt with a lot of these issues brought up. Many of the issues are animal cruelty and not necessarily a tethering issue. Just because you take tethering out of the equation doesn't mean you are eliminating the animal cruelty component.

When Mayor Bellamy called for a vote on Councilman Newman's amendment to the main motion, said motion carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Councilman Mumpower then withdrew his motion on the main motion.

Councilwoman Cape moved to approve the animal control ordinance as presented by staff, with the following amendments: (1) under Section 3-7 (Powers and limitations of the Animal Control Officers), that the Animal Control Officer be empowered to issue warnings regarding the presence of bears or other wild animals in a direct area to residences to remove attractants

including, but not limited to, pet food, garbage, refuse and other foods and limiting the duration of that order for no more than 60 days; (2) delete the proposed public nuisance Section 3-9 (a) (6) (a) and in it's place insert "After receiving a warning or directive to remove attractants from a City of Asheville Animal Control Officer, leaving or storing attractants or foods in a manner contrary to such warning or directive."; (3) the ordinance be reviewed in 6 months to see how it is working from a cost and enforcement standpoint; (4) to defer the provisions on tethering in the current ordinance until City staff reports back to Council within 30-60 days; (5) instruct staff to bring back to Council some recommendations on achieving a future goal where 24/7 tethering will not be permitted in Asheville; and (6) instruct staff to bring back some recommendations on making sure that people who do not have the resources to build a fence are not penalized as a result of this ordinance. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 258

B. RESOLUTION NO. 09-79 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SUTTON-KENNERLY AND ASSOCIATES TO CONDUCT AN EXTERIOR INSPECTION FOR WATER INFILTRATION IN THE CITY BUILDING AND TO PROVIDE CONSTRUCTION DRAWINGS FOR ANY NEEDED REPAIRS

Superintendent of Parks & Public Facilities Kathy Connor said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Sutton-Kennerly & Associates to conduct an exterior inspection for water infiltration in the City Building.

City of Asheville City Building is a recognized local historic landmark and is a contributing building in the Downtown Asheville National Register Historic District. The structure was designed by Douglas Ellington and built in 1926-1928. Visual observations on the seventh and eighth floors indicate there is some amount of water intruding into the building at various locations. Considering the age and the historical significance of this building to the community, a qualified professional firm needs to be retained to thoroughly review the condition of the exterior of the building as well those portions of the structural support system, and to be to provide construction drawings for any repair work necessary.

The City conducted a request for qualifications for this project and Sutton-Kennerly & Associates was selected as the most qualified firm to conduct this exterior inspection because of their extensive work with similar historically significant structures. Sutton-Kennerly's offices are located at 530 Hendersonville Road in Asheville NC. The negotiated cost for the City Building Exterior Inspection project is for an amount not to exceed $77,940.00. The cost for the construction drawings will be negotiated once the cost of repairs is known.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the public facilities maintenance program to make facility improvements. It is also consistent with the Asheville City Development Plan 2025 which indicates the preservation of Downtown Asheville's historic buildings as a goal.

Pros:
- Provide funds to investigate exterior building conditions of the City Building and estimate the cost for repairs.
- Fulfill commitment to repair and maintain aging infrastructure.
- Preservation of an historic landmark.

Con:
- Potential fiscal impacts beyond this initial study should the facility require repair.

Funding in the amount of $85,000.00 for conducting an exterior inspection for water infiltration in the City Building was approved by City Council in the FY 2007-2008 capital

improvement budget. There is currently no additional funds budgeted to cover the cost of the potential repair work.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with Sutton-Kennerly & Associates to conduct an exterior inspection for water infiltration in the City Building for an amount not to exceed $77,940.00, and to provide construction drawings for any needed repairs. The cost for the construction drawings will be negotiated once the cost of repairs is known.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Miller moved for the adoption of Resolution No. 09-79. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 30

C. RESOLUTION NO. 09-80 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BROWN AND CALDWELL ENVIRONMENTAL ENGINEERS FOR COMPLETION OF THE SWANNANOA FLOOD RISK MANAGEMENT PROJECT

Director of Transportation & Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Brown and Caldwell Environmental Engineers for the completion of the Swannanoa Flood Risk Management Project not to exceed $1,437,000.

One hundred percent of the funding for this project is through the Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. Staff is asking for consideration for the contract to be phased in order to allow the project to be used as a match for a cooperative agreement with the Corp of Engineers.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. The Biltmore Village area of the City of Asheville (within the Swannanoa River watershed) was named as a recipient of this funding. From December 2005 through August 2006 a planning study was conducted to identify and prioritize flood damage reduction projects for implementation in the community. This planning study was conducted by the North Carolina Department of Environment and Natural Resources Division of Water Resources (DWR) and stakeholders from the Biltmore Village, City of Asheville and the Swannanoa watershed, with the assistance of a project consultant. In September 2006, expenditure of funding for implementation of this Plan was reviewed without objections by the NC Government Operations Committee.

Flood damage reduction stakeholders, DWR, and the project consultant agreed through the aforementioned planning study that the development of a watershed-wide program for comprehensive flood damage reduction was a top priority action for Biltmore Village and the Swannanoa River Watershed. To achieve this goal, the City of Asheville issued a request for proposals (RFP) from qualified engineering firms experienced in the design and management of such projects. The RFP directed that the Engineer provide technical assistance to the City of Asheville, North Carolina, to develop a Feasibility Study for flood damage reduction on the Swannanoa River watershed. The Feasibility Study will be a complete decision document, which presents the results of the feasibility phase and provides the basis for recommending the

construction of a project and preparation of Plans and Specifications. The feasibility study will present recommendations for the City of Asheville. The Engineer will complete the project through detailed coordination at the direction of the City of Asheville and in compliance with applicable laws, regulations, policies, and the project management plan.

The project will be conducted in three phases:

- Phase 1 – Watershed Modeling, Economic Analysis, and Project Development
- Phase 2 – Investigation / Implementation
- Phase 3 – Future conditions mapping

A proposal selection committee, comprised of representatives from the City of Asheville, the Town of Black Mountain, and Buncombe County, selected a team proposed by Brown and Caldwell as the most qualified of the submitting firms. In the Brown and Caldwell proposal and in subsequent interviews with the selection committee, Brown and Caldwell proposed an approach designed to accomplish an aggressive schedule, focus on the most promising flood risk reduction opportunities, and anticipate the available implementation funding sources.

In consultation with the City of Asheville staff, the selection committee, the North Carolina Division of Water Resources, the U.S. Army Corps of Engineers (USACE), and other agencies, a Scope of Work was developed to guide the successful completion of this important project. The services and deliverables are provided in three phases as specified in the City's RFP. In order to achieve the most cost-effective and timely project execution, the phases will be executed concurrently.

This action complies with the City's plans and commitments to administer $2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on (date of execution). This request meets Council's strategic goal of partnering with local experts, particularly the University of North Carolina at Asheville.

The contract with Brown and Caldwell includes a thirty-four percent local participation and five percent minority business participation.

The Flood Damage Reduction Task Force has endorsed this request.

Pros:

- Approval of this action will allow the City to move forward with development of a plan to reduce and better manage the flood risks in the Swannanoa floodplain.
- The project's scope of work identifies improvements in flood warning capabilities that will be implemented for this year's tropical storm season.
- The cooperation of the U.S. Army Corps of Engineers and execution of a Federal Cost Sharing Agreement will position our community to receive Federal investment in flood control projects.
- Over one-third of the work will be completed by local firms and by NEMAC/UNC-Asheville. Approximately 6% of the work will be performed by local minority and women-owned businesses. Brown and Caldwell will direct supply purchases and support services to qualified local minority business where practical. This represents an opportunity for those firms to increase their professional experience and train their staffs in new skills.
- Project allows support for RENCI engagement site in downtown.

Cons:

- The City's responsibilities during the project will require an approximately 20% full-time equivalent (FTE) staff assignment from the Engineering Department over the coming year.

- It is expected that most of the flood risk reduction projects will be implemented in the Swannanoa watershed outside the City limits and ETJ.
- Funds from this project fund one year of a multi-year lease, Funding for the remaining years will need to be identified in future years. The lease with the Grove Arcade Public Market Foundation can be terminated if funding is not available in future years.

The funds to be expended have been provided by the State in compliance with the Hurricane Recovery Act of 2005. City staff will provide project management oversight and will participate in a series of project meetings and workshops, public meetings, and meetings with regulatory agencies. Approximately 20% FTE staff assignment will be required. The in-kind cost associated with 20% FTE is approximately $20,000.

Council previously approved a budget amendment for the Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds.

Staff requests adoption of a resolution authorizing the City Manager to execute a contract with Brown and Caldwell Environmental Engineers for the completion of the Swannanoa Flood Risk Management Project not to exceed $1,437,000. Staff is asking for consideration for the contract to be phased in order to allow the project to be used as a match for a cooperative agreement with the Corp of Engineers.

In summary, Ms. Ball reviewed the following PowerPoint presentation. She gave a brief history of the project in that in September 2004 with Hurricane Frances and Ivan (1) 115 structures, 110 commercial, 5 residential; (2) $83 Million lost in tourism money; (3) Extensive property damage in Biltmore Village; (4) Two emergency life rescues on Swannanoa River; (5) City's water supply interrupted for three days; (6) Damage to 39 historic structures; (7) Hurricane Recovery Act 2005 (SB 7) - Supported by local delegation; (8) State appropriated $30 M to WNC; (9) City entered into agreement for $4.6 M with DWR on 04/04/2007; and (10) City agreed to serve as lead agency in partnership with Buncombe County and Town of Black Mountain.

The Swannanoa Watershed - $4.6 Million – revealed (1) $2.5 M Flood Risk Management Project; (2) $2.0 M Land Acquisition; (a) Purchased over $1 M property on Swannanoa River Road; and (b) Demolition to begin in next six weeks; (3) $75 K Biltmore Village Flood Action Plan; (a) Work completed by Corp of Engineers; and (b) Funding 50% matched by Corp of Engineers; and (4) $50 K Debris Removal (a) Work completed by Buncombe County.

Addition work completed (1) Developed flood operations plan for Burnette Dam; (2) Updated emergency action plans for Burnette and Bee Tree Dams; (3) Implemented flood warning system; and (4) Formation of Regional Flood Damage Reduction Task Force.

She then explained that a Flood Risk Management Plan is a project that evaluates various ways of reducing flood damage by: (1) Engineering analysis; (2) Inventory and survey structures; (3) Identify and analyze flood mitigation opportunities; (4) Developing cost/benefit analysis; (5) Create eligible projects (State and Federal Funding); and (6) Produce future floodplain mapping.

We are doing the project now (1) To prepare for next flooding event; (2) To avoid losing existing funding; (3) To prepare for implementation funding; (a) Additional $1 M from Senate Bill 7 appropriation; (b) Additional $3 M from State; (c) Additional $7.5 M from Corps of Engineers; and (d) Additional Economic Stimulus Funding; and (4) To stimulate local economy – 34% project for local jobs ($500 k).

The total project cost will not exceed $1,437,000. These costs include:

- Project Management and Quality Control 7.5%
- Agency Coordination and Public Involvement 8.6%

- Data Collection and Model Verification 7.1%
- Flood Damage Assessments 31.6%
- Engineering Evaluation of Projects 18.5%
- Plan Formulation and Benefit/Cost Analyses 23.2%
- Future Floodplain Mapping 3.5%

The money is paying for (1) Analysis of 85,000 acre watershed; (2) Flood Damage Assessment of over 1500 structures; (a) Up to 850 to be inventoried and surveyed; (b) Content value estimates and appraisals; and (c) Flood Proofing Analyses; (3) Over two dozen project opportunities already identified; and (4) Benefit/Costs Analyses of alternative plans.

Regarding who will pay for the project (1) 100% of funding from the North Carolina Hurricane Recovery Act of 2005 – SB 7 (Supported by local delegation and DENR); (2) No cash local match required; and (3) Estimated City staff time (20% of FTE or $20 K).

The deliverables of the project include (1) Significant public engagement during the project; (2) Extend floodplain models; (3) Upgrade of flood warning system; (4) GIS based inventory of structures, including formal or informal appraisals of property; (5) Extension of Biltmore Village Flood Action Plan; (6) Analyzing up to 24 project opportunities; and (7) Preliminary engineering and environmental assessments for approximately six projects.

Community partners include (1) UNCA (RENCI) – 10% percent of project – Includes some funds for downtown engagement site; (2) Local delegation; (3) Flood Damage Reduction Task Force; (4) Buncombe County and Town of Black Mountain; (5) United States Army Corp of Engineers; and (6) North Carolina Department of Environment and Natural Resources, Division of Water Resources.

The project involves local partners and has a commitment to use local and minority resources for additional services and supplies.

Next steps include (1) begin project; (2) formal partnering with the Corp of Engineers (agreement to Council in May 2009); (3) community engagement; (4) upgrade Automated Flood Warning System; (5) identify immediate projects; and (6) finalize preliminary engineering reports.

This action complies with Council's strategic goals as follows: (1) Safe – Reduce threat to life and property due to flooding; (2) Affordable – Protect affordable housing and businesses in floodplain; (3) Sustainable - Allow for recreational, educational and artistic uses to be incorporated into projects; (4) Green – Many projects will improve water quality; and (5) Fiscally responsible – Projects will be evaluated on a cost/benefit analysis.

Ms. Mary Leonard White, Chair of the Flood Damage Reduction Task Force, spoke in favor of the resolution as this project will approaches all levels of threatening floods.

Ms. Ball responded to several questions raised by Councilman Newman, some being, but are not limited to: do these funds have to be used for planning purposes or could they be spent on other things that would make a positive difference in the watershed; is there anyway we can spend less on the analysis work that might have margin returns and more on implementation; is it staff's opinion that if we proceed in this process the outcome will be real projects that are feasible and cost effective that will reduce the future impact of flooding in our community; and will the process also look at other solutions, other than engineering fixes to the problems.

Ms. Ball outlined some of the potential projects: Lake Craig rehab; Sweeten Creek Detention and Channel improvements; conveyance improvements near new bridge in Biltmore Village (and elsewhere); Warren Wilson College and Quarry Projects; Left Fork Road – (water supply protection); automated flood warning system upgrades; emergency action plans for 14 regulated dams; and localized flood proofing.

Councilman Mumpower felt this is a significant waste of tax money for a study. Every study on flood control cites the prevention is keeping rivers clean. After four years and $50,000, we have only cleaned up a marginal part of the river.

Councilman Miller spoke in support noting that over 800 structures in the Swannanoa floodplain between Montreat and Biltmore Village will be inventoried for the project's economic analysis. The flood risks and potential damages to each of these structures will be quantified. Structures that are within the designated floodway will be identified. The inventory of structures will be analyzed to determine which ones may be flood proofed or otherwise protected by non-structural measures. With the loss of millions of dollars from flooding, he felt this is a good first start.

Councilwoman Cape supported this initiative in that we have the ability to take this money and do what is necessary for the region watershed.

Mayor Bellamy said that back in 2004 Mr. Chuck Tessier said that the City and County needed to "immediately appoint a flood commission from both private and public sectors. The commission should first identify what resources can immediately be made available to help those in need and secondly identify how the resources can best be used to rebuilt in a way that helps fix the problem and not make it worse. The flood commission needs to create a plan of action that will significantly change these areas of devastation, integrating the long-term objectives of flood control, transportation, economic development, recreation and environmental preservation." She acknowledged that since 2005 Council has appointed the Flood Damage Reduction Task Force. Not only has the commission been established, we have put in rain gauges to help monitor water; we have applied for Environmental Protection Agency grants to help clean up a brownfields area along the Swannanoa River; and we have worked with the N.C. Dept. of Transportation for engineering funds to look at the roadway system. This is another layer of how we are addressing the problems that we have in this watershed. Even though these processes have not been fast, they have been steady.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-80. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 31

D. RESOLUTION NO. 09-81 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS FOR THE ELEVEN WATER REVENUE BOND PROJECTS

ORDINANCE NO. 3732 - BUDGET AMENDMENT FOR WATER SYSTEM IMPROVEMENTS AND WATER REVENUE BOND PROJECTS

Interim Water Resources Director Robert Griffin said that this is the consideration of a resolution by City Council authorizing the City Manager to sign change orders increasing the project budgets and contract amounts totaling $38,331,310.67 for the eleven Water System Improvement Projects to $39,235,036.67, or an increase of $903,726.00.

On August 26, 2008, the City Council approved increasing the revenue bond construction project budgets and contract amounts to $38,331,310.67.

Numerous issues have arisen since then that could not be accounted for. These issues include but are not limited to rerouting lines due to encountering unknown underground utilities; additional easement, right-of-way and property acquisitions; encountering subsurface rock which required removal; changes in N.C. Dept. of Transportation (NCDOT) roadway repair requirements; and unsuitable subsurface conditions that required placement of crushed stone backfill. These issues have resulted in unplanned work requirements and time delays, which lead to a necessary increase in the contract amount from $38,331,310.67 to $39,235,036.67.

Funding is currently available in other capital projects to cover this adjustment. A capital project includes from 10% to 15% contingency, based on the project and complexity. Contingencies for unforeseen expenses that were not needed and lower than anticipated costs allow these funds to be reallocated from completed projects, so no other projects will require a delay. The redistribution of funds from other capital projects is temporary until some of the bond projects can be closed out and unspent contingencies and lower costs can be released. The sum of these budget amendments reflects an approximate 2.36% adjustment.

This project is part of the City Council strategic plan to improve City infrastructure.

Pro:

- Approval of the increase in contract amount will allow completion of the eleven water system improvement projects in a timely manner.
- These projects meet the City's goal to systematically repair / replace the aging water system infrastructure, improve the reliability of water service to affected customers, and improve available fire protection.
- The escalation of maintenance and repair costs for the aging water infrastructure will be reduced creating a more efficient system, which will reduce energy costs and the City's overall carbon footprint.

Con:

- Failure to approve the increase in contract amount will result in major changes in the scope of these projects, which would require some of the projects to be only partially completed resulting in failure to achieve the intended goals of the projects.

The budget for the eleven Water System Improvement Projects is currently at a total cost of $38,331,310.67. The $903,726.00 total in change orders will increase the total project budget to $39,235,036.67. These funds must be temporarily reallocated from other capital projects until savings are realized on the bond projects and can be credited back to those other projects.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign change orders for $903,726.00 additional increasing the total contract amount of $38,331,310.67 for the eleven Water System Improvement Projects to $39,235,036.67 and further allow staff to move the additional funds as needed between the 11 projects as cost estimates come in higher or lower than expected.

Councilman Mumpower said that he would continue to vote against projects as long as the current realities continue to unfold in that most of the sites where the City is repairing its water system very few, if any, people speak English. That does not mean that they are all here illegally, but statistically it means a significant number of them probably are. He felt it was irresponsible of the City to be supporting initiatives of any sort that don't hire legal citizens.

When Mayor Bellamy asked for public comments, she received none.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Miller moved for the adoption of Resolution No. 09-81. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 32

Councilman Russell moved for the adoption of Ordinance No. 3732. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 282

Mayor Bellamy asked Council be provided the City's street repaving schedule. In addition, she asked that information be made available on the City's website and in its newsletter.

Vice-Mayor Davis said that he has talked with several merchants in the downtown area who were pleased with the communication efforts regarding waterline repairs in that area.

City Manager Jackson noted that this will be the last week Interim Water Resources Director Robert Griffin will be in the interim position as a new director arrives next week. He thanked Mr. Griffin for his outstanding job in this role.

E. ENDORSEMENT FOR THE CITY OF ASHEVILLE'S PARTICIPATION IN THE APPLIED SOLUTIONS COALITION AND ENDORSEMENT OF THE READING, RIDING AND RETROFIT PROJECT CONCEPT

Councilwoman Cape, speaking on behalf of the Asheville-Buncombe Sustainable Community Council (ABSCC), said that the Asheville HUB, our regional economic development alliance, created the Asheville Buncombe Sustainable Community Council (ABSCC) this year in response to an Economic Development Overview Study, which concluded that sustainable community development is essential to the healthy economic development of the region. ABSCC membership consists of private entities (Biltmore Estate, local energy businesses), public organizations (Buncombe County, City of Asheville, Land-of-Sky Regional Council, Advantage West), non-profit groups (Kleiwerks), and institutional partners (Asheville-Buncombe Technical College, Warren Wilson College, University of North Carolina Asheville).

ABSCC has endorsed four main initiatives:

- Development of a community-wide Sustainability Plan;
- Regional participation in the Applied Solutions Coalition and support of the Reading Riding and Retrofit project, and;
- Development of a Community Sustainability Web portal.

The purpose of this presentation is to seek City Council endorsement of the City of Asheville's participation in the Applied Solutions Coalition and the Reading Riding and Retrofit project. Essentially it's a community vision for greening the school systems.

The Applied Solutions Coalition is a coalition of cities, each co-located near National Laboratories and with strong track records for responding with energy and conservation solutions, is being formed around a mutual goal of creating locally based, integrated projects that address resource conservation, energy and carbon reductions and local economic development.

The Coalition will jointly:

- Petition the federal government and DOE to create and support a competitive grant process (similar to the NC Clean Water Management Trust Fund) for the realization of these locally based, objective focused projects;
- Seek to influence legislation with an aim to support local responses to community challenges;
- Demonstrate community level readiness to implement integrated projects for rapid impact to crucial issues;
- Collaborate with one another by sharing ideas and support for the development of strong local projects;
- Collaborate with other local governments and organizations, businesses and the National Labs for project development and DOE objectives, and;
- Create templates for duplication by other communities for future grant cycles.

It was for this Coalition that the ABSCC created our local project Reading Riding and Retrofit. At the initial gathering of the Coalition, which occurred in Sonoma County in February 2009, this project received great support and was confirmed as a model project. Asheville-Buncombe representatives Mack Pearsall, David Spector and Robin Cape, with initial support from the school district superintendents, participated in the conference and are seated on the steering committee and the DOE outreach committee for the Coalition. Currently, the Coalition is moving forward on its national agenda, while locally we are building support and the team to enact the ideas within the program. RRR has been adopted by the Asheville-Buncombe Sustainable Community Council, (ABSCC) as the premier project toward building community sustainability. Commissioner K. Ray Bailey has joined the local steering committee to move this project forward.

Participation in this coalition aligns with the strategic goals of ABSCC, SACEE, CEAC (Progress Energy's Community Energy Advisory Council) and Asheville City Council's own commitment to reduce the organization's energy consumption by 2 percent annually. In addition, Asheville's participation fosters intergovernmental relations and supports Council's overall goals in the areas of sustainability, workforce and community development and education.

There is no financial implication for Asheville to participate in the Coalition.

Pros:

- Meets federal criteria for taking advantage of grant opportunities.
- Synergizes the efforts of local schools systems to achieve individual goals.
- Enhances youth education and adaptation.

Con:

- None noted.

She has met with Ray Bailey and the school superintendents who thanked her for her leadership in facilitating potential grant funding for sustainable green construction on school campuses primarily in the form of retrofits and renovations to increase energy efficiency. Mr. Tony Baldwin said that Buncombe County Schools will be an active participant in joining Asheville City Schools and A-B Technical Community College in these efforts.

Mr. Richard Mauney, Acting President of Asheville-Buncombe Technical College, was excited to have the opportunity to play a role in this initiative and looked forward to working with her to further develop this initiative.

She asked for Council's endorsement of the City of Asheville's participation in the Applied Solutions Coalition and the concept of the Reading Riding and Retrofit project.

In response to Councilman Russell, Councilwoman Cape said that we here to aid the efforts of the school systems. She is not planning on asking the City for funds as there is $400 Million in DOE competitive grants and we are well on the way of being competitive for those funds. They are asking the City for their support to can help supplement their ability to fix their buildings.

When Mayor Bellamy asked for public comment, she received none.

Councilman Miller moved to endorse (1) the City of Asheville's participation in the Applied Solutions Coalition; and (2) the Reading, Riding and Retrofit Project concept. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

F. RESOLUTION NO. 09-82 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Vice-Mayor David said that the term of Pat Whalen expired on December 31, 2008, and City Council extended his term until April 1, 2009. On behalf of Council, he expressed their appreciation to Mr. Whalen's valuable work on the Commission.

At the March 10, 2009, meeting, it was the consensus of Council to ask the Downtown Commission what experience they needed on the board.

At the April 14, 2009, meeting, it was the consensus of Council to interview Mark Allison, Harry Weiss and Abigail Emison. Ms. Emison was interested, however, was unable to attend the interview.

After Council spoke highly of the candidates, Mark Allison received no votes; Harry Weiss received six votes; and Abigail Emison received one vote. Therefore, Mr. Weiss was appointed as a member of the Asheville Downtown Commission, to serve the remainder of Mr. Whalen's original 3-year term, term to expire December 31, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 33

G. RESOLUTION NO. 09-83 - RESOLUTION APPOINTING A MEMBER TO THE URTV INC. BOARD OF DIRECTORS

Vice-Mayor Davis said that Mr. Mark Wilson resigned from the URTV Inc. Board of Directors, thus leaving an unexpired term until June 30, 2009.

At the March 10, 2009, meeting, it was the consensus of Council to re-advertise for this vacancy.

At the April 14, 2009, meeting, it was the consensus of Council to interview Rachael Bliss, Milton Simpson, John Calligan and Matthew Howard. Mr. Simpson was interested; however, he was unable to attend the interview. Mr. Calligan was unable to attend the interview.

After Council spoke highly of the candidates, Rachael Bliss received one vote; John Calligan received no votes; Matthew Howard received six votes and Milton Simpson received no votes. Therefore, Mr. Howard was appointed as a member of the URTV Inc. Board of Directors to serve the unexpired term of Mr. Wilson, term to expire June 30, 2009, and then a full two-year term, term to expire June 30, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 34

VII. OTHER BUSINESS:

Planning & Zoning Commission Request

Vice-Mayor Davis noted that the Planning & Zoning Commission has requested the use of the Council Chamber in the event of a large crowd in their regular meeting room of the First Floor Conference Room in City Hall. Because of technical concerns and the installation of City Council laptops on the Council dais, it was the consensus of Council to consider the request on a case-by-case basis.

Claims

The following claims were received by the City of Asheville during the period of April 3-16, 2009: AT&T (Water), Dakota Brewer (Sanitation), Doug Wagner (Sanitation), Keller Knight (Streets), David Douglas (Streets), Scotta Orr (Streets), Robbie Pittman (Streets), Brenda Mullen (Streets), AT&T (Water), PSNC (Water), Kayla J. Benfield (Streets) and Steve Kiraly (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton, Founder of Asheville Citizens for Quality Government, spoke about how we can achieve quality government in Buncombe County.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:27 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – May 12, 2009 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Jan B. Davis, Presiding; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Vice-Mayor Davis led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 09-84 - RECOGNITION OF APPRECIATION TO FORMER ASHEVILLE FIRE & RESCUE CHIEF GREGORY H. GRAYSON

On behalf of City Council and the citizens of Asheville, Vice-Mayor Davis was pleased read the resolution of appreciation to former Asheville Fire & Rescue Chief Greg Grayson. He also presented Chief Grayson with his helmet and badge. He explained that Chief Grayson served as Chief of the Asheville Fire and Rescue Department since November, 2000, and has resigned from his position as Fire and Rescue Chief effective May 25, 2009. He noted that he will be continuing his career as Fire Chief for the City of Greensboro, North Carolina. On behalf of the citizens of Asheville, Vice-Mayor Davis thanked him for his many years of valuable service and highly commended him for the manner in which he has carried out his responsibilities and duties.

On behalf of the County Fire Chiefs Association, Association Vice President Richard Sales (Chief of the Reynolds Volunteer Fire Department), presented Chief Grayson with a Plaque of Appreciation.

Resolution No. 09-84 was adopted by acclamation.

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B. RECOGNITION OF THE CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY GRADUATES

Vice-Mayor Davis said that the City of Asheville Youth Leadership Academy (CAYLA) is committed to providing its students with (a) a meaningful summer work experience; (b) leadership development through seminars and community service; and (c) college preparatory activities, including yearlong academic support.

CAYLA is an integral part of the City's 'Grow Our Own' initiative, as envisioned by City of Asheville Mayor Terry Bellamy and the Asheville City Council. The City is committed to giving Asheville's young people the opportunity to stay and work in Asheville, as well as to have valuable work experiences that will advance their future careers wherever they go.

Now completing its second full year, the City of Asheville Youth Leadership Academy is committed to developing the next generation of civic leaders in Asheville. Each spring, Asheville High School students are selected for prestigious summer internships with the City and our participating partners. The students are also asked to commit to yearlong leadership opportunities through community service. The 2008-2009 Class of CAYLA has completed more than 400 hours of community service this year with organizations such as Kids Against Hunger, ABCCM, RiverLink, and the Asheville Housing Authority. Seven of the CAYLA students are graduating seniors, and all seven will be attending college this fall. The City commends them for their hard work and dedication. We are very proud of their accomplishments in the CAYLA program. These students are an amazing group of young people with even more amazing futures lying ahead.

He recognized the Class of 2008-09 Graduates: Keevon Baten, Keshawnna Benjamin, Taurean "TJ" Davidson, Chelsea Finley, DJay Horton, Martel Jackson, Jordan Link, Tyrell Mauldin, Keva Miller, Sohna Njie, Nina Reynolds, Bianca Scott, Anice Smith, James Smith, Jill Smith, Sarah Smith, Jasmyne White, Jeanisha Williams, and Ciera Woods. He also thanked Ms. Erika Germer for her continued work with the CAYLA Program.

C. PROCLAMATION PROCLAIMING MAY, 2009, AS "FOSTER CARE MONTH"

Councilman Miller read the proclamation proclaiming May, 2009, as "Foster Care Month" in the City of Asheville. He presented the proclamation to Ms. Alisha Davis, with the Buncombe County Department of Social Services, who briefed City Council on some activities taking place during the month and thanked City Council for their support.

D. PROCLAMATION PROCLAIMING MAY 10-16, 2009, AS "POLICE APPRECIATION WEEK"

Councilman Newman read the proclamation proclaiming May 10-16, 2009, as "Police Appreciation Week" in the City of Asheville. He presented the proclamation to Police Chief Bill Hogan who briefed City Council on some activities taking place during the week and highlights of the Police Department.

E. PROCLAMATION PROCLAIMING MAY 17-23, 2009, AS "NATIONAL PUBLIC WORKS WEEK"

Councilman Mumpower read the proclamation proclaiming May 17-23, 2009, as "National Public Works Week" in the City of Asheville. He presented the proclamation to Mr. Chris Daniels from the Streets Division, Mr. Henry Glaze from the Sanitation Division and Mr. Kevin Haughinberry from the Fleet Management Division. Public Works Director Mark Combs who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B" and "C" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 28, 2009

B. RESOLUTION OF THE ASHEVILLE CITY COUNCIL REGARDING THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES' CONSIDERATION OF CTS CORPORATION'S REQUEST TO IMPLEMENT A VOLUNTARY REMEDIAL ACTION PROGRAM FOR THE FORMER CTS OF ASHEVILLE SITE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO SOUTHEAST ENERGY ALLIANCE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 09-87 - RESOLUTION ESTABLISHING A POLICY FOR GRANTING APPROVAL OF ROADSIDE SOLICITATION REQUESTS

RESOLUTION NO. 09-88 - RESOLUTION AUTHORIZING THE ASHEVILLE PROFESSIONAL FIREFIGHTER ASSOCIATION LOCAL 865 TO COLLECT MONEY FOR THE MUSCULAR DYSTROPHY ASSOCIATION ON MAY 15, 2009 (RAIN DATE MAY 29, 2009) AND SEPTEMBER 18, 2009 (RAIN DATE SEPTEMBER 25, 2009) AT THE INTERSECTION OF LOUISIANA AND PATTON AVENUES

Summary: The consideration of a resolution (1) establishing a policy for granting approval of roadside solicitation requests; and (2) authorizing the Asheville Firefighter's Association Local 865 to collect money for the Muscular Dystrophy Association on May 15, 2009 (rain date May 29, 2009) and September 18, 2009 (rain date September 25, 2009), at the intersection of Louisiana and Patton Avenues.

The Asheville Firefighter's Association and the Muscular Dystrophy Association (MDA) made a presentation to the Public Safety Council Committee requesting authorization to conduct roadside solicitation to benefit the Muscular Dystrophy Association. The Association has conducted roadside solicitation in the past as part of a nationwide MDA "Fill the Boot" campaign. This campaign is a partnership between the MDA and the International Association of Firefighters. A high percentage of the MDA's funding is derived from the "Fill the Boot" campaign.

In 2002, Asheville City Council adopted an ordinance prohibiting roadside solicitation due to the large number of groups that were conducting this activity in Asheville. The ordinance was in response to safety concerns of the soliciting groups as well as the motoring public. In 2006, the North Carolina General Assembly adopted G.S. 20-175 authorizing roadside solicitation under certain circumstances. The new law requires a written application providing certain information and also requires the applicant to possess a minimum of $2 Million of liability insurance.

Regarding City Council's Strategic Operating Plan, by adopting a policy to address roadside solicitation requests under G.S. 20-175, this resolution assists in making Asheville a safer city based upon metrics of similarly sized cities, by establishing due process to address the safety of this activity.

The City Council Public Safety Committee unanimously recommended that this be forwarded to City Council for further consideration.

Pros:

- By establishing a due process to address the safety of this activity, approved roadside solicitation will be conducted with reduced risks to solicitors and the motoring public.

Cons:

- Council may see an increase in requests for roadside solicitation.

City staff recommends City Council (1) establish a policy for granting approval of roadside solicitation requests: (2) authorize the Asheville Firefighter's Association Local 865 to

collect money for the Muscular Dystrophy Association on May 15, 2009 (rain date May 29, 2009) and September 18, 2009 (rain date September 25, 2009), at the intersection of Louisiana and Patton Avenue; and (3) review the roadside solicitation policy in six months.

RESOLUTION NO. 09-87 - RESOLUTION BOOK NO. 32 – PAGE 38
RESOLUTION NO. 09-88 - RESOLUTION BOOK NO. 32 – PAGE 41

Vice-Mayor Davis asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-85 - RESOLUTION OF THE ASHEVILLE CITY COUNCIL IN OPPOSITION TO CTS CORPORATION'S REQUEST TO IMPLEMENT A VOLUNTARY REMEDIAL ACTION PROGRAM FOR THE FORMER CTS OF ASHEVILLE SITE, AS IS BEING CONSIDERED BY THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Summary: Pursuant to Council's direction at the April 14, 2009, City Council meeting, our office has prepared a resolution regarding NCDENR's consideration of CTS Corporation's request to implement a voluntary remedial action program for the former CTS of Asheville site.

In preparing this resolution, the City Attorney's staff met with Mr. Barry Durand, reviewed the information Mr. Durand provided to our office, and examined the relevant statutes.

At its May 5 meeting, the Buncombe County Board of Commissioners heard a presentation on this matter, and directed that a letter be prepared expressing the Board's concerns with the CTS site and the remediation efforts.

Mr. Barry Durand provided Council with a brief recap of the imminent hazard situation. He urged Council's support of the resolution prepared by City Attorney Oast discouraging a voluntary remedial action program for the CTS of Asheville site and asked that the resolution be amended to ask for a full, proper and timely remediation of the CTS Asheville site.

Mr. Tate McQueen expressed concerns over this imminent threat affecting our community.

A resident on Sweeten Creek Road, who has been involved with this since 1990, explained that representatives from the EPA, N.C. Dept. of Environment and Natural Resources and others knew CTS was dumping barrels as far back as in the 1960's or early 1970's. He also pointed out where the N.C. Dept. of Environment and Natural Resources has not followed their notification laws.

Councilman Mumpower moved to adopt Resolution No. 09-85 with the following amendments: (1) the resolution title be amended to read "Resolution of the Asheville City Council in opposition to CTS Corporation's request to implement a voluntary remedial action program for the former CTS of Asheville site, as is being considered by the N.C. Dept. of Environment and Natural Resources;" (2) to amend item 2 (a) to reflect that the Dept. of Environment and Natural Resources give strong consideration to whether the conditions at the CTS of Asheville site constitute an imminent hazard pursuant to N.C. Gen. Stat. sec. 130A-310.5 (a); (3) amend item 2

(b) to delete the phrase "...before entering into a voluntary remedial agreement with CTS Corporation; and (4) amend item 2 to add a new 2 (c) "to deny the request of CTS Corporation to enter into a voluntary remediation agreement. This motion was seconded by Councilwoman Cape.

After discussion, Councilman Mumpower accepted other word-smithing amendments to the resolution as follows: (1) add the word timely into the phrase "a full and proper remediation of the CTS Asheville site is necessary ...;" (2) amend the second Whereas to read "substances are likely to migrate..."

The amended motion made by Councilman Mumpower and seconded by Councilwoman Cape carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 36

C. RESOLUTION NO. 09-86 - RESOLUTION AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO SOUTHEAST ENERGY ALLIANCE

Summary: The consideration of a resolution authorizing submittal of a grant for $500,000 from the Southeast Energy Alliance (SEEA).

The intention of this grant is to establish an operating company which serves as a "one-stop shop" clearinghouse for regional energy efficiency, energy conservation, and renewable energy projects in the community's existing building stock. The end goal of this grant is to reduce electricity and natural gas consumption city wide by 20-30% over the next five years. To achieve this goal, the $500,000 foundation funded grant award would be used in three phases: 1) Planning: Hiring staff, solidifying board, fortifying partnerships; 2) Financing: Securing financial partnerships, leveraging grant funds with investors; and 3) Implementation: marketing, communication and energy improvement project implementation.

The primary role the City of Asheville will play in this program is to receive and reallocate the grant, provide leadership to the operating company, and support the outreach and communication phase by having the program be branded as a City of Asheville initiative.

The service this operating company will provide is to establish the necessary partnerships with financial institutions, energy auditors, and equipment installers. Through these back stage efforts, the operating company can then serve the customer as the primary point of contact to guide them through each step of the process to identify, finance and implement an energy project.

The Land of Sky Regional Council (LOSRC) has submitted a letter of intent committing to serve as the operating company and function as the clearinghouse. The Waste Reduction Partners program of LOSRC has existing frame work and capacity to solicit participation from the commercial and industrial sectors of the community. In addition, the Western North Carolina Green Building Council (WNCGBC) has the existing framework and capacity to work with the residential and small business sector. The WNCGBC has also submitted a letter of intent committing to act as subcontractors under LOSRC.

Furthermore, this effort requires participation and support from partnering organizations. The following entities have submitted letters of support for this grant application:

- The North Carolina State Energy Office
- Progress Energy Carolinas
- Asheville-Buncombe Technical Community College
- AT & T
- Sustainability Advisory Committee on Energy & the Environment
- Sundance Power Systems

- Warren Wilson College
- Governor Purdue (pending)
- Congressman Shuler of N.C. 11th District (pending)
- Buncombe County Commissioners (pending)
- N.C. Dept. of Natural Resources (pending)
- Self Help Credit Union (pending)
- Community Action Opportunities (pending)

This action complies with the following areas of the City Council Strategic Operating Plan (1) Support diversified job growth and small business development; (2) Work with regional partners to create incentives for green building, energy conservation and energy intendance; and (3) Expand community education programs to attract volunteers to initiatives, including climate awareness, water conservation, recycling, storm water and sustainability.

Pros:

- A local energy alliance would support citizens, businesses and industries through reducing upfront investments in energy efficiency projects while sustaining reduced expenses on energy
- Centralizing energy usage reduction efforts through a local energy alliance reduces duplication of efforts and centralizes resources who have substantial existing capacity in the Asheville area
- Funds, if awarded to the City, may be leveraged to gain access to competitive federal stimulus dollars
- Participation in this partnership model demonstrates energy efficiency and renewable energy leadership to a national audience

Cons:

- Achievement of the grant goals is determined through successfully leveraging funding during less than favorable economic climate.
- The long term funding source of this effort will not be determined until after the receipt of the award and staff has been hired to create a business model.

There is no fiscal impact. In the event the grant is awarded to the City of Asheville, it is anticipated that up to 1/5 of the Energy Coordinators time would be dedicated to steer program development to be recuperated through grant administrative expenses.

City staff recommends City Council authorize the submittal of the grant application to the Southeast Energy Alliance.

Councilman Mumpower felt that in view of our current economic conditions, this is not the proper time or investment of our energies.

Councilwoman Cape supported this item action as its money coming from someone other than a governmental organization. In addition, it's a great mechanism by which to create an energy efficiency clearinghouse for our community to find out how they can make their own homes and businesses much more energy efficient.

Councilwoman Cape moved for the adoption of Resolution No. 09-85. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 37

III. PRESENTATIONS & REPORTS:

A. CIVIL SERVICE BOARD BLUE RIBBON COMMISSION REPORT

Ms. Maria Roloff, Vice-President of Human Resources at Mission Hospitals, and member of the Blue Ribbon Commission, said that this is the consideration of the Blue Ribbon Commission recommendations in adopting proposed legislation to revise the Asheville Civil Service law.

On February 10, 2009, Council appointed a Blue Ribbon Commission to review the effectiveness of the Asheville Civil Service Board and Civil Service law. The Blue Ribbon Commission was chartered with offering advice on future policy direction and bringing forward any recommended changes. City Council appointed Gene Bell, Lou Bissette, Bill Cook, Linda McDaniel and Maria Roloff to the Commission. Civil Service Board members include Chairman John Miall, Sidney Bach, Virginia Robinson and Marv Rosen.

The Blue Ribbon Commission held four meetings. During these meetings, they reviewed the current Civil Service law, the 5 remaining Civil Service laws of other North Carolina cities, and grievance data and trends. They also met with the current members of the Civil Service Board.

The Blue Ribbon Commission focused on best practice, efficiency, consistency, fairness and equity, cost implications and clarification of existing language when considering recommendations.

On March 12, 2009, the City of Asheville received word that Senator Nesbitt had introduced SB 556 in the General Assembly. The General Assembly deadline for crossover bills is Thursday, May 14, 2009.

She then reviewed the following summary of recommendations from the Blue Ribbon Commission and proved Council with a draft of the Civil Service law incorporating the recommended changes:

1. Elimination of rule making authority except as to procedural matters (Delete Sections 4 and 5)

   State Law grants the power to the City Manager general supervisory authority over all employees, and to direct and supervise the administration of all departments and agencies, subject to such general rules, regulations, and policies as the Council adopts. The Human Resource field has become increasingly complex and requires a high level of expertise in order to manage the City's human capital. No fiscal impact.

2. Judicial review in nature of certiorari instead of trial de novo (Section 8 f.)

   Provides for a less burdensome and a less resource intense (time and money) process for each party. Similar to review for other administrative proceedings, including other civil service boards in NC. Empowers the Board with full quasi-judicial hearing and decision making authority. Decreases fiscal impact to employee and City.

3. Clarify Subpoena power to Board during grievance hearings (Section 8 c)

   Best practice based upon review of other Civil Service laws in the State. No fiscal impact.

4. Assistant Directors added to those not covered by Civil Service (Section 2 b)

   Assistant Directors are members of the City Manager's executive team and are frequently called upon to act as an extension of the Department Director. The City Manager, Department Directors and Assistant Directors are held to very high level of accountability to City Council on operational, budget and personnel matters. The City Manager needs

the latitude to be held solely accountable to City Council for the actions and behavior of these personnel. No fiscal impact.

5. Council's right to control the City's finances (Section 1)

   Common language in other existing Civil Service laws. Law should recognize Council's/Manager's legal authority to eliminate positions to address budget needs. No fiscal impact.

6. City Clerk acts as Secretary (Section 2 c)

   Best Practice in other existing Civil Service Laws. The City Clerk can designate someone to fulfill these duties. The City Clerk already has duties in the grievance process under the current law and is designated under State laws as records custodian and proper person for service of process. Grievance hearings typically are recorded by Court reporters. May have fiscal impact.

7. HR Director ex officio non voting member of the Board (Section 2 d)

   Patterned after Wilmington's Civil Service law. Maintains a role in the process for Human Resources and allows for a resource for the Civil Service Board regarding City policy and procedures during grievance hearings. Allows HR Director to be present in closed sessions. No fiscal impact.

8. Employees may wear uniforms (Section 3 b)

   Employees may wear uniforms to meetings but are not considered on duty or compensated while at meetings unless required to be there by subpoena or the City Manager. No fiscal impact.

9. Outside Counsel for grievance hearings (Section 8 c)

   Formalizes the current practice of providing a qualified outside attorney for grievance hearings. The City Attorney shall approve the qualifications and fees. No significant change in fiscal impact.

10. Membership requirements (Section 2 b)

    Provides for a broader base of possible Board members by extending the membership to all qualified voters of Buncombe County. This article also restricts employees who have been employed within the previous 5 years from serving on the Board. No fiscal impact.

11. Board makes own rules of procedure (Section 10)

    Formalizes the Board's ability to make their own rules of procedure including meeting frequency and times. No fiscal impact.

In summary, the Blue Ribbon Commission recommendations include: (1) Elimination of rule making authority; (2) Judicial review in nature of certiorari; (3) Clarify subpoena power of the Board; (4) Exempt Assistant Directors; (5) City Council's right to control finances; (6) City Clerk as Secretary and HR Director as ex officio non-voting member; (7) Employees can wear uniforms; (8) Outside Counsel for grievance hearings; (9) Board membership requirements; (10) Board Rules of Procedures; and (11) Law and Board should be reviewed every 2 to 3 years for effectiveness.

She said that most of the changes have no fiscal impact to the City. If the Council chooses to adopt some but not all of these changes, this may create additional fiscal impact.

City staff recommends City Council consider the Blue Ribbon Commission's recommendations in adopting proposed legislation to revise the Asheville Civil Service law.

There was a brief discussion, initiated by Councilman Mumpower, regarding the elimination of the rule making authority, except as to procedural matters, and if there is any oversight of the City Manager's authority by perhaps City Council. City Attorney Oast said that under general law in North Carolina, the city manager has the supervisory authority over personnel and the administration of the city, subject to such general rules and direction that council may approve. Under the Civil Service Law, the manager's role is taken by the civil service board. The Commission's recommendation is that the State law is the best practice and the manager may come to council which whatever rules that have been reviewed by the Human Resources professionals for general direction and approval. Councilman Mumpower suggested City Manager Jackson craft some language that provides him with rule-making authority along with some procedure to ensure inclusion and openness of the Civil Service Board and other employee organizations.

Councilman Mumpower spoke against extending the Board membership to qualified voters in Buncombe County; and in support of some periodic review of the Civil Service Board and Law.

City Attorney Oast said that the deadline for submitting local legislation has passed in the General Assembly. But, one of our legislators has introduced a bill that is currently pending to amend the Asheville Civil Service Law, not as comprehensively has this Commission has recommended. He has sent to our legislator copies of the Commission's recommendations letting him know Council will be considering the recommendations.

Councilman Mumpower moved to approve the Blue Ribbon Commission's recommendations with the following amendments: (1) instruct the City Manager to come up with a process or procedure to provide for input from the Civil Service Board, employee organizations, etc.; (2) keep the Civil Service Board membership to qualified voters of the City of Asheville; (3) the Civil Service Board provide City Council with an annual report on the Board's work that provides some opportunity for the Civil Service Board and Civil Service Law to be reviewed, as necessary. This motion was seconded by Councilman Russell.

Mr. Mike Marshall, representing the Asheville Firefighters Association, urged Council to review the recommendations closer. He noted that the first recommendation is to delete Sections 4 and 5. He felt that will basically take the authority of City Council out of any rule approvals.

City Attorney Oast explained that deleting Sections 4 and 5 does not mean that the City Manager can make rules that don't get reviewed by anyone. He would be subject to State law, which requires Council approval.

Mr. Rondell Lance, President of the Fraternal Order of Police in Buncombe County, spoke in opposition of the recommendations presented by the Commission. He felt the Civil Service Law has worked well for the employees and they like the law the way it is written. We had some concerns, which resulted in the appointment of this Blue Ribbon Commission. He felt many of these recommendations take away the power of the Civil Service Board and many of them take away a process that benefits the employees of the City of Asheville. They are asking that the rules of the Civil Service Law be followed and that the employees who have to come before the Civil Service Board receive a fair hearing. He felt the recommendations presented take that away from employees. He felt the recommendations deteriorate the confidence employees have in the Civil Service Board. He also noted that he was not contacted or interviewed, nor was Mr. Marshall or Mr. Dave Anders (who represent employees) by the Blue

Ribbon Commission. He urged Council not to adopt the recommendations and let the employees review the recommendations first.

In response to Vice-Mayor Davis about being more specific in his concerns, Mr. Lance said that when the rule-making authority is taken away from the Civil Service Board, you are taking away the oversight for hiring, firing and promotion process.

Councilman Mumpower recalled the Boards & Commissions Committee suggesting the Blue Ribbon Commission interview appropriate staff organizations as part of their mission. He felt it was important to receive input from organized organizations.

Mr. Lou Bissette, member of the Blue Ribbon Commission, said that given the time restraints and mission, they did not interview employees. He explained that the Committee spent a great deal of time with Civil Service Board members, noting that Mr. Bach and Ms. Robinson are the City employee representatives on the Civil Service Board so they feel they did get the view from the employee organizations. He noted there are two parts of the Civil Service Law – (1) the rule making authority for hiring, firing and disciplining; and (2) the grievance procedure. He explained that with all the complicated human resource laws and policies in this day and time that a lay Civil Service Board was not the appropriate body to manage personnel. Regarding the grievance procedure, he explained how the Commission actually strengthened the role of the Civil Service Board and how it is now more streamline and efficient for employees. He noted that all meetings of the Commission were open to the public.

When Councilman Mumpower noted that the minutes of the Boards & Commissions Committee did not reflect language outlining specific groups the Blue Ribbon Commission should seek input from, he felt a step was missed by not talking to employee organizations and withdrew his motion.

Because Councilman Newman felt City Council should take a little more time to review the recommendations, he moved to table action on this matter until May 26, 2009, and give an ad hoc committee of Council (Vice-Mayor Davis, Councilman Mumpower and Mayor Bellamy) the opportunity to meet with employee organizations to hear their specific concerns and to report those back to the full Council on May 26. This motion was seconded by Councilman Mumpower and carried unanimously.

On behalf of City Council, Vice-Mayor Davis thanked the Commission members for their hard work on this issue.

Due to the fact that that the Civil Service Board Blue Ribbon Committee recommendations action was continued until after the cross-over deadline in the legislature, it ws the consensus of Council to instruct the City Attorney to contact the legislators and ask them to take whatever action is necessary to allow for Council's recommendation to get full and fair consideration at the appropriate time.

B. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-89 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR THE 2009 BYRNE JUSTICE ASSISTANCE GRANT AND TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH BUNCOMBE COUNTY

RESOLUTION NO. 09-90 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR FEDERAL TRANSIT ADMINISTRATION FUNDING FOR TRANSIT INVESTMENTS FOR GREENHOUSE GAS AND ENERGY REDUCTION GRANT APPLICATION

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

She said that staff is seeking City Council approval of (1) a resolution authorizing the City to apply for the 2009 Byrne Justice assistance grant and to into a Memorandum of Understanding (MOU) with Buncombe County; and (2) a resolution to apply for Federal Transit Administration funding for Transit Investments for Greenhouse Gas and Energy Reduction. In addition, Council will hear an update by David Nash of the Housing Authority's stimulus funding priorities.

Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation

The Asheville Police Department is applying for the JAG – Local Solicitation Award. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. Asheville Police and Buncombe County Sheriff have been allocated $372,630 with Asheville receiving $265,466 and Buncombe receiving $107,164. As part of this grant APD will adopt a MOU with Buncombe County that authorized APD to administer the Grant and disperse the appropriate funds to the Buncombe County Sheriff's Department.

Equipment:

The APD plans to purchase security enhancement equipment for the Municipal Building which will replace funding that was eliminated from the 2009-2010 Budget. The improvements will update the video security system within the Municipal Building, update and add key card access to doors as needed, and integrate an alarm system that makes internal notification of unauthorized entries to secure areas. It is estimated that this will cost approximated $225,956.

Additionally APD plans to purchase a SPEX AFIS system that will enable APD to scan and enter fingerprints and palm prints into a local system that will analyze the prints and compare with previous sets. This will be a great improvement to the current system as it will use the increasing data compiled local for comparison. It will also be able to use palm prints which we currently do not process.

At its May 5, 2009, meeting, the City Council Finance Committee reviewed the proposed projects and authorized staff to submit the application and MOU for approval by City Council which is a requirement for funding.

Municipal Building Security:

Upgrade to camera system (32 cameras), key card access to critical office areas (50) and integrated alarm system to include associated computer hardware	$225,956
SPEX AFIS/APIS:	
Computer, monitor, modem, scanner, etc.	$30,500
Interface with SPEX central server	$995
Yearly software support	$1,895
Interface with CCID (Buncombe Detention)	$995
Shipping, packing and handling	$625
INDENTIX service contract *	$4,500
Total:	$265,466

This is a 100% non-matching grant that will enable the APD to greatly improve the Municipal Building Security and improve the processing of fingerprints and palm prints to compare to those compiled locally.

There is no fiscal impact at this time for City Council to approve the resolution supporting this application and MOU. The funding is allocated as part of a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. Most of the equipment is replacement of older equipment and is accounted for in the budget.

Pros:

- Security enhancement equipment for the Municipal Building which will replace funding that was eliminated from the 2009-2010 Budget.
- Update to the video security system, add key card access to doors as needed, and integrate an alarm system that makes internal notification of unauthorized entries to secure areas.
- Added technology to scan and enter fingerprints and palm prints into a local system which is great improvement to the current system.

Con:

- None.

FTA Funding for Transit Investment for Greenhouse Gas and Energy Reduction Grant

An interagency team composed by the City of Asheville, Buncombe County and Henderson County transit agencies is proposing that the City of Asheville apply for the Federal Transit Administration (FTA) Funding for Transit Investment for Greenhouse Gas and Energy Reduction (TIGGER) Grant. This program is available to transit agencies for capital projects that either, reduce energy consumption, and greenhouse gas emissions of the transit agency, or both.

The FTA has issued a call for proposals via the American Recovery and Reinvestment Act 2009. The TIGGER program is dedicating $100 Million in discretionary grants for public transportation projects that reduce a transit system's greenhouse gas emissions or result in a decrease in a transit system's energy use. The proposals must be in the range of $2 million minimum to $25 million maximum. FTA is allowing agencies to submit consolidated proposals from different transit agencies.

The interagency team is focusing in replacement vehicles to replace their existing fleet. City of Asheville's Transit System still needs funding to replace four of the 1996 diesel buses; these buses have already reached their life-cycle and though they are still operative, have begun presenting the problems attributable to age, engine repairs, transmissions and other parts. Since these buses are not manufactured anymore, parts are spare and difficult to find and maintenance costs have become burdensome and have increased the operational costs in at least thirty percent (30%). Staff is recommending acquiring four hybrid buses to replace the existing ones; this option offers reduction in greenhouse gas emissions and energy consumption.

Buncombe County and Henderson County are proposing replacing their vehicles (twelve vans and one LTV, respectively) with CNG technology. Henderson County is also applying for a new CNG pump station. Projects selected will be funded 100%. The proposals exclude fleet expansion.

Applications are due by May 22, 2009, and although the City is the primary applicant for this proposal, the projects are awarded to individual projects based on the merits of the proposal.

The City of Asheville's request is $2,240,000. The total request including Buncombe and Henderson Counties is $3,749,125. FTA will fund 100% of the project, therefore with no direct impact to the City.

Pros:

- Access to FTA funds will allow the entire fleet replacement which will traduce in savings in maintenance costs, and fuel consumption, as well as reduction in carbon footprint emissions.
- FTA will fund 100% of the project.

Con:

- None.

City staff recommends (1) Adoption of the resolution authorizing the City Manager to apply for the 2009 Byrne Justice assistance grant and to enter into a MOU with Buncombe County; and (2) Adoption of a resolution to apply for Federal Transit Administration funding for Transit Investments for Greenhouse Gas and Energy Reduction.

Councilman Mumpower did not support deficit spending by the federal government in this fashion. He spoke against purchasing hybrid bus and the viability of this new technology.

Director of Transportation and Engineering Cathy Ball said that we have recently learned that we can also request funding that would cover the gap that we needed between the appropriations that we received from Congressman Shuler's office. In 2008, we received $294,000 for hybrid buses and in 2009 we received $238,000. We are requesting an additional $600,000 to purchase both of those hybrid buses.

Councilwoman Cape felt we can't get all this technology worked out until we have a willingness to put it on the street and try it.

Housing Authority Stimulus Funding Priorities

Mr. David Nash, representing the Housing Authority of the City of Asheville (HACA), said that the Housing Authority received a formula allocation of $3,384,718 in Public Housing Capital Funds under the Recovery Act. Consistent with HUD requirements and with the expedited spending requirements of the Recovery Act, HACA is prioritizing projects that are already in the pipeline:

- Phase 4 of the Klondyke Homes (500 Montford Avenue) modernization and energy efficiency project is being expanded to cover more units and advanced to begin this year. This project is carried out primarily by force account labor, with some external contracting. Work is expected to begin in June or July.

- Roof replacements at Bartlett Arms (121 Bartlett Street) and Altamont Apartments (72 N. Market Street.) will be advanced to begin within the next 12 months. If determined feasible, those roof replacements will be combined with solar energy installations. These projects will be contracted to private sector companies. The Housing Authority is currently evaluating proposals from architect/engineering teams and has solicited proposals from solar energy companies. Design work should begin in June, so that a contractor can be selected in the fall.

- The Housing Authority is currently evaluating energy efficiency options in all developments with our energy performance contractor and may revise these plans or use some of our regular 2009 Capital Fund distribution for other opportunities determined to be feasible.

In our experience, at least 50% of our construction expenditures are for labor. Based on the Buncombe County average annual wage of $32,968, we estimate that at least 45 jobs will be preserved or created as a result of these projects. This calculation does not include any estimate of the multiplier effect of those wages circulating in the community, or of the jobs created in manufacturing the materials, appliances and equipment purchased for the jobs

In response to Councilwoman Cape, Mr. Nash said that regarding the Klondyke Homes renovation, the Housing Authority has already modernized approximately 50 units and this funding will add approximately 25 more.

When Vice-Mayor Davis asked for public comments, he received none.

Vice-Mayor Davis said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-89. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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Councilwoman Cape moved for the adoption of Resolution No. 09-90, with the additional $600,000 request to purchase hybrid buses. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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At 6:56 p.m., Vice-Mayor Davis announced a short break.

C. PRESENTATION OF THE DOWNTOWN MASTER PLAN AND SETTING A PUBLIC HEARING ON SAID PLAN FOR MAY 26, 2009

Ms. Sasha Vrtunski, Project Manager for the Downtown Master Plan, said that the final version of the Downtown Master Plan is being presented by the consultant team. Public comments are not scheduled for this meeting. The public hearing on the master plan will be held at the Council meeting on May 26, with Council discussions to follow in subsequent meetings.

From the beginning of this process, the Downtown Commission stressed to the consultant team that our community is one of many opinions, and that they would have to work hard to find common ground, and to craft a plan that could meet the needs of many different perspectives. The plan strives to do just that. The recommendations are carefully balanced to help form our future downtown while allowing for creativity, flexibility and new initiatives, offering action on the elements that arose as most important to the greatest number of those who were a part of the process.

The master planning process provided numerous opportunities for citizen and stakeholder input. The turnout was very high - much higher than in any effort in recent years – an estimated 4,000 hours of citizens' time; and there was wide representation of many different perspectives. The consultant team turned that input into a set of design and plan principles and then a set of strategies. Some of these recommendations were initially controversial, and there were numerous discussions between stakeholders to find common ground. Reflecting that effort, some elements that began as recommended strategies evolved into recommendations for future consideration located in the Plan Appendix. As a result, there is a strong feeling among the majority of those who participated in the process that the plan now presents an important middle ground that will improve downtown development through predictability, rational standards and clarity.

Key Dates and Actions:

		Actions Taken
Planning & Zoning Commission	April 1, 2009	Voted 6-0 in support of the plan with two recommendations to Council.
Downtown Commission	April 3, 2009	Voted 8-0 in support of the plan
Downtown Master Plan Advisory Committee	April 9, 2009	Voted 13-0 in support of the plan.

* The Planning and Zoning Commission recommendations are noted in their April 1, 2009, minutes.

A public hearing will be scheduled for the May 26 Council meeting. At this meeting Council will hear from the public, providing a further opportunity for the Council to understand the process and hear varied points of view regarding the plan. The staff recommends that the Council discuss the plan at a meeting in June, at which time the Council can refine their thoughts about the plan, establish areas of general support, and direct staff to come back with any additional information they wish to see regarding specific elements of the Plan.

Regarding City Council's Strategic Operating Plan, City Council has recently adopted the goal of completing the Downtown Master Plan and to begin implementation.

Staff recommends that City Council set a public hearing on May 26, 2009, to hear public comments on the final plan. Staff also recommends that City Council make the most of the consultants' presence through questions regarding the plan recommendations and strategies. The consultant team has a keen understanding of the complexities of cities, experience nationwide and a solid knowledge of downtown Asheville. This will be the consultants' last trip to Asheville and will complete their contract.

Mr. Pat Whalen, immediate past Chairman of the Downtown Commission, explained how the downtown matters to everyone and it is now a nationally recognized jewel. He thanked City Council for agreeing with the Downtown Commission that it was time to update the Master Plan. After two years of extensive interviews, public meetings and public input and discussion, we now have a new Master Plan.

Mr. David Dixon, representing Goody Clancy, said that the Downtown Master Plan represents the broad-based consensus of Asheville's whole community of downtown stakeholders.

The context for the Plan is (1) New era of growth and change demands better management to preserve downtown's essential character; (2) Economic conditions are fluctuating; (3) Downtown stakeholders have diverse perspectives; (4) ...hence management, resiliency and balance are essential themes; and (5) Plan has deliberate near- and long-term elements.

Community vision includes (1) Sustain Downtown Asheville's dynamic and diverse culture and economy; (2) Enhance Downtown Asheville's role as the larger community's "front porch;" (3) Strengthen Downtown Asheville's identity as a series of residential neighborhoods; (4) Preserve and enhance Downtown Asheville's diverse architecture, historic resources, walkable streets, view corridors; (5) Provide good, interconnected transportation choices for better access *and* better health; (6) Make Downtown Asheville a national model of sustainable planning, development and operations at every level; and (7) Establish creative strategies for managing this special place.

He explained the seven interdependent strategies under three primary themes: (1) Experiencing Downtown Asheville; (2) Shaping Downtown Asheville; and (3) Managing Downtown Asheville. There is also the overall policy under main strategy and details in the appendix.

Mr. Tom Gallaher, sub-consultant for Goody Clancy, explained the following strategies as follows:

One - Cultivate essential cultural and historic resources: (1) *Key issues:* (A) Support affordable housing, the arts and other elements central to downtown's success; and (B) Continue rich legacy of historic preservation. (2) *Response:* (A) Help diverse arts organizations and individuals work together; (B) Support ongoing projects: Art museum expansion, Performing Arts Center, Artists' Resource Center etc.; (C) Update downtown historic district with more landmarks; and (4) Keep historic properties economically viable.

Two – Expand convenient choices for access and mobility: (1) *Key issues:* (A) Ensure parking is available to support downtown businesses; and (B) Improve downtown walkability; and (2) *Response:* (A) Wayfinding, payment, lighting and other safety/convenience improvements for public parking; (B) Additional priority pedestrian streets with ped-friendly design guidelines; and (C) Downtown shuttle study.

Mr. Ben Carlson, with Goody Clancy, explained the following strategies:

Three – Inaugurate an urban design framework to extend downtown's sense of place and community: (1) *Key issues:* (A) Strengthen sense of place; (B) Encourage change where it will help; encourage preservation where it is merited; and (C) Expand the success of the traditional core to areas of untapped potential; and (2) *Response:* (A) Five unique districts – that quality new development will help shape; and (B) Attention to adjoining corridors and neighborhood transitions.

Four – Shape building form to promote quality of place: (1) *Key issues:* (A) Prevent inappropriate building height, mass; and (B) ...but don't curtail economic, cultural, aesthetic opportunity; and (2) *Response:* (A) Defined height zones; (B) Slender buildings with views and daylight between them, reflecting local 1920's precedent; (C) Attention to street scale, character; and (D) Before/after photomontages for evaluation.

Five – Update design guidelines to be current and clear, and to promote sustainable development: (1) *Key issues:* (A) Make guidelines clear and effective; (B) Address housing, scale, other new elements; and (C) Take leadership in green design; and (2) *Response:* (A) Streamlined, updated design review checklist integrating *required* zoning requirements and *recommended* design guidelines; and (B) Green design incentives.

Mr. Dixon explained the following final strategies:

Six – Make project review transparent, predictable, and inclusive of public: (1) *Key issue:* (A) Fix broken review process; and (2) *Response:* (A) Early, ongoing public input opportunity; (B) New project review categories – reserving City Council input for the largest projects; (C) Political accountability preserved; (D) Limited use of Conditional Use Permit; (E) Enhanced roles for Downtown Commission (design review), Planning & Zoning Commission (site review); and (F) Defined review period time limits.

He reviewed a chart of the proposed review process for downtown projects with public comments accepted at all steps.

Seven – Nurture a sustainable and resilient economy through active management of downtown: (1) *Key issues:* (A) Keep downtown clean, safe and green; (B) Maintain downtown's

remarkable mix of businesses; grow new businesses and jobs; and (C) Reinvest in downtown for continued success; and (2) *Response:* (A) Establish Community Improvement District (CID) to help manage downtown above and beyond city role, maintain healthy mix of businesses and uses; (B) create an economic development arm within CID; and (C) Phase in community benefits fund.

Downtown's stakeholders are ready to put the plan to work. Much of the plan can be implemented soon by City staff at little cost. Economic downtown presents a good opportunity to revise the policy.

Councilwoman Cape thanked the community for participating in this process. Our staff and consultants have done an amazing amount of work. She felt this is a plan that the City of Asheville can utilize as a backbone. She hoped that this Plan will serve a lot of other organizations as well as the City.

Councilman Newman supported delegating more of these decisions to the Planning & Zoning Commission and other bodies, but it appeared to him that the big controversial projects still come to City Council. He questioned how different this process is than what is currently being practiced. He understands the developers want certainty, but if the project is before Council, Council has an obligation to make a meaningful review.

Mr. Dixon said that the review thresholds have been raised by 75% and the Appendix contains a stronger foundation of standards.

Councilman Mumpower felt the primary job of City government is to keep it safe and clean. He didn't feel efforts to have control over others is the best use of our time and resources.

In response to Councilman Mumpower, Economic Development Director Sam Powers said that the contract with the consulting firm was $170,000 for fees and associated expenses. The other costs (e.g., obtaining 5,000 hours of public input, 14 public meetings, etc.) is estimated at approximately $37,000.

In response to Councilman Mumpower, Ms. Vrtunski explained the concept of the Community Improvement District and the community benefits fund.

Councilman Mumpower moved to set a public hearing on May 26, 2009, to hear public comments on the final Downtown Master Plan. This motion was seconded by Councilwoman Cape and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO SOLICIT COMMENTS ON A SUBSTANTIAL AMENDMENT TO THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO ESTABLISH THE FUNDING GUIDELINES AND ALLOCATION PROCESS FOR THE HOMELESS PREVENTION AND RAPID REHOUSING PROGRAM OF $509,460

RESOLUTION NO. 09-91 - RESOLUTION AMENDING THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO ESTABLISH THE FUNDING GUIDELINES AND ALLOCATION PROCESS FOR THE HOMELESS PREVENTION AND RAPID REHOUSING PROGRAM OF $509,460

Vice-Mayor Davis opened the public hearing at 7:59 p.m.

Ms. Amy Sawyer, the City's Homeless Coordinator, said that this is the consideration of a resolution amending the City's 2008-09 Consolidated Action Plan, detailing the City's plan to establish the funding guidelines and allocation process for the Homeless Prevention and Rapid Rehousing Program of $509,460. This public hearing was advertised on May 1 and 8, 2009.

The Community Development Division proposes that the City substantially amend its 2008-09 Consolidated Annual Action Plan to enable the City to receive funding under the Homelessness Prevention and Rapid Re-Housing Program (HPRP). The total amount of federal "Homeless Prevention Funds" funds, which have been made available to the City per Division A, Title XII of the American Recovery and Reinvestment Act of 2009, is $509,460.

The City of Asheville is expected to receive $509,460 in Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds. Eligible activities are financial assistance, housing relocation and stabilization services, data collection and administration, and administrative costs.

The City of Asheville Planning Department's Community Development Division proposes to competitively distribute HPRP funding to local agencies, which will use these funds to prevent homelessness and to rapidly re-house persons who have become homeless. The Division expects that up to 150 households will receive financial assistance and housing relocation and stabilization services with the HPRP funding.

A commitment to community input is evidenced by the plan's incorporation of the City of Asheville's public meetings policy, discussions with the Homeless Coalition, and discussions with the Homeless Initiative Advisory Committee.

A pre-application process will identify eligible agencies. Eligible agencies will be asked to submit an application for funding. Applications will be reviewed and funds will be committed before September 30, 2009. HPRP guidelines require that all funds be used within a thirty-six month period, or by September 30, 2012. Additionally, guidelines require that all program activities be recorded using the Carolina Homeless Information Network's Homeless Management Information System, or HMIS. The City and Sub-Grantee(s) will use five percent of the $509,460 allocated to City of Asheville for administration of the grant. The program will be coordinated by the Community Development Division of the City of Asheville and subject to all associated US HUD regulations.

Partner agencies of the Homeless Initiative have already implemented elements found in the HPRP program guidelines in existing programs. The County, along with partner agencies of the Homeless Initiative, sees this as a strength and is hoping to apply to the State of North Carolina for an additional $500,000-$1,000,000 in HPRP funds to bolster the City's program.

The Substantial Amendment to the Consolidated Action Plan directly relates to the Council's Strategic Goal of *Affordable,* meeting the objective of implementing strategies in the 10-Year Plan to End Homelessness. Specifically, this amendment will allow funds to be directed to prevention and rapid re-housing, strategies that thus far have been drastically underfunded.

Pros:

- Approval of the Action Plan paves the way for the receipts of $509,460 in HUD funding to the City, which will be used to prevent homelessness and rapidly re-house approximately 150 people.

- The City's application promotes a similar application by Buncombe County for North Carolina's HPRP funds, which could more than double the impact of HPRP funds in our community.

Cons:

- HPRP funding, like all funds from America's Reinvestment and Recovery Funds, have a very tight timeline and strict outcomes reporting, which requires staff time and community collaboration to successfully implement.

- HPRP funding will not renew, and must be spent within two-three years once the grant agreement is signed. When HPRP funding ends, other funding sources will be needed to sustain the program if it is deemed successful and vital to meeting the goals of the 10-Year Plan to End Homelessness.

By preventing homelessness and rapidly re-housing households that are in a housing crisis, we limit the probability that individuals will become chronically homeless. The 10-Year Plan estimates that it can cost up to $12,000 in public funds to pay for someone who is experiencing chronic homelessness. The project increases the likelihood that individuals and families will maintain their employment, education, and community relationships.

Staff recommends approval of the resolution authorizing submission of a substantial amendment to the City's Consolidated Annual Action Plan for 2008-09 to the U.S. Dept. of Housing and Urban Development.

Vice-Mayor Davis closed the public hearing at 8:02 p.m.

In response to Councilwoman Cape, Ms. Sawyer said that to qualify for the program, people have to show that they will be able to sustain their own housing after the financial assistance is over. The longest period of financial assistance someone could receive is 18 months.

When Councilman Mumpower asked if the faith based communities will have access to this funding option, Ms. Sawyer said this is just like any other grant that has come through the Community Development Division.

Councilman Mumpower said that he has a personal concern that the 10-Year Plan devotes a lot of revenue to what is arguably an unsustainable model, which basically follows the public housing model. He is concerned we will not find the funding for it going forward. He felt that public housing in this community has proven to be an incubator for drugs, crimes, etc. that put our children and elderly at risk. He felt that the faith based communities can achieve a better sustainability aspect regarding social services for providing permanent housing or transitional housing. He has requested Mayor Bellamy schedule a presentation from the faith based communities regarding where there might be better places to invest our dollars. He was also concerned that there is a never ending supply of homeless people in our community and that we are chasing an impossible effort. Not that we shouldn't continue to try, but to use our dollars wisely and we are not doing that. He was also concerned spending these borrowed federal dollars. He felt that the lack of accountability in a lot of our services is a missing part of the equation.

Councilwoman Cape said that the world has always had people that needed care and we are trying to find compassionate and healthy successful models. .

Councilman Miller was confident that with the help of private organizations and the faith based community we can strive to reduce homelessness.

Councilman Newman supported this action in that in our current economy there are thousands of people who are without a secure paycheck living paycheck to paycheck. This program will help them from becoming homeless.

Vice-Mayor Davis stated that there are a lot more people on the street, whether they are there by choice or situation. He would be amiss not to support funding to help curb that,

however, the atmosphere in the western corridor of Asheville needs some accountability and we must continue to try to do something different.

Vice-Mayor Davis said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-91. This motion was seconded by Councilman Miller and carried on a 4-2 vote, with Councilman Russell and Councilman Mumpower voting "no."

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V. UNFINISHED BUSINESS:

A. QUARTERLY REPORTS

Planning & Economic Development Chair Report

Councilwoman Cape, Chair of the City Council Planning & Economic Development Committee, provided Council with an update of their activities during the last quarter. She thanked her other Committee members of Vice-Mayor Davis and Councilman Russell for their hard work on this Committee.

Strategic Operating Plan

Assistant City Manager Jeff Richardson reviewed with Council the 2008-09 Strategic Operating Plan.

In the affordable focus area (1) Preliminary HOPE VI feasibility study complete (funded by the City of Asheville); (2) Focusing on two properties, Aston Park Tower and Lee-Walker Heights; (3) Proposals for architectural and engineering services currently being evaluated; (4) Design teams selected by end of May to proceed with site planning, analysis and design work; (5) Community outreach meetings underway and will continue throughout design process; (6) Three new Housing Trust Fund loans were approved, totaling $670,000; (7) The Asheville Regional Housing Consortium allocated $1.5 million dollars of federal HOME for affordable housing in the four county consortium region; (8) The HOME and CDBG application process resulted in the preliminary approval for funding for the creation of 316 new units of affordable housing; and (9) 37 Asheville City homes owned by lower-income households will be improved using new CDBG funding.

In the green focus area (1) Public Works (a) Collected 17,958.81 tons of solid waste in Fiscal Year (FY) 2008-2009; (b) Collected 3,877.70 tons of recyclable material in FY 2008–09; (c) Completed 35 side walk maintenance work orders and installed two ADA ramps; (d) Swept 1,341 miles of roadway and collected 1,010 tons of debris; and (e) Completed two energy conservation campaigns with Asheville Fire & Rescue Department (AFR) and Parks and Recreation; (2) Information Technology (a) Telework Program - Supports 5-10% of work force.; (b) Automatic PC Shutdowns - Estimated savings of $12,000; and (c) Hardware Procurement - Achieved 100% of CRT to LCD monitor replacements (69% less energy consumed); and (3) Transportation and Engineering (a) Received grant money from Congressman Heath Shuler for Hybrid bus; and (b) Continued implementation of the Environmental Management Systems Training.

In the safe focus area of AFR (1) AFR's annual compliance report was approved by the Center for Public Safety Excellence. This approval allows AFR to remain an accredited fire and rescue department; and (2) AFR is working on a transitional agreement to service a portion of the current Haw Creek fire district for FY 2009-10.

In the safe focus area of the Asheville Police Department (APD) Downtown Initiatives (1) In 2008 APD conducted 6,469 business contacts made and 117 plainclothes/surveillance operations; (2) Improvements in 2008: (a) Violent Crime in the downtown reduced by 30%; and (b) Property Crime reduced by 13%; (3) As of April 2009 APD conducted (a) 3,760 business contacts; and (b) Over 69 plainclothes/surveillance operations; and (4) 2009 Initiatives (a) Downtown Task Force; and (b) South Central District to the Economic Development Office. In addition, 18 cadets from the APD Academy graduated in March of 2009.

In the sustainability focus area (1) City of Asheville Leadership Academy (CAYLA) (a) All CAYLA Seniors have been accepted and will attend college in fall; and (b) CAYLA class completed 402 hours of community service this academic year; (2) Building Safety First Quarter Reporting (a) 2007 avg. 246 Building Permit Applications; (b) 2008 avg. 320 Building Permit Applications; (c) 2009 avg. 220 Building Permit Applications; (d) % change from 2008 to 2009 - 31% decrease; and (e) % change from 2007 to 2009 - 10.5% decrease; (3) Water Bond Project (a) Water Bond projects are approximately 90% complete; (4) Partnership Expansion with UNC-Asheville (a) GIFT Program for Reid Center; (b) Health and Wellness; (c) Culture and Recreation; (d) Economic Development and Technology; and (e) Public Safety; and (5) Partnership expansion with A-B Tech (a) Oakley Police Sub-station.

Mr. Richardson said that Council has been provided with an economy report for Fiscal Year 2008-09 (3rd Quarter). He reviewed charts on (1) employment change by major industry; (2) unemployment rates; (3) monthly home sales - units; (4) monthly home sales - average price; (5) residential building permits - units; (6) residential building permits - value; (7) City business licenses; and (8) special focus of unemployment rate by Metro.

He said that Council has been provided with the Asheville Police Department's outreaches/actions for January-March 2009.

B. BUDGET

3rd Quarter Financial Report

Chief Financial Officer Ben Durant briefed Council on the following City's overall financial position for the fiscal year through March 2009.

In summary, regarding General Fund revenues, (1) Property Taxes: (a) 96% of budget collected to date; (b) Will exceed budget by $150,000; (2) Sales Taxes: (a) 9 months collected to date; (b) Down 4.2% compared to prior year; and (c) Will come in under budget by $1.7-1.8 million; (3) Intergovernmental: (a) Will exceed budget by $400,000 (State Utility Taxes); and (4) Overall, revenues will fall short of budget by $800-900,000.

In summary, regarding General Fund expenditures (1) Departments remain on track to achieve $1.0 million targeted savings goal (a) Selective hiring program; (b) Delay vehicle & equipment purchases; (c) Civic Center capital project savings; and (d) Departmental line item reductions; and (2) Health care expenses are trending higher in recent months; (a) Possible budget amendment prior to June 30.

He then reviewed the bottom line of Fund Balance being the adopted budget was 20.3%, the current budget is 19.9% and the year-end estimate is 19.8%.

The following is more detailed information:

Amendments. During the 3rd quarter, the General Fund budget was amended two times, resulting in an overall increase in the budget of $152,926. The amendment for the cleaning of the City Hall ventilation system included an appropriation from fund balance of $119,013. Below is a

summary of all of the General Fund budget amendments adopted since the start of the fiscal year.

Amendment	Amount
Bullet Proof Vest Grant	$23,018
Energy Management Plan*	50,000
Unison Economic Development Incentive*	47,250
Grove Park Inn Fireworks Donation	40,000
City Hall Ventilation System Cleaning*	119,013
Biltmore Park Street Light Removal	33,913
Total Amendments	$313,694

* Fund balance appropriations total $216,263

Revenues. Through March 31, 2009, the City has collected $72.9 million in General Fund revenue, which represents approximately 82% of the total General Fund revenue budget. At the end of the 1st quarter, staff projected that the economic recession would result in a $1,000,000 revenue shortfall in the General Fund in the current year. In recent months, sales tax collections have continued to decline, however, other revenues have improved such that the overall revenue picture remains nearly unchanged. Staff now projects that FY 2008-09 year-end *revenue will fall short of budget by $1,100,000.*

Expenditures. General Fund expenditures through March 31st, total $64.6 million or 71% of the budget. Staff reported to Council in October that the management team had identified a set of budget savings strategies to address the current year budget shortfall, which at that point was projected to be $1.0 million. These strategies included, among others, implementation of a selective hiring program and the delay of capital equipment purchases. These expenditure targets remain on track as of the end of the third quarter. Staff is currently monitoring health care expenses and may return to Council prior to June 30 to request an amendment to the health care budget.

Fund Balance. The City ended FY 2007-08 with available fund balance of $19.67 million or 19.3% of year-end FY 2007-08 expenditures. Based on current year-end revenue and expenditure estimates, which include the $1.0 million in budget savings mentioned above, staff is projecting that *unreserved fund balance will end FY 2008-09 at $17,699,260, which will equate to 19.8% of estimated year-end expenditures.*

Formal Budget Presentation

Chief Financial Officer Ben Durant said that the objectives are to (1) provide an overview of the Fiscal Year (FY) 2009-10 General Fund budget; and (2) review the remaining budget schedule.

Budget themes for revenues include sales tax decline, property tax base growth/ annexation, no property tax increase, and user fee increases.

Budget themes for expenditures include significant cost increases; no service cuts; no market or merit pay adjustments; management streamlining and reorganization; and minimal capital funding.

Using charts he reviewed the recession impact regarding sales taxes and also property tax base growth.

Revenue adjustments include (1) No property tax rate increase; and (2) Revenue Enhancements: (a) Council-Approved fee adjustments - $700,000 (i) Adjust household recycling

to 100% cost recovery; and (ii) Increase Nature Center admission fees; and (b) Ridgefield/Airport Road Annexation Net Gain - $325,000.

Cost increases total $2,558,000. They are health insurance - $870,000; Biltmore Town Center Economic Development Payment - $450,000; Electricity - $200,000; Street Lighting $175,000; Election Costs - $160,000; Technology Expenses - $150,000; Fleet Maintenance - $130,000; Fire Annexation Contracts - $120,000; Joint City/County Programs - $107,000; Recycling Program - $76,000; Tipping Gees - $65,000; and Emergency Notification System - $55,000.

Personnel budget reductions include (1) Salary Freeze (a) Eliminate Market Adjustments - $1,000,000; (b) Eliminate Merit Pay - $750,000; (2) Re-Engineering & Management Streamlining (a) Eliminate 20 General Fund positions - $1,000,000; (b) Reduce overtime requests by 7.5% - $150,000; and (3) Early Retirement Incentive (a) 63 employees accepted; (b) Absorbed payouts with managed savings; and (c) Savings to be realized in subsequent budgets.

Operating reductions include (1) Transit Fund Subsidy - $700,000; (2) Housing Trust Fund Contribution - $300,000; (3) Fund Municipal Building Security w/ Grant - $150,000; (4) Discontinue Ice at the Civic Center - $50,000; and (4) Fund Sidewalks with ARRA Grant - $140,000.

Strategic priorities include (1) downtown cleanliness - $100,000; and (2) Pack Square Park maintenance (County will reimburse the City $150,000) - $300.000.

Capital improvements for major funded projects include: Annexation Sewer Projects - $1,870,000; Street & Sidewalk Maintenance - $952,300; Vehicle Replacement - $752,000; Golf Course Irrigation Phase II - $300,000; Overlook Park Land Purchase - $250,000; Civic Center Improvements - $250,000; Walton Street Pool Improvements - $200,000; and Building Security - $125,000.

He then reviewed the General Fund revenue and expenditure summaries.

Finally, he outlined the recommended schedule of (1) May 26 – Budget worksession at 2:30 p.m.; (2) June 9 – public hearing; and (3) June 23 – budget adoption.

Councilman Russell moved to set a budget worksession on Tuesday, May 26, 2009, at 2:30 p.m. in the Council Chamber, located on the 2nd Floor of City Hall. This motion was seconded by Councilwoman Cape and carried unanimously.

Motion setting a public hearing on June 9, 2009, for adoption of the Fiscal Year 2009-10 Annual Operating Budget

Councilman Newman moved to set the public hearing for adoption of the Fiscal Year 2009-10 Annual Operating Budget on June 9, 2009. This motion was seconded by Councilwoman Cape and carried unanimously.

C. PARKING GARAGE AFTER-HOURS PARKING RATES

Director of Transportation and Engineering Cathy Ball said this is an opportunity for City Council to revisit after-hours parking rate increases adopted by Council as part of the Fiscal Year 2009 budget.

In April 2008, City Council approved increasing the after-hours parking rates as shown in below. After-hours refers to hours where the parking garages are not staffed. These hours are from 7:00 p.m. to 10:00 a.m. and weekends except for special event parking.

	Current	Approved FY 2009	
Wall Street	Flat $2.00	$0.75 per hour	Max. $8.00
Rankin Avenue	Flat $1.00	$0.75 per hour	Max. $8.00
Civic Center	Flat $1.00	$0.50 per hour	Max $8.00

The rates above were scheduled to be implemented following the installation of parking control equipment capable of tracking these costs. Ninety-percent of the equipment was installed this winter, with only the prepaid acceptors remaining.

Using a chart, she showed the current rates along with the proposed rates for each of the three parking garages.

As Council is aware, our economic landscape has changed over the past year to the point that staff wanted to give City Council the opportunity to revisit this change prior to implementation.

The new parking garage located on College Street and operated by Buncombe County charges $1.00 per hour and a maximum daily rate of $8.00.

Staff presented this item to Downtown Association in April 2009. The comments from the group were mixed with some representatives requesting no change and others support the increase as a way to increase revenue for future parking infrastructure. The issue will be presented to the Downtown Commission on May 8, 2009. The Commission requested staff to review their recommendations of: (1) a volume discount for monthly parkers (a) currently 160 qualify; (b) proposal if > 10 spaces = 10% discount; and (c) $15,000 cost; and (2) a volume discount for validation coupons (a) approximately 30,000 per year; (b) 10% discount > 100 coupons; and (c) maximum cost of $3,000.

The Finance Committee of City Council reviewed this request and asked staff to bring this issue before the entire Council.

The approval of these fees complies with the City's plans and commitments to continue with a sustainable funding source for the parking enterprise fund for the purpose of providing public parking in downtown.

Pros:

- Additional revenue generated will offset the capital cost of the parking control equipment.
- Additional revenue will be used to fund future parking infrastructure in downtown.
- The increased rate may encourage people to purchase monthly parking spaces in the Civic Center Garage.
- Allows for consistency in applying the parking rates.

Con:

- The increased rate may discourage use of the parking garages.

Staff anticipates additional revenue of approximately $30,000 per year as a result of the approved rate increase. The increase is not as high as originally expected because Council requested that the first hour free apply to after-hours rate. (The first hour is not free currently after-hours.)

Staff requests Council review and direct staff to implement the rate increase as approved by City Council in the Fiscal Year 2009 budget.

In response to Councilman Miller, Ms. Ball said that some benefits of the new equipment include easier use of dollar bills and debit and credit cards being accepted.

Ms. Ball responded to Councilman Mumpower's inquiry about enforcement of parking meters after 6:00 p.m. She said the Downtown Master Plan has a recommendation in it to increase the hours of enforcement. As a result of that we have been doing some evaluation of the cost and benefits associated with it. There are some challenges in that our current meters are not illuminated and an enforcement officer cannot easily be able to determine whether someone is parked illegally or not. During the summer months it may be possible to increase the time without having the meters changed out at a capital expense. She noted that it would be cheaper for people to park in the parking garages if they are parking for 3 hours or less. At this point, it is not staff's recommendation to increase the hours of enforcement.

Upon inquiry of Councilman Russell, Ms. Ball said that she would be happy to review the Downtown Commission's recommendations and report back to the City Council Finance Committee.

Vice-Mayor Davis felt the Downtown Commission would be looking for more than a 10% discount for monthly parkers, but the volume discount for validation coupons may have some merit.

In response to Councilwoman Cape, Ms. Ball said that if people had to pay this hourly rate (approved earlier by Council), the best they can determine is they would pay more than $60 a month (opposed to $40 a month currently). There is also the recommendation of a 10% discount for monthly parkers.

Councilman Miller encouraged staff to work with the Downtown Association to promote the benefits of using the parking garages vs. metered parking.

Councilman Newman said that since we have extra capacity at the Civic Center, he suggested we look at a more deeply discount at the Civic Center Parking Garage. Let's try to give people some less expensive option than parking at the metered spaces.

Councilwoman Cape felt that parking in our parking garages is a bargain compared to parking in other cities.

Ms. Ball said that staff has developed a 30-day communication plan so we do ask that the rates be effective July 1, 2009, opposed to being implemented immediately.

Councilman Mumpower suggested that any decisions made about rate increases should be part of a comprehensive effort, rather than an incremental effort. Therefore, he recommended the after-hour parking rate increase action be tabled and occur at the same time the volume discounts are discussed.

Councilman Russell said that this issue was discussed six months ago and supported moving forward.

In response to Councilwoman Cape, it was the consensus of Council to instruct City Attorney Oast to research the issue enforcement limitations for on-street handicap parking.

It was the consensus of Council to instruct City staff to review the recommendations of the Downtown Commission regarding volume discounts for monthly parkers and validation coupons and report back to Council with an analysis in approximately 4 weeks, so it can be adopted prior to the new fiscal year.

Councilman Russell moved to implement the after-hours parking rate increases as approved by City Council in Fiscal Year 2009 budget, effective July 1, 2009. This motion was

seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

D. RESOLUTION NO. 09-92 - RESOLUTION APPROVING THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR FISCAL YEAR 2009-10 WHICH ALLOCATES COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS TO SPECIFIC PROJECTS

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing submission of the City's Consolidated Action Plan for Fiscal Year (FY) 2009-2010 which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year.

The City expects to have available an estimated $1,500,614 in CDBG funds and $1,553,887 in HOME funds in the fiscal year beginning July 1, 2009. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 38 programs are recommended for funding. Allocations are consistent with the Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME funds and some CDBG funds will assist 316 housing units Consortium-wide. CDBG funds will also benefit more than 5,600 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute over $25,000,000 of other funding to these programs, leveraging $9.78 for every $1 of HOME and CDBG funds.

A public hearing was held at the Council meeting of April 28. No comments were received at the meeting, and none have been submitted in writing. The plan is due to be submitted to HUD by May 15.

This action complies with the City Council's Strategic Operating Plan in that it Plan directly relates to the Council's Strategic Goals of: Affordable: This plan directly supports the City's affordable housing plan, supports the city-owned land redevelopment process, and supports the development of new workforce housing in the City. It supports initiatives to end homelessness in Asheville; Green: All new housing units will, at a minimum, be Energy Star rated, and most will exceed that level of energy efficiency. A new weatherization program in the West Riverside Weed and Seed area will increase energy efficiency for at least 25 existing low income households there; Safe: Transit shelters and sidewalk improvement will improve the safety of our public infrastructure. Emergency home repairs will improve the health and safety of at least 37 Asheville households, primarily elderly households; and Sustainable: New apartments will be affordable for at least 30 years to households earning 50%-60% of median income. A new job training program for youth will focus on emerging jobs in "green" businesses.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $2,900,000 of HUD funding to the City, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $25,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. New assisted housing units to be constructed in Asheville will add at least $10,600,000 to the City's tax base.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2009-10 to the U. S. Dept. of Housing and Urban Development.

When Vice-Mayor Davis asked for public comments, none were received.

Councilman Mumpower felt this money will be for nice, but not necessary projects. He did not think this is the appropriate expenditures of revenues.

Councilwoman Cape said that the amount of return is phenomenal on these projects. This money will be well spent stimulating our economy.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-92. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 45

Introduction

City Manager Jackson was pleased to recognize new Water Resources Director Steve Shoaf.

E. RESOLUTION NO. 09-93 - RESOLUTION TO ESTABLISH A PLAN FOR MULTIPLE PERMITTING FOR PACK SQUARE IN PACK SQUARE PARK

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution to establish a plan for multiple permitting for Pack Square in Pack Square Park.

The use of Pack Square Park for outdoor special events has been limited due to park construction. Once complete, the park is destined to become one of the premier downtown event locations for organizations and event organizers. The first section of the park, the Pack Square area, will soon be complete and scheduled to open in late April or early May. The Pack Square area consists of 3 distinct sub areas, each of which may accommodate events without requiring the use of other sub areas. The sub lease plan would allow for separate events to be permitted within the Pack Square area of Pack Square Park.

The lawn area adjacent to the Biltmore Building (orange shaded area – Area A) would lease for the standard park usage fee of $100 for the first three hour and $25 for each additional hour. Per the Outdoor Special Event Guide, fees would be charged from the time of event set up to breakdown. Event organizers would have access to available electricity and water and would be required to obtain and additional required permits.

The streets within the Pack Square area (N. Pack Square and S. Pack Square – Area B) would not require the park usage fee. However, event organizers would still be required to obtain required permits such as outdoor special event permit, street closing permit, parking meter closings, building fire safety permit, etc. This would enable event organizers to obtain an Outdoor

Special Event Permit for a street festival or event without use of the lawn. Should the event organizer require use of the lawn, the park usage fee would be applied.

The plaza area in front of Pack Place and Asheville Art Museum (Area C) would not require the park usage fee, would only be available for small programs and may be subject to additional permitting. Events proposed in that area will be reviewed individually with consultation of other City departments to determine the safety and appropriateness of the event.

This action complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it assures that administrative policies promote effective provision of community festivals and events.

Pros:

- Allows the community affordable use of the Pack Square area of Pack Square Park;
- Allows for multiple events within the proposed area;
- Allows for permitting of the space to begin in conjunction with park construction completion;
- Allows for better fee consistency across all City parks.

Cons:

- Fees will not recover all operating costs Pack Square Park rental;
- Heavy use of Pack Square area could have an impact of the infrastructure, which may drive operational expenses higher in the future;
- Multiple events in the Pack Square area may compete with each other and may require additional coordination with event organizers.

Park rental will generate revenue to offset operating cost.

Staff recommends City Council adopt a resolution to establish multiple permitting plan Pack Square.

When Vice-Mayor Davis asked for public comments, none were received.

Councilman Miller said that while construction is on-going, he suggested some permanent ties in specific areas for tenting.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-93. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 48

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-94 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THREE EASEMENT DONATIONS FROM 265 BROADWAY LLC FOR THE PURPOSE OF IMPLEMENTING PHASE IV OF THE REED CREEK GREENWAY

Ms. Nikki Reid, Real Estate Manager, said that this is the consideration of a resolution authorizing the Mayor to accept three (3) easement donations (portions of PIN# 9649-23-7361-00000, 9649-23-8213-00000, and 9649-23-8163-00000) from 265 Broadway, LLC for the purposes of implementing Phase IV of the Reed Creek Greenway.

The City is in need of easements through three (3) contiguous properties in an effort to obtain 100% of the right-of-way necessary to implement Phase IV of the Reed Creek Greenway. The owner of all three (3) properties, 265 Broadway, LLC, has offered to donate the easements to the City. Once accepted, the City will have a majority of the right-of-way required for the project.

The total size of the contiguous easements is 0.10 acres. The City has not commissioned a professional appraisal of the property. Based upon the latest Buncombe County tax appraisal, the total value of the land being donated to the City is estimated at $45,150. The City will pay for all transaction costs associated with the easement.

This action complies with (1) City Council's Strategic Plan in the Green Focus Area in that it advances a multi-modal transportation plan, which includes greenways, and pursues opportunities to preserve open space; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

The Greenway Commission unanimously approved of the acceptance of the easements during their regular meeting on April 9th, 2009.

Pros:
- The easement is being donated, allowing significant costs savings for the City.
- Acceptance of the easement will allow the project to be completed.
- Increases the City's inventory of park space.

Con:
- Added maintenance costs.

Cost savings estimated at $45,150. City staff will prepare closing documents and perform final closing.

City staff recommends City Council adopt a resolution authorizing the Mayor to accept three (3) easement donations (PIN# 9649-23-7361-00000, 9649-23-8213-00000, and 9649-23-8163-00000) from 265 Broadway, LLC for the purposes of implementing Phase IV of the Reed Creek Greenway.

When Vice-Mayor Davis asked for public comments, none were received.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-94. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 50

B. RESOLUTION NO. 09-95 - RESOLUTION AUTHORIZING THE MAYOR TO ACQUIRE IN FEE SIMPLE A 0.214 +/- ACRE PARCEL LOCATED ON BROADWAY STREET FROM MIEGAN AND CHANDLER GORDON FOR THE PURPOSE OF IMPLEMENTING PHASE II OF THE REED CREEK GREENWAY

Ms. Nikki Reid, Real Estate Manager, said that this is the consideration of a resolution authorizing the Mayor to execute all necessary documents to perform the fee simple acquisition

of a portion of PIN # 9649-14-5085-00000 located on Broadway Street, for the purposes of implementing Phase II of the Reed Creek Greenway, for the amount of $20,000.

The subject property is located on Broadway Street about 400 feet west of the intersection of Ocala Street and Broadway. The property size totals 1.48 acres, however to accommodate for the Reed Creek Greenway, Phase II, the City is requesting authorization to purchase a 0.214 acre portion from owners Miegan and Chandler Gordon. A MSD sewer line runs the length of this 0.214 acre portion. The Gordons are requesting to retain a sewer easement on the property in order to maintain access to sewer line as part of this transaction, with the exact location of the easement to be determined prior to closing. The property was appraised Richard Smith of Dry Ridge Appraisal Services, LLC. Nikki Reid, Real Estate Manager, reviewed the appraisal and recommended a fair market value of $20,000 based on the appraisal.

This action complies with (1) City Council's Strategic Plan in the Green Focus Area in that it advances a multi-modal transportation plan, which includes greenways, and pursues opportunities to preserve open space; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

The Greenway Commission unanimously approved of the purchase of a 0.214 portion of PIN # 9649-14-5085-00000 on Broadway Street during their regular meeting on April 9th, 2009.

Pros:
- With the purchase of the property, the City will have acquired 100% of the right-of-way necessary to implement the Phase II of the Reed Creek Greenway, therefore allowing the implementation phase to begin.
- Increases the City's inventory of park space.

Con:
- Added maintenance costs.

The fiscal impact is the compensation for property to the Gordons in the amount of $20,000. Funding for the stated purchase has been allocated by City Council via the Fiscal Year 2008/09 capital budget. City staff will prepare closing documents and perform final closing.

City staff recommends City Council adopt a resolution authorizing the Mayor to establish $20,000 as the just compensation for the property and to execute all necessary documents to perform the fee simple acquisition of a 0.214 acre portion of PIN # 9649-14-5085-00000 on Broadway Street for the purposes of implementing Phase II of the Reed Creek Greenway.

When Vice-Mayor Davis asked for public comments, none were received.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-95. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 51

C. RESOLUTION NO. 09-96 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 29-31, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to make provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival on May 29-31, 2009.

Mountain Sports Festival, Inc. has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Mountain Sports Festival event coordinated by the City of Asheville and allow for consumption at this event.

Mountain Sport Festival, Inc. has received the special one time permit from the North Carolina Alcoholic Beverage Control Commission (ABC) for each of the dates and event organizers are expected to complete the ABC Responsible Seller Training Program which is offered at no charge and can be done in person or on line.

The Mountain Sports Festival will be held on Friday, May 29, 2009 from 5:00 p.m. to 10:00 p.m., Saturday, May 30, 2009 from 10:00 a.m. to 10:00 p.m., and Sunday, May 31, 2009 from 12:00 p.m. to 6:00 p.m. within the boundaries of Carrier Park and will be free and open to the public.

This action does not comply with the City Council Strategic Operating Plan nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- Allows fundraising opportunity for Mountain Sports Festival, Inc.

Con:

- Potential for public safety issues.

There is no fiscal impact to this decision.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival on May 29 – May 31, 2009.

When Vice-Mayor Davis asked for public comments, none were received.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-96. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 52

D. RESOLUTION NO. 09-97 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOWNTOWN AFTER 5 EVENTS ON MAY 15, JUNE 19, JULY 17, AUGUST 21 AND SEPTEMBER 18, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to make provisions for the possession and consumption of malt beverages and/or unfortified wine at Downtown After Five on May 15, June 19, July 17, August 21, and September 18, 2009.

The Asheville Downtown Association, Inc. has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Downtown After Five event and allow for consumption at this event.

The Asheville Downtown Association has received the special one time permit from the North Carolina Alcoholic Beverage Control Commission (ABC) for each of the dates and event organizers are expected to complete the ABC Responsible Seller Training Program which is offered at no charge and can be done in person or on line.

Downtown After Five will be held on Friday, May 15, 2009 from 5:00 p.m. to 9:30 p.m., Friday, June 19, 2009 from 5:00 p.m. to 9:30 p.m., Friday, July 17, 2009 from 5:00 p.m. to 9:30 p.m., Friday, August 21, 2009 from 5:00 p.m. to 9:30 p.m., and Friday, September 18, 2009 from 5:00 p.m. to 9:30 p.m. within the boundaries of the 100 block of Lexington Avenue and will be free and open to the public.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- Allows fundraising opportunity for the Asheville Downtown Association.

Con:

- Potential for public safety issues.

The fiscal impact would be overtime pay for Asheville Police officers per City co-sponsorship agreement.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at Downtown After Five on May 15, June 19, July 17, August 21 and September 18, 2009.

When Vice-Mayor Davis asked for public comments, none were received.

Councilman Mumpower felt that the climate of activity changes with alcohol and we don't need to encourage that in our activities, especially since there are bars downtown that provide that service.

Councilwoman Cape would be open to hearing the conversation from the Downtown Association after they poll their merchants to see how they feel about the sale of alcohol at these events.

In response to Councilman Russell, City Attorney Oast said that there is a provision in the law that requires the City's approval to allow open containers on the streets. Councilman Russell noted that people cannot go into a restaurant or bar during Bele Chere to buy a drink and then drink it on the street.

Vice-Mayor Davis said that the groups (which are generally charitable and non-profits) that actually sell the wristbands are beneficiaries of the alcohol sales. The Downtown Association has difficulty funding these events without the sale of alcohol. He felt this does have a good economic effect and is well controlled.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-97. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 55

E. RESOLUTION NO. 09-98 - RESOLUTION REQUESTING FEDERAL FUNDING FOR THE AUTOMATED VEHICLE LOCATION SYSTEM

Director of Transportation and Engineering Cathy Ball said that this is the consideration of requesting federal funding for an Automated Vehicle Location system (AVL) in the amount of $416,000 for the transit fleet as part of the upcoming Highways and Transit Authorization bill. This reauthorization process takes place every 5 years, and offers an opportunity to include high priority transportation projects for funding.

In preparation for the upcoming Highways and Transit Authorization bill that will substitute the current SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act - , the House Committee on Transportation and Infrastructure has issued a request for projects to be included in the new bill.

The City of Asheville is requesting funding for an AVL system. The AVL system has two components: (1) A Global Positioning System (GPS) that enables transit operations to remotely track the location of its vehicle fleet in real-time; (2) A user interface that allows communications with the riders through cellular technology, internet and real-time information on main transit stops.

The use of AVL systems improves fleet management and customer service. In operational terms the system provides information to better scheduling the service and to identify problems (buses running hot, delays, accidents on the road, etc). In addition, this information is available to the riders in a website especially designed for the customers, indicating the location and arrival time of the next bus and is also available through text messages.

AVL is shown to increase ridership, capital savings (potential reductions in fleet size due to better utilization of vehicles), lower annual maintenance costs and generally a lower vehicle cost per mile. AVL systems improve schedule adherence, monitoring and transfer coordination. AVL allows for improved ability of dispatchers to control bus operations as well as better monitoring of driver performance. AVL provides the capability to inform passengers of predicted bus arrival times enhancing the quality of transit service and allowing travelers to make better travel decisions. AVL provides more complete and accurate data for scheduling and planning of routes and bus stops.

The cost of the AVL system is $502,000. The City is requesting funding for 80% of the cost and will contribute with the additional 20%. The City will seek for additional 10% through the N.C. Dept. of Transportation (NCDOT).

Applications are due by May 14, 2009.

From City Council's adopted 2008-09 Strategic Plan, the two goals most directly addressed are (1) Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements; and (2) Achieve short term and long term energy goals and reduce city carbon emissions by 2% per year.

Pro:

- The AVL system will improve transit operations, safety response and customer service.

Con:

- The City has to contribute with 20% of the cost, though staff will seek for additional 10% funding through NCDOT.

The City of Asheville's request is $416,000. If the City is successful in obtaining these funds, we would need to contribute $86,000 as part of the local match and will seek for 10% of this amount through the NCDOT.

City staff recommends City Council support to request funding for the Automated Vehicle Location system in the amount of $416,000.

When Vice-Mayor Davis asked for public comments, none were received.

Councilman Newman felt this technology will add value to our existing system.

In response to Councilman Russell, Ms. Ball said that this has been an unfunded project on the Stat's Transportation Improvement Plan. City Council and the Transit Study consultants have previously endorsed this project.

In response to Councilman Mumpower, Ms. Ball said that most riders have cell phones and the information can be sent or searched for in many different ways. People can even sign up for automatic messages.

In response to Councilman Mumpower, Ms. Ball said that she would be happy to provide Council with information on the progress to keep our buses on schedule.

Councilman Mumpower felt we need to fix the problem of making sure our buses are where they're supposed to be within reason. He felt this is a request for federal borrowed dollars and questioned if this is a legitimate expenditure.

Councilman Miller wanted to make sure that the interface is as user-friendly as possible.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-98. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 58

F. BOARDS & COMMISSIONS

It was the consensus of Council to reappoint Brian Woods, Michael Burke and George Keller, and interview J.L. Thompson for a vacancy on the Civic Center Commission.

It was the consensus of Council to interview Larry Harris for a vacancy on the Civil Service Board.

It was the consensus of Council to reappoint Harry Harrison, and appoint Jenny Bowen and a board member from the Asheville Area Arts Council to the Public Art Board.

Due to the date and time conflict for a Council member to serve on the Pack Place Board of Directors, Vice-Mayor Davis said that he would contact the Chair of the Pack Place Board to see if there is any flexibility in their meeting date or time.

Councilman Russell suggested that when there are board openings that the chair for that board contact the City Clerk to let her know if there are any board recommendations for appointment.

VII. OTHER BUSINESS:

E-Verify

Councilman Mumpower said that he spoke with Ms. Debora C. Fikes, CPA, Forensic Auditor for the Department of Homeland Security, who sent him the following e-mail "I understand that there are a number of contractors working on multiple projects in the Asheville area that could possibly be employing unauthorized workers. I would like to propose your city contracting and/or permit office to set up a time/place for my co-worker, Darren Vazquetelles and myself to come speak about correct preparation of the I-9 form and how E-Verify and IMAGE (ICE Mutual Agreement between Government and Employers) can assist the business owners/human resource managers in hiring only those authorized to work in the United States." He asked if Council would be interested in hosting an ICE informative seminar, possibly in cooperation with the Chamber of Commerce and some manufacturing organizations in the community. It was the consensus of Council to ask City staff proceed in making these arrangements.

Claims

The following claims were received by the City of Asheville during the period of April 17-30, 2009: 32 Broadway Association (Water), Keller Knight (Water), Mary Hagan (Streets), Michelle Denton (Water), Piedmont Paper (Streets), Paul Finder (Police), Louise Dixon (Police), Phil Ramsey (Water), Milton Honig (Police), Patricia Helms (Sanitation), Kacey Rawson (Transit), Jean Stephens (Water) and Michael Greene (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Vice-Mayor Davis adjourned the meeting at 10:02 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – May 26, 2009 – 2:30 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (arrived at 2:57 p.m.); Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

City Council held a worksession to discuss the budget and the economic stimulus package update.

Budget

Chief Financial Officer Ben Durant said that on May 26, 2009, City Council will hold a budget worksession at 2:30 p.m. to discuss the Fiscal Year 2009/2010 Manager's Recommended Budget.

At the May 12, 2009, formal City Council meeting, staff presented the Fiscal Year 2009/2010 Manager's Recommended Budget, with a focus on the general fund.

Staff would suggest that Council use the remaining time during the worksession to review and discuss the budget fund by fund. If there are questions that require more extensive research, we will provide those responses at a subsequent Council meeting. As usual, staff from each of the departments will also be available at the worksession to answer questions.

A public hearing on the Fiscal Year 2009/2010 Manager's Recommended Budget will be conducted on June 9, 2009, and City Council is scheduled to adopt the budget on June 23, 2009.

Staff recommends that City Council discuss the Fiscal Year 2009/2010 Manager's Recommended Budget fund by fund.

Mr. Durant began the budget worksession with a brief recap of the general fund budget themes that were discussed at the May 12th meeting, and provided an overview of some pending issues that may impact the general fund budget.

He said that the objectives of this worksession are to (1) have a staff overview of the FY 2009-10 budget; and (2) have City Council review of the budget fund by fund.

General Fund budget themes include (1) Sales tax decline; (2) Property tax base growth/annexation; (3) No property tax increase; (4) $1.5 million fund balance appropriation; (5) Higher cost recovery from fees; (6) Significant cost increases; (7) No service cuts; (8) No market or merit pay adjustments; (9) Management streamlining & reorganization; and (10) Minimal capital funding.

General Fund pending issues include (1) Animal Control: $32,000; (2) Civil Service Legal Fees: $100,000; (3) Further Sales Tax Decline?; (4) Health Care & Other Inflationary Trends (a) $1.3 million health care amendment in current year; and (5) Stimulus Funds.

Budget Director Tony McDowell then presented a summary of the major budget themes for each of the City's seven enterprise funds.

Water Fund budget themes include (1) 6.3% decrease due to the removal of $3.5 million in one time capital expenses for Brevard Road project; (2) Significant inflation in key areas; (a) Health Care: $220,000; and (b) Electricity & Chemicals: $400,000; and (3) $5.6 million for capital improvement projects.

He then reviewed the Water Fund Capital Improvement Projects fund, which totals $5,597,735.

Transit Fund budget themes include (1) 4.9% budget increase; (2) Additional federal & state funding of $947,000; (3) $693,000 decrease in general fund subsidy; and (4) Increased operating costs (a) Fuel & maintenance; and (b) Black Mountain & Weaverville service (state reimbursed).

Stormwater Fund budget themes include (1) 12.3% budget decrease; (2) Development permit revenue reduced 29% from $287,000 to $204,000; and (3) One position eliminated & two positions will be paid from capital & grant funded projects.

Parking Fund budget themes include (1) 8.4% budget decrease; (2) Recession has impacted garage revenue (a) $300,000 decrease; (3) $500,000 for possible debt service payment on Biltmore Avenue parking deck; and (4) $57,240 to fund signage for the Wayfinding program.

Civic Center budget themes include (1) 6.9% budget decrease; (2) General fund subsidy reduced from $397,000 to $391,000; (3) Capital funding reduced from $400,000 to $250,000; and (4) Discontinued ice installation (a) $50,000 in immediate savings; and (b) Avoidance of another $150,000 in repair work to the chiller.

Golf Fund budget themes include (1) 14.1% budget decrease; (2) Restructuring & streamlining of operations (a) 3 positions eliminated; and (b) $150,000 in savings; and (3) Will operate without a general fund subsidy.

Festivals Fund budget themes include (1) 30% budget decrease (a) Reduction in the overall footprint for 2009 Bele Chere and (b) No ticketed event at the 2009 Bele Chere; (2) Recession impacting revenues (a) Attendance is expected to be down 10-12%; and (b) $35,000 decrease in sponsorship revenue budget; and (3) Continuation of general fund subsidy (a) $184,726 (2008-09 was $162,675).

Using a chart, he reviewed the enterprise fund summary.

Throughout the presentation, Mr. Durant, Mr. McDowell and Civic Center Director Sherman Bass responded to various questions/comments from Council, some being, but are not limited to (noting that information not readily available would be provided to Council): update on the sales tax and what the state is using for their calculations; does City staff have any concerns the state will come to local governments to balance their budget; what is the rate of inflation from the last 6 months; explanation of the 3% overall budget increase; does the Consumer Price Index make allowances for health care; is there a better figure to compare our costs to than the Consumer Price Index; what was the analysis regarding health care costs for employees; if there are funds left over at the end of the Fiscal Year, do they go back into the General Fund Fund Balance; why is the investment income flat; suggestion to look at advertising opportunities in our parking decks to raise revenue; what has staff done, and how has staff reacted, to filling the $5 Million gap learned about in November, 2008; what constitutes the emerging issue of $100,000 Civil Service legal fees; what are our fuel costs based on this year; additional detailed information on health care costs, factors associated with the 15% increase, and what innovative ways is the City doing to reduce health care costs; what is the Metropolitan Sewerage District's projected revenue loss; reminder that there are available spaces in the parking deck for people who would like to rent them; why and how was the Civic Center capital improvement plan decreased; request

for an update on the Civic Center's white paper presented to Council several years ago; and how many people will be affected with the deletion of the ice at the Civic Center.

In response to Councilman Mumpower, City Manager Jackson said that input and review of applicable Capital Improvement Project lists have been sought from all appropriate boards.

At 3:30 p.m., Mayor Bellamy announced a 5 minute recess.

Economic Stimulus Package Update

American Recovery & Reinvestment Project Manager Brenda Mills said that the purpose of this report is to provide City Council with an update on staff work to date on the American Recovery & Reinvestment Act (ARRA) funding opportunities and next steps.

Staff has worked since the February 17, 2009, when the $789 billion funding for the American Recovery & Reinvestment Act (ARRA) was signed by President Barack Obama to respond to opportunities offered by the ARRA while ensuring the highest level of transparency and project coordination.

The federal stimulus package provides about $6.2 billion in direct aid to North Carolina to create jobs and rebuild infrastructure, including highways and schools. The recovery program will also inject additional funding into the state through targeted tax cuts, additional grants from federal agencies and direct funding for specific federal programs in the state. We anticipated that the majority of recovery fund opportunities for the City of Asheville would come through specific grant or other program funding opportunities offered by state agencies.

Funding Announcements & Applications:

Entitlements

- Homeless Prevention Funds ($509,460)
- Community Development Block Grant - R ($332,942)
- Energy Efficiency & Conservation Block Grant ($804,700) - $250,000 for Community Projects
- Edward Byrne Justice Assistance Grant ($265,466) – Memorandum of Understanding with Buncombe County
- Transit Capital Projects ($2,500,000) – French Broad River Metropolitan Planning Organization (MPO) to guide choices for this funding – prioritized list submitted April 30, 2009
- Transportation Small Enhancement Projects (shovel ready under $100,000) – staff submitted projects by letter in February
- MPO Urbanized Area Funding ($6,000,000) - French Broad River MPO to guide choices for this funding – prioritized list submitted April 30, 2009

Grant Applications

- Neighborhood Stabilization Program (NSP2) - NSP 2 funding is available only for communities and neighborhoods showing high need. HUD has published the maps that indicate the high need areas for foreclosure and vacancy. Our Community Development Director, Jeff Staudinger, has reviewed the maps for the City of Asheville and no census

tracks in our city meet the high need criteria. He advises that we are not eligible for NSP 2 funding.

- N.C. Dept. of Environment and Natural Resources (NCDENR) Drinking Water State Revolving Fund – Four Applications
- NCDENR Clean Water State Revolving Fund – Seven Applications
- Department of Energy Mobile Source Emissions Reductions Grant ($60,000)
- Federal Transit Administration – Transit Investment for Greenhouse Gas and Energy Reduction Grant (TIGGER) -$2,240,000
- Department of Justice (DOJ) – COPS Hiring Grant ($1,645,668)
- DOJ – Local Youth Mentoring Initiative ($482,250)
- DOJ – Competitive Byrne Grant: Project Safe Neighborhoods GREAT Families
- DOJ - Competitive Byrne Grant: Downtown Safety & Crime Prevention Initiative - equipment

Transparency and Accountability:

The ARRA website page is kept updated on funding announcements and applications that pertain to the City of Asheville. Resource links are provided to help with additional information on funding and granting opportunities.

The ARRA newsletter began in April and is sent to the community at large with updates, information and education on the ARRA funding and how it affects Asheville and WNC. There is a link to sign up for the newsletter as well. We are receiving positive feedback on the information.

Public meetings were held on May 14th and May 21st to provide information to the community which was very well received. Information from the meeting is online for future reference and we are continuing to answer inquiries in regards to the ARRA funding.

Next Steps for Staff:

We will be working on meeting and training with affected departments on being 'shovel ready,' ARRA funding requirements and reporting, grant receipts and procedures and contracting procedures once grant funding is awarded. It is our goal to help the process be transparent for the community and run smoothly for staff in getting projects out for contracting and bidding. This will also include a plan to advertise contracting opportunities in addition to what is provided with our regular contracting practices.

We will be meeting with community stakeholders in regards to their ARRA funding. We hope they will provide updates to City Council in the near future on their plans for ARRA funding. Our goal is to provide update to the community on how ARRA funding is affecting our area overall.

Ms. Mills responded to Mayor Bellamy's question of what the City's commitment is to make sure that we are hiring locally and what we can do to encourage our co-application agencies to hire local people as well.

Councilman Mumpower was concerned that this is basically Washington's Community Welfare Program based on borrowed dollars that will have to be repaid. He was concerned that

our enthusiasm will bring us short-term returns, but long-term our children and grandchildren will have to pay for this.

In response to Councilman Mumpower, Ms. Mills explained how we are making information readily available for contractors to check on the legal status of employees. City Attorney Oast also noted that he will update Council on any new state initiatives regarding employing local, legal citizens.

At 3:51 p.m., Mayor Bellamy announced a recess prior to beginning the formal Council meeting.

Regular Meeting **Tuesday, May 26, 2009 – 5:00 p.m.**

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (excused at 10:05 p.m.); Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 12, 2009

B. RESOLUTION NO. 09-99 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR THE INSTALLATION OF POWER UTILITY LINES AND FACILITIES ON CITY PROPERTY ON AIRPORT ROAD (WNC AGRICULTURAL CENTER – NEW LIVESTOCK FACILITY)

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the Western North Carolina Agricultural Center (herein "WNCAC")

The land on which the WNCAC is located is owned by the City of Asheville. It is leased to the State of North Carolina, specifically, the Department of Agriculture and Consumer Services, which uses it for the WNCAC. A new livestock facility is being constructed on the property, and this new facility requires electrical service. The new line would run from an existing transformer west about 30 feet and then north about 150 feet to new transformer to serve the new facility. The easement area would include 10 feet for the line, with the line being in the center, and 10 feet around the enclosure for the transformer.

This installation has been approved by the Department of Agriculture, which requested it. Such improvements are within the scope of and contemplated by the lease.

This action complies with the City's Strategic Operating Plan in that it contributes to an existing partnership with the State for the operation of a regional facility, and promotes community education on agriculture.

Pros:
- Facilitates development and use of WNCAC
- Promotes community education on agriculture

Con:
- None noted

No direct fiscal impact for City; marginal impact on State.

Adoption of the resolution is recommended

RESOLUTION BOOK NO. 32 – PAGE 59

C. RESOLUTION NO. 09-100 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Summary: The terms of Harry Harrison, Dana Irwin and Bill Fishburne, as members of the Public Art Board, expired on December 31, 2008. Mr. Fishburne is not eligible for reappointment and Ms. Irwin has resigned.

At the May 12, 2009, meeting, it was the consensus of Council to (1) reappoint Mr. Harrison to serve a three year term, term to expire December 31, 2011, or until his successor has been appointed; and (2) appoint Ms. Jenny Bowen (to replace Ms. Irwin) to serve a three year term, term to expire December 31, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 61

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

III. PRESENTATIONS & REPORTS: None.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3733 - ORDINANCE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:13 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone properties recently annexed and located along Airport Road Commercial Industrial District. This public hearing was advertised on May 15 and 22, 2009.

On April 28, 2009, the Asheville City Council voted unanimously to zone 86 of 112 parcels in the Airport Road Annexation Area as Commercial Industrial, Highway Business, and RM-16 Districts. At that meeting, property owners in and around the other 26 parcels in the annexation area, which staff had recommended for RS-8 zoning, voiced an interest in Commercial Industrial zoning, despite being an area predominately comprised of single-family residential development. Their interest was based on the facts that the area was surrounded by commercial and industrial businesses and that the property had previously been zoned EMP (Employment) District by Buncombe County.

This property, more specifically, is located off of Bradley Branch Road, Gilliam Road, Machen Road, and Benwood Drive. As previously stated, the property is primarily single-family in nature, but does contain a paving business, a few multi-family structures, and a family care home. Initially, the Planning staff and Asheville Planning and Zoning Commission had recommended these properties be zoned RS-8 in keeping with the existing development pattern. Additionally, Commercial Industrial does not allow single-family residences which would make the existing homes grandfathered, nonconforming uses.

Staff met with property owners in the area on Monday, May 11, 2009, in order to discuss the issues with them and get a sense of their interests. At the meeting and subsequent to the meeting, it became clear that the consensus in the area was for the properties to be zoned Commercial Industrial. In these early communications, staff failed to mention the fact that the single-family homes in the area would be nonconforming and thus, unable to expand. Staff provided that information to the affected property owners and they recommended their property be rezoned Commercial Industrial District.

In light of the interests of the property owners, staff is supportive of the following 26 parcels being zoned Commercial Industrial (CI) District:

> ***CI Commercial Industrial District*** – PINs 9643981845 ,9643983896, 9643983997, 9643986989, 9643988901, 9643994100, 9643994221, 9643994309, 9643994381, 9643996245, 9643996422, 9643999194, 9643999226, 9653081568, 9653081658, 9653081747, 9653081838, 9653090312, 9653090417, 9653090508, 9653091010, 9653091180, 9653091294, 9653091399, 9653092504, 9653092608.

Pros:

- Supports the *Asheville City Plan 2025* goals for regional commercial corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.

Con:

- The single-family homes would become grandfathered nonconforming uses in the Commercial Industrial District.

In response to the interest of the property owners, staff is supportive of these 26 parcels being zoned Commercial Industrial (CI) District.

Mayor Bellamy closed the public hearing at 5:15 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3733. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 285

B. PUBLIC HEARING TO SOLICIT COMMENTS ON A SUBSTANTIAL AMENDMENT TO THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO DISTRIBUTE $332,952 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (CDBG-R) ALLOCATED TO THE CITY OF ASHEVILLE

RESOLUTION NO. 09-101 - RESOLUTION AMENDING THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO DISTRIBUTE $332,952 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (CDBG-R) ALLOCATED TO THE CITY OF ASHEVILLE

City Attorney Oast noted that Council's rules specify that a public hearing must be set by special order of the Council, except in zoning items. Staff was not advised in time for the public hearing to be set at Council's last meeting. Therefore, Councilwoman Cape moved to waive the rules and proceed with the public hearing. This motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy opened the public hearing at 5:18 p.m.

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution authorizing submission of a Substantial Amendment to the Consolidated Action Plan for Fiscal Year (FY) 2008-09, enabling the City to receive $332,942 in CDBG-R grant funding from the U.S. Department of Housing and Urban Development. This public hearing was advertised on May 15 and 22, 2009.

The American Recovery and Reinvestment Act authorized the US Department of Housing and Urban Development to distribute an additional $1 billion of Community Development Block Grant funds to eligible recipients. The City has been allocated $332,942 of these funds, allocated as "CDBG-R" funding.

HUD is requiring unusually fast action on the part of grantees to receive and further allocate these funds. Entitlement cities (of which Asheville is one) have until June 5, 2009, to submit their plan for the use of the funds to HUD. HUD has in turn waived regular citizen participation provisions, requiring only a seven-day public comment period and reduced publishing requirements. City staff prepared and published on the City web site as of May 18, 2009, the proposed Substantial Amendment, thus satisfying the public notice requirements

The City's Housing and Community Development Committee has made recommendations for the use of CDBG-R funds, which must be used in housing or community development programs in Asheville. The recommended uses are consistent with the Strategic Housing & Community Development Plan for 2005-2010. Although statutorily available for any eligible community development activity, HUD *"strongly suggests that grantees incorporate consideration of the public perception of the intent of the Recovery Act in identifying and selecting projects for CDBG-R funding."* Section 1602 of the Recovery Act requires that grantees shall use grant funds in a manner that maximizes job creation and economic benefit.

HUD also states, *"HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings."*

According to HUD: *"In selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009."*

In order to meet the program rules and the intent of the ARRA, the following projects have been recommended for funding:

- **Tier II Emergency Home Repair, $75,000.** Sub-recipient: Mountain Housing Opportunities (MHO). MHO facilitates the extensive repair of homes owned by very-low and low-income, special need households. The maximum investment per home is $15,000. MHO coordinates weatherization activities with Community Action Opportunities; the repairs facilitated by MHO enable weatherization activities to be allowable and effective. MHO will be able to immediately implement the CDBG-R activities. Local building contractors are informed of the program, and MHO will assist those who need help obtaining DUNS and CCR numbers.

- **Weed and Seed Weatherization Program, $75,000.** Sub-recipient: Western North Carolina Green Building Council (WNCGBC). WNCGBC will market and facilitate weatherization for 60 low-income households in the West Riverside area of Asheville. They will partner in this program with the Community Action Opportunities Weatherization program. Marketing of the program will begin immediately upon funding. Youth participating in the Asheville GO program will serve as paid apprentices performing the weatherization work.

- **Mountain BizCapital, $26,000.** Mountain BizCapital is a revolving loan fund for start-up businesses. Entrepreneurs are trained by Mountain BizWorks, which also administers the RLF. Education and training are ongoing, producing an ongoing pool of start-up business applications for the Revolving Loan Fund. At least two start-up businesses will be assisted with these funds.

- **City of Asheville, $123,648.** The City of Asheville will use these funds to contract for a sidewalk serving a lower-income neighborhood in the City. Forty percent of residents of that neighborhood do not own cars, and must currently walk along a road with no sidewalks to schools, jobs, shopping and public transportation. All rights-of-way for the section of sidewalk to be built with CDBG-R funds have been obtained, and the City is prepared to contract for this work upon completion of the environmental review, which is underway.

- **City of Asheville, $33,294: Program Administration.** 10% of grant funds are for administration.

The recommended use of these funds complies with the City Council's Strategic Operating Plan in that it directly relates to the Council's Strategic Goals as noted: (1) Affordable: This plan will assist at least 65 Asheville households remain in affordable housing; (2) Green: The weatherization program in the West Riverside Weed and Seed area will increase energy efficiency for at least 60 existing low income households there; (3) Safe: Sidewalk improvements will improve the safety of our public infrastructure. Emergency home repairs will improve the health and safety of at least 5 Asheville households, primarily elderly households; and (4) Sustainable: New jobs created through the entrepreneurship training program have an increased chance of success.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $332,942 of HUD funding to the City, which will be used to preserve affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $ 345,813 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.
- Because these projects were funded from the pool of existing approved 2009-2010 applications, some of this year's CDBG funds will be freed up for reallocation.

Con:

- Were more time available, a greater range of projects might have been able to be considered for funding.

The Action Plan proposed amendment is fully funded from federal CDBG entitlement grants.

The Housing and Community Development Committee and staff recommend the approval of the resolution to approve the Substantial Amendment to the Consolidated Action Plan for FY 2008-09, enabling the City to receive $332,942 in CDBG-R grant funding from the U.S. Department of Housing and Urban Development.

Mr. Gordon Walton, President of the Board of Homeward Bound, introduced Ms. Fran Harvey, the new Executive Director, and Rev. Heather Spencer, the new Director of A-Hope. Ms. Harvey explained that the mission of Homeward Bound is to end the cycle of chronic homelessness and briefed Council on their overall success rate. Rev. Spencer explained that her role will be more community focused and she looked forward to working with the City of Asheville.

Vice-Mayor Davis felt it would be beneficial for Rev. Spencer to hold a neighborhood meeting in order to introduce herself and perhaps pledge her support in working with the neighborhood in finding some solutions to the difficulties arising from clients at A-Hope.

Mayor Bellamy closed the public hearing at 5:29 p.m.

Councilman Mumpower could not support the action in that this is basically Washington's Community Welfare Program based on borrowed dollars that will have to be repaid. In addition, he was concerned whether the choices are a wise investment of those dollars given the realities of our current economy.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-101. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 62

C. PUBLIC HEARING ON THE DOWNTOWN MASTER PLAN

RESOLUTION NO. 09-102 - RESOLUTION ADOPTING THE DOWNTOWN MASTER PLAN IN CONCEPT

Ms. Sasha Vrtunski, Project Manager for the Downtown Master Plan, said that this is the consideration of a resolution adopting the Downtown Master Plan. This public hearing was advertised on May 15 and 22, 2009.

City Council heard a presentation of the final version of the Downtown Master Plan by the consultants on May 12, 2009. City Council authorized the development of a Downtown Master Plan in June, 2007. Goody Clancy was selected from a field of highly qualified consultants and began work in April 2008. A draft of the plan was presented at a public meeting on January 15, and further changes were made. The final draft was released to the public on March 23 and has been presented to and approved by the Planning and Zoning and Downtown Commissions and the Advisory Committee.

From the beginning of this process, the Downtown Commission stressed to the consultant team that our community is one of many opinions, and that they would have to work hard to find common ground, and to craft a plan that could meet the needs of many different perspectives. The plan strives to do just that. The recommendations are carefully balanced to help form our future downtown while allowing for creativity, flexibility and new initiatives, offering action on the elements that arose as most important to the greatest number of those who were a part of the process.

The master planning process provided numerous opportunities for citizen and stakeholder input. The turnout was very high - much higher than in any effort in recent years – an estimated 4,000 hours of citizens' time in public meetings and committee meetings; and there was wide representation of many different perspectives. In addition to public meetings the consultants conducted over 100 interviews and meetings with stakeholders, and presentations were made at dozens of groups throughout the community.

The consultant team turned that input into a set of design and plan principles and then a set of recommended strategies. Some of these recommendations were initially controversial, and there were numerous discussions between stakeholders to find common ground. Reflecting that effort, some elements that began as recommended actions evolved into recommendations for future consideration located in the Plan Appendix. As a result, there is a strong feeling among the majority of those who participated in the process that the plan now presents an important middle ground that will improve downtown development through predictability, rational standards and clarity.

It is crucial to understand that the Master Plan and the Master Plan Appendix serve two different functions. The Plan is the "roadmap" for Council, staff and the community, while the Appendix supplies additional information and suggestions to staff and the community. By adopting the plan, City Council will not be adopting the Appendix. This preserves flexibility over time in being able to adapt to changing conditions. Key detailed numbers such as exact height of buildings are found in the Appendix, not the Plan itself. After implementation, exact details will be specified and worked out through amendments to the UDO and design guidelines. As always, this amendment process will include Council-appointed Boards and Commissions as appropriate.

Staff would like to note that some editing has been done to correct typos, and ensure consistency throughout the plan. The plan content, however, remains exactly the same.

Key Dates and Actions:

		Actions Taken
Planning & Zoning Commission	April 1, 2009	Voted 6-0 in support of the plan with two recommendations to Council.
Downtown Commission	April 3, 2009	Voted 8-0 in support of the plan
Downtown Master Plan Advisory Committee	April 9, 2009	Voted 13-0 in support of the plan.

A public hearing will provide the opportunity for Council to hear from the community. If Council chooses to adopt the master plan, staff will begin work on the higher priority items. Staff will report annually to the Council on the accomplishments of implementing the master plan. The Downtown Commission is prepared to assist with the implementation through a pursuit group that would have some representation of the commission, but would consist largely of stakeholders from the different sectors of downtown, and differing viewpoints.

Regarding the City Council Strategic Plan, City Council adopted the goal of completing the Downtown Master Plan and to begin implementation.

Pros:

- Establish a clear direction and a coordinated effort to guide staff, advisory boards and commissions and elected officials in efforts to enhance the arts, transportation, development and management of downtown Asheville.
- Help future development in our downtown through greater clarity in requirements, design guidelines and development process, which in turn will increase predictability and objectivity in the development approval process.

Con:

- None noted.

Recommendations about the arts and downtown management are to be triggered by the private sector for implementation. Implementation of the other recommendations in the plan can be folded into the work plans of current staff. The plan calls for supporting projects such as the Performing Arts Center, the Art Museum addition and the rehabilitation of the Diana Wortham Theater, but this support is not specified as financial support per se.

Staff recommends that City Council adopt the plan and direct staff to begin work on implementation of items that are highest priority to Council.

Mr. Jesse Plaster, Chairman of the Downtown Commission, said that this plan is the culmination of a series of planning efforts, beginning with the Asheville Revitalization Plan of 1978 through the Asheville Design Guidelines and the 2002 Center City Plan. The master plan discussion began in earnest at the Downtown Commission's annual retreat in 2007. The need for a master plan comes from all members of the community and addresses their needs. Developers needed a clear picture on what the City wanted and needed clear guidance on the route to approval. Thousands of people have come together from all walks of life during this master plan process to contribute to the plan and influence the future of Asheville. No single party or interest group has gotten exactly what they wanted from the plan. The Downtown Commission approved the plan unanimously and urged Council to do the same.

At 5:38 p.m., Mayor Bellamy opened the public hearing.

The following individuals spoke in support of adopting the Downtown Master Plan:

Ms. Susan Griffin, Chair of the Downtown Asheville Residential Neighbors (DARN)
Mr. Gordon Smith, downtown business owner
Mr. Pat Whalen, past Chair of the Downtown Commission
Mr. Peter Alberice, member of Downtown Commission
Ms. Stephanie Pankiewicz, landscape architect and member of the Downtown Master Plan Advisory Committee
Mr. Larry Holt, member of DARN and member of the Downtown Master Plan Advisory Committee
Ms. Rebecca Heck, representing the Lexington Area Merchants Association
Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation and member of the Downtown Master Plan Advisory Committee

Mr. Joe Minicozzi, member of the Downtown Master Plan Advisory Committee
Ms. Stephanie Twitty, member of the Downtown Master Plan Advisory Committee

Mr. Steve Rasmussen supported most of the Downtown Master Plan, but expressed two concerns (1) degree of authority transferred from elected official to appointed Planning & Zoning Commission; and (2) need for a fair and well defined procedure for City residents affected by a proposal to appeal. He explained that the Master Plan only allows for developers to appeal a denial of their project to City Council. He proposed adding language to Strategy 6, Item J as follows "And enable aggrieved parties, as defined by City ordinance and state law, to appeal approved proposals to the City Council within a reasonable time period." These two issues should be examined further.

Ms. Jenny Bowen, member of the Downtown Master Plan Advisory Committee, expressed two concerns (1) the need for a citizen appeal process; and (2) the need for requirements to get information out to the public about upcoming projects. She could not validate the plan, but supported it as a treaty for growth.

Mr. Albert Sneed felt that there are many special interest group agenda items hidden in the plan, e.g, limit shadows on public parks and designated historic structures. A balanced overall view of the entire City is necessary or these special agendas will seriously impair future development in our City. The genius of downtown Asheville is hundreds of people making independent decisions and pursuing their own visions. It would be a terrible mistake for the City to impose a comprehensive monolithic plan that would prevent this type of growth in the future.

Ms. Leesa Kulba explained why she felt the City did not need a business improvement district. She also didn't like the assumption that developers owe the community something.

Mr. W. Louis Bissette, partner in the law firm of McGuire, Wood and Bissette, P.A., and member of Drhumor Associates LLC explained that the LLC owns the Drhumor building and a parcel of property located on Patton Avenue between Church Street and Lexington Avenue. The parcel of property located on Patton Avenue measures 19,166.4 square feet and is currently used for employee and client parking. The LLC would like to develop the property at some point in the future. He said the plan looks good at 50,000 feet, but the problems become apparent when you get to street level and start applying the compromise restrictions and regulations to specific pieces of property. Urban sprawl will be encouraged because of excessive restrictions and over-regulation of downtown development. When you try to apply the restrictions included in the Master Plan Appendix to a lot such as ours at the corner of Church and South Lexington, it becomes a mind-boggling task to determine what, if anything, can actually be built there.

Ms. Kitty Love, member of the Downtown Commission, hoped that if the Plan is adopted that the City will work with an alliance of arts organizations and individuals to create a cultural experience that benefits some of the broader goals, e.g., tourism, arts, cultural heritage and economic development.

Mr. Chris Lyman, partner with McGuire, Wood and Bissette, P.A., said that there are 11 restrictions in the Appendices which may apply to the property at the corner of Church and South Lexington. Some include (1) limited to 15 stories (even though the lot is in the middle of downtown); (2) subject to front and side step-back restrictions (taking building space from the development); (3) subject to top floor plate limitations (taking 2/3 of otherwise buildable space); (4) subject to a shadow study (because of small pocket park); (5) other restrictions if the lot is determined to be in a view corridor; and (6) due to the proximity of two historic buildings we would be subject to architectural standards to match the buildings. He opposed the adoption of the Plan on the basis that it is overly restrictive of their rights, will diminish the architectural diversity of Asheville, and limit the ability to build green and LEED projects.

Using pictures from the Master Plan, Mr. Jeffrey Owen, attorney with McGuire, Wood and Bissette, P.A., explained how the property value of the parking lot on Church and South Lexington Avenue will be reduced with adoption of the Plan if they develop the property in the future.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Councilman Miller, former member of the Downtown Master Plan Advisory Committee, said that this Master Plan is a compromise and is not perfect. There are some unintended consequences but felt confident that staff will do a good job in working out the details. He supported this Plan as it's predictable, transparent, actionable and pro-active.

Mayor Bellamy said that Council has the option of adopting the Plan in its totality or ask staff to bring the Plan back in phases attaching recommendations on implementation.

Vice-Mayor Davis agreed that the Plan is good and it's not perfect. Since there will be expectations that the Plan will be implemented once adopted, he suggested staff provide an implementation matrix.

Councilwoman Cape spoke in support of the Plan. Due to the 5,000 volunteer hours spent on this Plan, she felt we owe it to the community to adopt the Plan and the resources of staff to work out the details.

In response to Councilman Newman, Planning & Development Director Judy Daniel said that staff can present all the necessary Unified Development Ordinance amendments to Council at one time and then if Council has questions, the amendments can be continued until those questions are answered.

Councilman Mumpower explained how he felt this is an ill advised, expensive indulgence by the City. He felt government's job is to keep downtown clean and safe and if we adopt this Plan, we are expanding the bureaucracy and rules of that indulgence. He felt that adoption of this expensive exercise is expanding City government and curtailing downtown property owner's liberties.

Councilman Newman felt this is a pro-growth plan for downtown and felt there will be more development downtown because of the clarity on what can be built.

Mayor Bellamy said that members of Council have previously been furnished with a copy of the resolution and it would not be read.

Councilman Miller moved to adopt the Downtown Master Plan (not the Appendix) in concept and to direct City staff to begin working on recommendations and a timetable specific to the seven strategies articulated in the Plan. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy said it was going to be very important for staff to bring back the recommendations and timetable in a timely fashion because personally the adopted concept might be different than what will really be implemented.

On behalf of Council, Mayor Bellamy thanked Ms. Vrtunski for her commitment in making this process inclusive to the community. She also thanked those who participated in the process and the countless hours in crafting this Plan.

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Closed Session

At 7:06 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Troy Steven Wyatt, City of Asheville, City Manager Gary Jackson, Police Chief Bill Hogan, Police Officer Chad Bridges, and John Doe, individually and in their capacity as Asheville Police Officers or employees - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C. Gen. Stat. sec. 143-318.10(e). The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11(a)(1). This motion was seconded by Councilman Mumpower and carried unanimously.

At 7:30 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Miller and carried unanimously.

V. UNFINISHED BUSINESS:

A. HEALTH OF DOWNTOWN ASHEVILLE UPDATE

RESOLUTION NO. 09-103 - RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION TO KEEP AMERICA BEAUTIFUL FOR THE GRAFFITI HURTS NATIONAL GRANT PROGRAM

Assistant City Manager Jeff Richardson said that the purpose of this staff report is to provide staff analysis on quick action steps recommended by the Health of Downtown Committee focusing on four key areas: (1) Graffiti Vandalism, (2) Cleanliness, (3) Panhandling, and (4) Towing.

At its meeting on April 14, 2009, City Council received a report from the Health of Downtown Quick Action Committee including recommendations to address four main areas of concern. Pursuant to the report, City Council directed staff to review the recommendations to determine (1) which recommendations could be implemented immediately with no budgetary impact; (2) which recommendations require budgetary funding for implementation, and; (3) which recommendations need local ordinance adoption for legal implementation. Staff was directed to report back its analysis to the City Council on May 26, 2009.

He then reviewed with Council a chart which summarizes staff analysis based on City Council's direction.

Staff analysis of the Health of Downtown recommendations relate to several of City Council's focus areas included in the City of Asheville's 2009-2010 Strategic Plan, including Green, Safe and Sustainable.

Pro:

- Approval of these items will operationally jump start action on downtown issues that have been identified as problematic and needing the community's attention and oversight for improvement.

Con:

- Items requiring additional budgetary resources will require identification of a dedicated funding stream, or reprioritization of existing services.

Staff has provided preliminary information about the budgetary implications for implementing specific committee recommendations.

Staff recommends City Council: (1) Identify which items in each category for which staff should develop specific operational implementation plans. Provide guidance to staff in coordination with the adoption of the FY 2009-2010 budget as to funding levels and provide further direction on the level of service or program to be implemented, and; (2) Consider passing the resolution authorizing staff to apply for the Keep America Beautiful Graffiti Hurts Grant in the amount of $2,500 to provide funding for the education and outreach component of the Committee's recommendations, or of any other portion of the recommendations Council may otherwise wish to see supported by grant funds.

In response to Councilman Newman, City Manager Jackson said that we have a placeholder of $100,000 for downtown improvements.

Mr. Richardson then reviewed the following recommendations and policy/resource/legal analysis. Discussion occurred on each recommendation and direction was given on each policy question.

Graffiti/Vandalism: Cleanup

- City-owned property: Public Works to remove all reported graffiti vandalism on City-owned property by a specified time period – Continue database of complaints and disposition maintained, Public Works staff removes with 48 hours notification. Public Works work with N.C. Dept. of Transportation, Parks and Recreation and Asheville GreenWorks.
- City staff to work with recycling contractors, commercial waste haulers, and utility companies to remove graffiti vandalism from their properties within a specified period of time – Continue, Sanitation Division contacting affected parties.
- 50/50 matching grant program for property owners to help cover one-half vandalism abatement costs – (1) requires policy direction to establish fund and approve criteria and award process; (2) requires additional budgetary resources; and (3) requires staff resources to manage process, review applications and make recommendations to Council or designated body.
- Research and recommend to Council a possible third party to be the first responder for graffiti vandalism removal on private property – (1) requires policy direction and an ordinance to mandate removal by third parties; and (2) requires a Request for Proposals process to assess capabilities and address liability issues.
- Encourage and promote more groups like Asheville GreenWorks, who are removing vandalism for property owners at cost, as well as providing graffiti removal kits for smaller surfaces – Requires staff resources to coordinate program; potential to be included as part of the City's volunteer program coordination.

(1) Does City Council want to require private property owners to clean up graffiti at the property owners' cost under any circumstances?

It was the consensus of Council to instruct the City Attorney to explore the potential for contracting with non-profit agencies or other organizations for graffiti clean-up.

There was discussion to (1) have private property owners cleaning up graffiti either by themselves within a specific amount of time or by signing a waiver that allows someone else on their property to clean up the graffiti; and (2) launch a public awareness campaign making the business community, especially in the downtown area, that they have a responsibility to get graffiti off their buildings quickly.

It was the consensus of Council to instruct staff to get graffiti off public property within 48 hours.

(2) Does City Council want to pilot a removal incentive program like a grant fund? ($5,000, 50/50 match)

There as no consensus for this pilot removal incentive program.

(3) Does City Council want to dedicate resources to a 2-person downtown cleanliness team responsible for loose litter, weeds, sidewalk cleaning, median landscaping and other maintenance? ($127,474 – potential for ARRA funding to cover some costs).

It was the consensus of Council to ask staff to bring back to Council some partnerships opportunities with other organizations.

(4) Does City Council want to allocate funding for 12 additional trash receptacles in downtown? ($12,000)

There was no consensus for this allocation.

Graffiti/Vandalism: Enforcement

- The purchase and installation of a high definition, moveable surveillance camera capable of catching graffiti vandals in the act – Asheville Police Department (APD) has ordered two units to detect graffiti vandals in the act and report the incident for immediate police response.
- Increase the number of stakeouts – Requires additional budgetary resources to increase special operations. APD had conducted a number of stakeouts focused on graffiti vandals and have made a number of arrests.
- CrimeStopper rewards for citizens turning in graffiti vandals – Requires policy approval by the CrimeStoppers Board. Important to note that prosecuting requires catching vandals in the act of the crime.
- Make public aware of motion sensor lights as a major graffiti vandalism deterrent – Able to implement in CPTED immediately.
- Govern spray paint sales – Requires legal review, policy direction and an ordinance to govern sales. Important to note that most vandals arrested are between 18 to 30's, and so limiting sales to minors may not have intended impact.
- More boots patrolling – Requires policy direction and additional budgetary resources.

(1) Does City Council want to allocate additional funding for the purchase of additional detection devices? ($7,500 – 5 units)

It was the consensus of Council to evaluate the detective devices recently purchased and if they are successful, Chief Hogan was instructed to return to the Public Safety Committee with a recommendation for more.

(2) Staff recommends waiting on the award status of ARRA funding dedicated to creating a downtown patrol unit before considering allocating additional resources to enforcement personnel.

It was the consensus of Council to continue to wait on award status.

Mayor Bellamy said that the City of Asheville allocates $25,000 annually to the CrimeStoppers Committee. After a brief discussion, it was the consensus of Council to allocate a one-time addition of $5,000 (in $1,000 increments) for the charging of graffiti vandalism and asked staff to work with the CrimeStoppers Board on the process.

Graffiti/Vandalism: Communication & Education

- Officially launch "Vandal Free in 3," a voluntary community-wide program that residents and property owners pledge to do all they can to remove graffiti vandalism within 72 hours (3 days)
- Create "Vandal Free in 3" website and launch press release campaign including press conference. Website will serve many purposes, including: (1) report graffiti vandalism; (2) post before and after photos; (3) graffiti vandalism removal tips; (4) volunteer sign-ups; and (5) frequently asked questions.
- Establish a hotline to report all graffiti vandalism
- Shame Game: Committee recommended promoting names and photos of captured graffiti vandals. Subsequent research by staff reveals conflicting viewpoints.
- Communicate to the community the economic impact of graffiti vandalism and how these acts increase consumer prices.

For the policy/research/legal analysis for the Communication and Education section, the following items are identified: (1) requires additional budgetary resources and/or a reassignment of existing resources through policy direction. Does not require legal review; (2) An estimate of necessary resource hours is outlined as follows (some work could be completed on contract) (a) campaign design: 4-8 hours; (b) press conference: 4-8 hours; (c) web portal: (i) page creation/design: 8-16 hours (within City's site and template); (ii) content development: 8-16 hours; (c) volunteer coordination: 16 hours for initial set-up; 8 hours/month ongoing; (iv) ongoing maintenance: 1-2 hours/week; and (v) IT support: 4-8 hours; (d) hotline (i) IT support: 4-8 hours; and (ii) ongoing APD support: 5-10 hours/weeks; (e) other resource considerations: (i) paid advertising: $1000-$1500; (ii) printed materials: Varies; and (iii) presentation materials: 8-16 hours; (f) Total resource hours (i) public relations: 16-40 hours; (ii) production: 16-40 hours; (iii) volunteer coordination: 16 hours; (iv) IT services: 8-16 hours; (v) ongoing hotline support: 1-2 hours/week; (vi) ongoing website support: 1-2 hours/week; and (vii) ongoing volunteer coordination: 4-8 hours/month.

Staff recommends Council authorize staff to apply for a $2,500 Graffiti Hurts grant from Keep America Beautiful to apply toward community education and outreach.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved to adopt Resolution No. 09-103 (application for a $2,500 grant) to apply toward the recommendations regarding graffiti/vandalism communication and education. This motion was seconded by Councilman Russell and carried unanimously.

Towing

- Regulate through ordinance (passed Asheville City Council on March 24, 2009) – Initial notification and implementation; monitor for effectiveness.
- Convene major downtown property owners who own lots and discuss current challenges and opportunities regarding parking in private lots – Parking reservation system for private lots currently being researched by staff. Will require policy direction, Request for Proposals for software services, and a public outreach process. Staff to make recommendation to Council in the next 120 days.
- Continue to explore feasibility of awarding parking contract to a third party parking vendor similar to other North Carolina cities – See item above. Would voluntarily expand City parking opportunities and regulation to private lots.

- The integrated wayfinding program will be installed this summer/fall, directing drivers to City-owned parking decks. This should help in reducing the number of cars illegally parked in private lots. – One-half of funding is approved in current fiscal year and remaining amount is budgeted if Fiscal Year 2009-10.

Cleanliness

- If dollars are available, have dedicated City staff tackle litter and weeds problem on a regular basis. – Requires additional budgetary resources. Currently operational crews are reassigned as available to complete. City has applied for ARRA funding for landscaping needs.
- Asheville GreenWorks to encourage monthly clean-ups by Adopt-A-Street sponsors. – Staff can coordinate with GreenWorks to encourage program.
- More trash cans in Central Business District and at bus stops. – Requires additional budgetary resources. Staff has identified 12 new locations for trash cans – cost $12,000.
- Make sure enough resources are available to keep Asheville's new "living room," (Pack Square Park), clean.

(1) The Downtown Cleanliness Team Detail duties and responsibilities would include (1) loose litter clean-up; (2) graffiti removal; (3) median landscaping and weed removal; (4) sidewalk cleaning and weed removal; and (5) sidewalk pressure washing (night schedule). The budget detail would be 2 full-time employees ($67,474); specialized equipment – sidewalk pressure washing ($30,000); and supplies, equipment and vehicle ($30,000) – for a total Clean Team Total of $127,474.

There was no consensus for the allocation of more trash cans in the Central Business District and at bus stops.

Panhandling

- Re-launch "Spare Change for Real Change" effort. – Requires policy direction and budgetary resources if the City were to be the lead agency in re-launching effort. Council may pass resolution encouraging the Downtown Association to re-launch effort.
- Increase number of "Spare Change" receptacles. – Requires policy direction and budgetary resources if the City were to add receptacles.
- Pursue City's strategic goal of establishing a "nuisance court" that can effectively deal with panhandlers. – Requires budgetary resources to develop and launch the nuisance court model. Approximately $25,000 in court administration annually, plus an additional amount to link offenders with services and alternative sentences in addition to police and social worker overtime. Requires policy direction in the form of formal memorandums of understanding with community partners including district attorney, courts, public defender, Buncombe County Department of Social Services, and community agencies.
- Promote widely and encourage residents to call Asheville Police Department at 252-1110 to report panhandling when witnessed. Councilman Mumpower suggested signage used by Savannah, Georgia. – Requires policy direction.

(1) Nuisance Court: Should staff move forward with pursuit of intergovernmental Memorandums of Understanding? Does City Council want to allocate funding to pilot the nuisance court in Fiscal Year 2009-10? ($35,000 estimate for court costs and personnel overtime)

In response to Councilman Mumpower, Police Chief Hogan anticipated there would be fines associated with the conviction and also there would be community service. The District Attorney has committed an assistant to meet on a monthly basis. The money would go towards

(1) hiring a retired judge to conduct court one day a month; and (2) support the Clerk of Court's Office for the official judicial proceedings.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Davis moved to (1) develop the nuisance court model in the amount of $35,000; (2) have staff research what other cities are investing in their program; and (3) instruct staff to move forward with the various Memorandums of Understanding for creation of a nuisance court. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Mumpower said that if it turns out that a nuisance court is too expensive to continue, he suggested the City provide the Police Chief with additional resources to track chronic offenders.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Miller moved (1) to allocate $2,000 toward increasing the number of "Spare Change" receptacles in the Central Business District; and (2) ask staff to provide Council with an estimate to install no panhandling signs, similar to those used in Savannah, Georgia, in the downtown area. This motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy said that as soon as staff has the additional information, it will be placed on the Council's agenda.

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B. CIVIL SERVICE BOARD BLUE RIBBON COMMISSION STATUS REPORT

Councilman Mumpower, liaison to the Civil Service Board, said that the Civil Service Board Blue Ribbon Commission reported their recommendations on the Civil Service Board on May 12, 2009. During that meeting it was determined that organized employee organizations were not consulted in that process. It was the consensus of City Council at that meeting to ask the former Boards & Commissions Committee (Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower) to meet with those organized employee organizations. That meeting occurred on May 19, 2009, which resulted in some significant actions. Since that time, however, Council determined that there was an issue on the table that the Council Subcommittee was not aware of – that there was new legislation as of May 12 that was introduced in Raleigh. Council had some apprehensions in locking the City into agreements where there is a legislative action occurring in Raleigh that the City Council nor staff was a part of. Council is being told what is happening and not being included in the process. On the basis of that, the Council Subcommittee convened an emergency meeting with the 3 of the 4 employee representatives earlier in the day. What the Council Subcommittee would like to bring to the table are the 5 things that the Subcommittee and the employee representatives reached consensus on. There are other issues we could not reach consensus on which will result in further detailed discussions in the near future. Those consensus items are listed below:

Blue Ribbon Commission Recommendation #6

City Clerk acts as Secretary (Section 2 c)

Best Practice in other existing Civil Service Laws. The City Clerk can designate someone to fulfill these duties. The City Clerk already has duties in the grievance process under the current law and is designated under State laws as records custodian and proper person for service of process. Grievance hearings typically are recorded by Court reporters. May have fiscal impact.

City Council Subcommittee Recommendation: Consensus to have City Clerk, or his/her designee, to act as Secretary.

Blue Ribbon Commission Recommendation #7

HR Director ex officio non voting member of the Board (Section 2 d)
Patterned after Wilmington's Civil Service law. Maintains a role in the process for Human Resources and allows for a resource for the Civil Service Board regarding City policy and procedures during grievance hearings. Allows HR Director to be present in closed sessions. No fiscal impact.

City Council Subcommittee Recommendation: Consensus for HR Director not to be an ex-officio non-voting member of the Board, but that the HR Director will be a staff resource and allowed in closed session only upon invitation of the Board.

Blue Ribbon Commission Recommendation #8

Employees may wear uniforms (Section 3 b)
Employees may wear uniforms to meetings but are not considered on duty or compensated while at meetings unless required to be there by subpoena or the City Manager. No fiscal impact.

City Council Subcommittee Recommendation: Consensus.

Blue Ribbon Commission Recommendation #10

Membership requirements (Section 2 b)
Provides for a broader base of possible Board members by extending the membership to all qualified voters of Buncombe County. This article also restricts employees who have been employed within the previous 5 years from serving on the Board. No fiscal impact.

City Council Subcommittee Recommendation: Consensus to reject Blue Ribbon Commission recommendation to allow qualified voters of Buncombe County to serve on the Board. Also consensus to enable former employees to serve on the Board after five years post-employment.

Blue Ribbon Commission Recommendation #11

Board makes own rules of procedure (Section 10)
Formalizes the Board's ability to make their own rules of procedure including meeting frequency and times. No fiscal impact.

City Council Subcommittee Recommendation: Consensus for Board to make their own rules of procedure including regular monthly meetings, however, the Board shall have the flexibility to cancel meetings and make schedule adjustments upon Board majority.

The following are the other items from the May 19, 2009, meeting which did not receive consensus and will be discussed at the next meeting:

Blue Ribbon Commission Recommendation #1

Elimination of rule making authority except as to procedural matters (Delete Sections 4 and 5)

State Law grants the power to the City Manager general supervisory authority over all employees, and to direct and supervise the administration of all departments and agencies, subject to such general rules, regulations, and policies as the Council adopts. The Human Resource field has become increasingly complex and requires a high level of expertise in order to manage the City's human capital. No fiscal impact.

Police and Fire association representative reaction

Section 4. The BRC recommended deleting this section. This section gives the Civil Service Board the authority to make and amend rules for promoting efficiency in the Classified Service of the City. Currently, the Council has the authority to approve or deny the Board's rules and make their own rules. By deleting this section, the Blue Ribbon Commission is recommending that city staff be able to make personnel rules without any accountability to anyone looking over their shoulders, even the City Council and citizens of the City. The Council would give up much of their jurisdiction they currently have over the rule making process governing the city's civil service positions.

- *The flawed reasoning of the Blue Ribbon Commission is very evident. If the funds paying the salaries and benefits of the employees were paid for by the City Manager and his staff, their way of thinking would make more sense. However, accountability as how tax payer's funds are spent requires another level of safeguards. Legislators in 1953 designed the current Civil Service Law so that the substantive rules governing public employees would be produces in the full view of the public. The RBC is recommending to the City Council that the process for substantive rules governing public employees be hidden in the back rooms of City Hall.*

- *As the law is now, and when everyone follows the law, the city manager and his staff can be involved with the Civil Service Board during the rule making process all the way through the City Council's approval or amendment of the Civil Service Board's proposed rules.*

Section 5. This section is for standardization and classification and efficiencies of all positions within the classified service as authorized by Section 4 and requires the designee of the City Manager to consult representatives of the Police and Fire Departments to establish criteria to be used to fill positions within the respective departments. It also gives the Civil Service Board the authority to approve any criteria established. Again, the city staff wants to make the rules for promotion with very little accountability to public and City Council. If Sections 4 and 5 were deleted, rules could be adopted without the Council fully understanding the reasons behind the rule making process and how employees are managed.

Council subcommittee recommendation

Reject the recommendation. Retain current provisions of Sections 4 and 5, with one clarifying amendment. In the first sentence of Section 4, scratch "shall make, and may amend" and insert "shall recommend.

Blue Ribbon Commission Recommendation #2

Judicial review in nature of certiorari instead of trial de novo (Section 8 f.)
Provides for a less burdensome and a less resource intense (time and money) process for each party. Similar to review for other administrative proceedings, including other civil service boards in NC. Empowers the Board with full quasi-judicial hearing and decision making authority. Decreases fiscal impact to employee and City.

Police and Fire association representative reaction

This should be rejected. Although it rarely happens, this is just another way to keep the employee from having their day in court or to be able to petition a trial by jury.

Council subcommittee recommendation

Inclined to reject subject to further advice from the City Attorney.

Blue Ribbon Commission Recommendation #3

Clarify Subpoena power to Board during grievance hearings (Section 8 c)
Best practice based upon review of other Civil Service laws in the State. No fiscal impact.

Police and Fire association representative reaction

We feel this should be rejected. The first sentence of the underlined words allows the city staff to reject any attorneys they do not like. The remainder of the underlined is not needed with the current language in SB 556.

Council subcommittee recommendation

Seek advice of the City Attorney.

Blue Ribbon Commission Recommendation #4

Assistant Directors added to those not covered by Civil Service (Section 2 b)
Assistant Directors are members of the City Manager's executive team and are frequently called upon to act as an extension of the Department Director. The City Manager, Department Directors and Assistant Directors are held to very high level of accountability to City Council on operational, budget and personnel matters. The City Manager needs the latitude to be held solely accountable to City Council for the actions and behavior of these personnel. No fiscal impact.

Police and Fire association representative reaction

Why should the assistant directors of any departments be exempt from being a member of the Civil Service?

- *Suppose the assistant director was being told to do something that was immoral or illegal and he refused. He/she could be fired without cause. If he/she were unable to appeal a grievance before the Civil Service Board the incorrectness of the original order would mostly be lost. All city employees are accountable to the public. Why not allow the process to work for the efficiencies of city government.*

Council subcommittee recommendation

Accept the recommendation to exempt Assistant Directors based on executive management status of the positions.

Blue Ribbon Commission Recommendation #5

City Council's right to control the City's finances (Section 1)
Common language in other existing Civil Service laws. Law should recognize Council's/Manager's legal authority to eliminate positions to address budget needs. No fiscal impact.

Police and Fire association representative reaction

Part of their proposal 'and nothing in this law shall be so construed as to deprive the Asheville City Council of its control of the finances of the City."

- *The City Council should reject this addition. In over 56 years, the Civil Service Board has never caused a problem that affected the City's finances **BUT**, if this language were in the Civil Service Law, the City Staff could over rule any decision by the Board to subpoena witnesses they did not want to be heard by saying the Board is depriving the City Council of its control of the City's finances.*
- *The staff could even use this to deny the Board to meet saying the cost is denying the Council control of the City's finances.*

Council subcommittee recommendation

Inclined to accept the recommendation to retain Council's financial control.

Blue Ribbon Commission Recommendation #9

Outside Counsel for grievance hearings (Section 8 c)
Formalizes the current practice of providing a qualified outside attorney for grievance hearings. The City Attorney shall approve the qualifications and fees. No significant change in fiscal impact.

Police and Fire association representative reaction

We feel this should be rejected. The first sentence of the underlined words allows the city staff to reject any attorneys they do not like. The remainder of the underlined is not needed with the current language in SB 556.

Council subcommittee recommendation

Seek the advice of the City Attorney.

Other Blue Ribbon Commission Recommendations

Clarify provisions 8(b) enabling the Board to extend the time in taking action and 8(e) specifying board decisions shall include findings of fact. Delete language in Section 11.

Police and Fire association representative reaction

Section 8. *Subsection (b) recommendation seems to be grammatically incorrect and the lack of helping words causes this sentence to make no sense.*
Subsection (e) recommendation is trying to structure the law so that any witnesses' testimony could be rejected. They can always claim that any testimony, even if it is eye witnessed, is not "substantial and competent evidence of record." This is too much room for interpretation.

Section 11. *Just deleting repetitive language and is okay.*

Council subcommittee recommendation

Seek the advice of the City Attorney.

In addition to the discussion of the Blue Ribbon Commission Recommendations, the subcommittee and association representatives discussed the SB 556 provision of criminal penalties for violation of either the civil service law or civil service procedural rules. The

association strongly recommended reinstatement, of pre-1999 criminal penalties, as a deterrent to oppressive management.

Councilman Mumpower moved to approve the City Council Subcommittee recommendations on the five items outlined above (Numbers 6, 7, 8, 10 and 11). This motion was seconded by Vice-Mayor Davis and carried unanimously.

Vice-Mayor Davis said that a meeting has been arranged for Monday, June 1, 2009, with the City Council Subcommittee and the employee organization representatives to work out the remaining details. Mayor Bellamy said that when those details are worked out, they would be brought back to City Council for consideration.

Councilman Miller suggested City Attorney Oast be invited to the next meeting for any attorney clarification that may be necessary.

C. ANIMAL CONTROL ORDINANCE – TETHERING

Assistant City Attorney Curt Euler said that Chain Free Asheville has proposed that the City of Asheville adopt an ordinance prohibiting the tethering of animals on private property within the City limits.

On Tuesday April 28, 2009, the City Council adopted a revised animal control ordinance. In the revised ordinance, staff did not have any provisions which prohibited the tethering of dogs on private property. At the public hearing on the revised animal control ordinance, Chain Free Asheville along with a number of individual citizens requested that the City Council adopt an ordinance prohibiting the tethering of dogs on private property in the City limits. Council adopted the revised animal control ordinance but requested that staff come back to Council with information on the issues of achieving a goal of the prohibition on tethering twenty-four hours a day/seven days a week in Asheville in the future and give recommendations on making sure that people who do not have the resources to build a fence to secure their dog are not unfairly penalized.

In terms of achieving the goal of completely prohibiting tethering on private property in the City of Asheville, staff believes there are two methods for Council to consider. First, Council could adopt a tethering prohibition but delay the implementation of the prohibition until a later date. When implementing the tethering prohibitions, Durham County, Orange County, the Town of Chapel Hill, and the City of Raleigh delayed the date the ordinance went into effect. For example, Durham County adopted the ordinance on September 8, 2008, and it does not go into effect until January 1, 2010. Raleigh adopted its ordinance on March 3, 2009, and it is not effective until July 1, 2009. Orange County adopted its ordinance on November 18, 2008, and it will not be effective until November 19, 2009. Chapel Hill's ordinance goes into effect March 1, 2010, but they will only be issuing warning citations for the first three months. Actual enforcement of the Chapel Hill Ordinance with penalties begins June 1, 2010. We also looked at New Hanover County and found that their ordinance had no waiting period. They are also responsible for no tethering in the City of Wilmington, which is a similar size of Asheville. The enforcement in New Hanover County is through the issuance of fines. Therefore, Council has the option of adopting a tethering prohibition but delaying the effective enforcement date of the ordinance for any period of time in order to educate the public and give dog owners who tether the chance to make alternate arrangements for keeping one's dog on his or her property.

The second option for Council, if Council does not wish to actually adopt a tethering prohibition at this time, is to place in the tethering provision of the animal control ordinance on a mandatory review date where staff must conduct a review of the tethering issue and report back to Council on an annual or bi-annual basis. City Council in other situations has mandated staff review of other City ordinances on a bi-annual basis.

Staff also researched at whether a tethering prohibition can only be enforced against persons who have the financial ability to purchase a fence. First, it should be noted there are no provisions in the current City Code that requires an individual to secure a dog on his or her property by means of a fence or electric fence. The City Code Sec. 3-27 prohibits a person from allowing his or her dog from being at large (i.e. off the owner's property without a leash). The City has no say in how a person keeps a dog on his or her property as long as the dog stays on the person's property and the means of securing the dog is humane. Therefore, under the current ordinance, except for potentially dangerous and dangerous dogs, there is no way for the City to make a person build a fence to secure his or her dog.

A tethering prohibition would be adopted pursuant to N.C.G.S. § 160A-186 in order to protect the public, health safety and welfare of the citizens. Staff could find no examples of existing public health and safety ordinances enforced on persons based on financial means. In addition, staff could find no case law or enabling legislation that would allow a municipality to apply a public health and safety ordinance to persons based on their financial status. It is staff's position that any financial test which triggers the enforcement of a public safety ordinance may violate the equal protection clause of the U.S. and North Carolina Constitutions and that the best practice for enforcing a public safety ordinance is for the ordinance to apply to all persons as opposed to a select few based on financial considerations.

Staff was also asked to look at whether the tethering prohibition could only be enforceable against persons who tether and refuse the help of community groups to build a fence. Furthermore, if the community group could not build the fence then the City would not issue the citation to the person tethering the dog. While it is possible to craft an ordinance with these provisions, it is staff's position that such an ordinance would be operationally unfeasible and enforcement would be based on a private group's ability to build a fence in the City. When researching tethering ordinance across the country, staff could not find any ordinances with similar provisions. If the City adopted such an ordinance, the enforceability of the tethering prohibition would totally be dependent on a non-profit or community group's ability to build fences. Such an ordinance would create numerous operational headaches for the animal control officer attempting to enforce the ordinance.

As stated in the April 28, 2009, Staff Report, tethering is the act of securing an animal to a fixed location so that it can only range within a set radius (i.e. tying a dog to a tree in one's backyard). Tethering has nothing to do with walking a dog on a leash and has no effect on one's ability to take his or her dog out for a walk. After researching this issue, it is staff's position that a tethering prohibition on private property initially will increase the number of at-large dogs and increase the number of dogs brought to the shelter. In addition, it is staff's position that adopting a complete tethering prohibition will create more calls for service and require an additional staff person to ensure proper education and enforcement of the tethering prohibition.

Pros:

- Eliminates the risk of a dog being injured by getting tangled in its tether.
- The City will be promoting a preferred practice in animal care.
- The prohibition may discourage persons from getting a dog when the persons are not prepared for the responsibilities associated with securing the dog on one's property.
- Improved quality of life for the dog.

Cons:

- Adopting a tethering ban would increase calls for service and need for additional staffing.
- The prohibition of tethering could adversely effect low income citizens and place financial burden on citizens to erect fences to confine their dogs.
- Person may allow his or her dog to roam freely on the person's property as opposed to building a fence thereby creating more at large dog calls for service.

- Persons may surrender their dogs to the animal shelter because of the increase costs of securing one's dog on his or her property through fencing or purchasing an invisible fence system.
- Requiring fences/invisible fences to be erected for confinement as opposed to tethering may come into conflict with homeowner associations' bylaws/restrictive covenants in some neighborhoods.

A tethering ban would increase the number of calls for services for animal control officer. This would create the need for one (1) additional full time employee for a total of five (5) Animal Services Officers.

Salary and Benefits:		
Entry Level:	$25,396.98 annually + 26% for benefits =	$32,000.19
Vehicles:	Fully equipped Animal Services Truck: 1 current Vehicle has 174,000 miles and 1 has 96,900 miles. Would need to replace 1 vehicle as part of current year Capital purchases.	$38,000.00
Laptop Computer:	1 Semi-ruggedized mobile computer:	$2500.00
Uniforms:	For 1 position:	$700.00
Training, Travel and Certification:	For 1 Position:	$1125.00
	Total Fiscal Impact:	**$74325.19**

If City Council decides to adopt an ordinance prohibiting the tethering of dogs on private property, from an operational standpoint, Staff recommends the following: (1) Create another animal control officer position to deal with the increased enforcement and educational issues associated with a tethering prohibition; (2) Do not begin enforcement of a tethering prohibition until September 1, 2010. The cost of the additional officer and equipment can be placed in the 2010-2011 budget as opposed to 2009-2010 budget.; (3) Adopt a total prohibition on unattended tethering at all times on private property. City staff believes that allowing a dog to be tethered unattended for a certain number of hours per day will be impossible to enforce in that staff has no adequate way to determine when a dog was first placed on a tether; and (4) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property).

Upon inquiry of Mayor Bellamy about a public comment process, City Attorney Oast said that the public hearing on this was not a required public hearing and it's up to Council on whether they want to solicit additional public comment at this time. Staff was directed by Council to come back with information about tethering ordinances. If Council wants to provide staff with further direction on an ordinance, then at that time public comment would be appropriate.

Councilman Newman was very concerned about making criminals out of people who don't have the finances for a fence or compliance. It seems like most communities have an education period before they move into the enforcement phase and that makes sense. Since there are many people in the community who care a lot about this issue and who are spending their own funds to help people build fences, he suggested creating a fund with resources provided by those people. If we move towards prohibiting 24/7 tethering, during Phase One of the educational period we could work on the creation of a pool of resources raised by people in the community who care about these issues so when we move into Phase Two (the enforcement) we can feel confident that there will be some resources to help those who financially cannot comply. He did support moving forward with a policy prohibiting tethering of dogs, but contingent upon the creation of the fund outlined above.

Councilwoman Cape would like to adopt prohibiting tethering of dogs immediately. She noted that when you get a dog, you are supposed to apply for a $10 dog license from the City of Asheville. We can amend the dog license form to show that the City does not allow tethering and perhaps a line that asks how will your dog be cared for. She felt we can phase out unattended tethering by September 1, 2009. She also felt that staff could work on a complaint driven basis for allowing tethering for a short number of hours.

In response to Councilwoman Cape, Police Chief Hogan said that the September 1, 2010, enforcement date was suggested in order to add the cost of the additional full-time animal control officer and equipment in the 2010-2011 budget. In addition, it would give staff a sufficient amount of time to work with ChainFree Asheville and other organizations to help in the education process, build fences, etc. We're not saying that you have to have to build a fence, or have an invisible fence installed – you can chose to take your dog inside. He also felt it would be wise for a grace period of warning citations.

Councilman Mumpower personally was against tethering, however, he did not support government getting involved in that role. A greater concern to him is that we can't stop drug dealers from running open air drug markets in our public housing developments, graffiti vandals, aggressive panhandlers, etc. He was very hesitant to see us distracted from our primary mission. He felt we should passionately concentrate on abuses through complaints and hold those people who are doing things wrong accountable. If the prohibition is adopted, he suggested some consideration be given to grandfathering.

Vice-Mayor Davis supported prohibiting tethering with enforcement beginning on September 1, 2010.

Councilman Miller also supported prohibiting tethering with enforcement beginning on September 1, 2010.

In response to Councilman Miller, Ms. Peggy Irwin, representing ChainFree Asheville, said that ChainFree Asheville wants a total ban on tethering, but would be open to a 3-hour time frame of unattended tethering, noting that it would be difficult to enforce. There are about 200-300 tethered dogs in the City, noting it's hard to see many of those as they are hidden in alleyways and behind homes. It costs roughly $300 to build a fence for a single dog. They do have serious monetary commitments from people in the community to build fences.

Upon inquiry of Mayor Bellamy, Mr. Euler explained that under our current laws, tethering means you are required to keep your dog on your property. How you keep your dog on your property is up to you (invisible fence, built fence, or inside). What the tethering ban would do is prevent you from tying the dog, whether that's using a rope, chain, etc. to a fixed location and leaving it outside on your property. T-runners would also not be allowed. The definition of tethering does not include a leash, so that does not prevent anyone from taking their dog out for a walk. All it does is prevent you from leaving your dog tied to a rope which is tied to a fixed location, so the dog can't run free.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that if the owner is outside with the dog and the dog is on a T-runner that is "attended" tethering and that is one of the recommendations which Council can consider. He understood that the recommendation is to adopt a total prohibition on unattended tethering.

Mayor Bellamy said that we need to be crystal clear on the recommendation. She felt we need some level of "attended" tethering in the ordinance. She agreed we do not want dogs on chains or ropes all day long, but felt strongly felt we need some form of "attended" tethering.

Councilwoman Cape agreed with the recommendation to adopt a prohibition on unattended tethering, except for a 3 hour period when the person responsible for the dog is

present for not. She noted we are all trying to get to the end result of ending cruelty and dangerous aspects to animals, understanding there are a lot of variables.

In response to Councilman Newman, Police Chief Hogan said that we can change the form so that we can recognize it's a new animal that was not registered the prior year and have a notice that with this new dog you cannot tether the new dog. But, it will take (1) additional administrative time; and (2) a follow-up to ensure that the ordinance is being followed in that the new dog is not being tethered. He did feel it was doable through our licensing process.

Councilman Newman moved that it is the intent of City Council (1) to move forward with a policy on the prohibition of 24/7 unattended tethering (with perhaps a secondary motion on the period of time when the person responsible for the dog is present); (2) that there be a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component; (3) to support creating a fund using private dollars raised by people in the community who care about this issue used once we move into Phase Two (enforcement phase) to assist people complying with the law that have a legitimate financial hardship to achieve compliance with the ordinance; (4) to make execution entering into Phase Two contingent upon the creation of this community fund; and (5) to direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund. This motion was seconded by Councilman Miller.

Councilman Miller explained why he felt everyone should be allowed to take advantage of the community fund, regardless of income and offered a friendly amendment to remove the legitimate financial hardship as a condition of accessing the community fund. Councilman Newman accepted the friendly amendment.

Mayor Bellamy offered a friendly amendment to the motion to include a short hour period for "attended" tethering. Councilman Newman accepted the friendly amendment.

Councilwoman Cape was concerned that if the fund doesn't have $90,000 (300 fences for $300 each) that we are not going to move into enforcement of the ordinance. She suggested Phase One be an educational process and a fund-building process, and Phase Two be enforcement.

Councilman Newman felt that community fund needs to be a condition precedent going into Phase Two. He believes this is the right thing to do but not make people criminals that do not have the financial resources to build a fence.

Mayor Bellamy said that at this point, Council is giving direction to staff to come back to Council with an ordinance using the parameters discussed. If a Council member would like to work with staff on crafting such an ordinance, she felt that would be appropriate.

Councilman Newman said that the community can see that Council is committed to the law. He felt confident that the community will come forward with the resources to make sure that enforcement of the law is done in a way that is fair to the existing dog owners who do not have the financial means to comply with the law.

Upon inquiry of Councilman Mumpower, Police Chief Hogan said that he would provide Council with data for the past year on the number of dog bites and the percentage associated with tethered dogs.

The amended motion made by Councilman Newman and seconded by Councilman Miller as follows: "that it is the intent of City Council (1) to move forward with a policy on the prohibition of 24/7 unattended tethering, except for a short period of time of "attended" tethering; (2) that there be a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component; (3) to support creating a fund using private

dollars raised by people in the community who care about this issue used once we move into Phase Two (enforcement phase) to assist people in compliance with the law; (4) to make execution entering into Phase Two contingent upon the creation of this community fund; and (5) to direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund, carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy said that staff will bring back an ordinance for Council's consideration.

D. RESOLUTION NO. 09-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MATHEWS ARCHITECTURE FOR WC REID CENTER CREATIVE ARTS CONSTRUCTION DOCUMENTS

Parks, Recreation and Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Mathews Architecture to develop the construction documents for the construction of the WC Reid Center for Creative Arts for an amount not to exceed $278,600.

City Council reviewed and approved the new construction plan for the WC Reid Center for the Creative Arts on January 13, 2009.

The City conducted a request for qualifications (RFQ) to develop the WC Reid Center construction documents. The City's policy was followed which included posting RFQ at the mandated locations and number of days, and adhered to the Minority Business Plan. The City received 11 qualified submittals and selected three finalists to interview.

Mathews Architecture was selected as the most qualified firm to develop the construction documents since it demonstrated the most direct experience in recreation and community center design through representative projects that were similar to the scope and scale of this project. The firm most thoroughly articulated the site planning process and the integration of LEED design in terms of a proposed center design.

Mathews Architecture's offices are located at 34 Wall Street, Asheville, North Carolina. The negotiated cost for the construction documents is for an amount not to exceed $278,600.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Sustainable Goal of addressing the city's aging infrastructure including facilities, as well as the Green Goal of making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

This project complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it supports strategically increasing recreational programming level of service, ensures a continued high level of service in parks, and increases connectivity to parks and greenways.

Pros:
- Next step in the process to fulfill the city's commitment to construct a new WC Reid Center for Creative Arts

Cons:
- If not proceed with construction documents at this time will delay the project resulting in a loss of public and private grant and donation funding

Construction of the Reid Center is funded by 25% of City of Asheville funds as approved in the Fiscal Year 2006-07capital improvement budget, and by 75% of public and private grants

and donations. Cost associated with development of the construction documents is part of the total estimated project cost and budgeted in these funds previously allocated for project.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Mathews Architecture to develop the construction documents for the WC Reid Center for Creative Arts for an amount not to exceed $278,600.

Mr. Simmons responded to Vice-Mayor Davis' concerns regarding $278,600 being spent for a $2 Million project and the reasoning behind a change from the original architect firm.

Councilwoman Cape was pleased that we will be using LEED standards with this building.

Councilman Mumpower was concerned that we are pursuing new construction when we are having tremendous difficulty in maintaining what we currently have. He was also concerned that this project will leave us with an old building that we are still going to have to do something with.

In response to Councilman Mumpower for low bid information, Mr. Simmons said that design work is not bid out. It's done by a Request for Qualifications. A vendor is selected and then a contract is negotiated. City Attorney Oast said that for construction projects over a certain size we are required to solicit proposals from certain types of professionals, but we are prohibited by law from seeking the low bid. The best qualified firm is selected and then a price is negotiated. He has seen where firms supply the hourly fees charged and that can vary depending on who's doing the work.

Councilman Newman felt that the project has strong merits and a lot of people have contributed and raised money for this project. It's true we do have a lot of capital needs for the City, but opposition to this project does not solve those problems for the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-104. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 65

E. RESOLUTION NO. 09-105 - RESOLUTION AUTHORIZING NOTICE OF INTENT TO EXERCISE OPTION TO PURCHASE 29.62 ACRES OF REAL PROPERTY (BEAUCATCHER MOUNTAIN / WESTERN SLOPE) PURSUANT TO LEASE – PURCHASE AGREEMENT WITH THE TRUST FOR PUBLIC LAND

City Attorney Oast said that this is the consideration of a resolution authorizing the acquisition of 29.5 acres on Beaucatcher Mountain for park purposes

In May of 2007, the City entered into a 3-year lease purchase agreement with the Trust for Public Land (TPL) to acquire the property (approximately 29.5 acres) known as Overlook Park. We are entering the third year of that agreement, and the contract with TPL requires us to give notice of our intent to purchase the property on or before June 2, 2009, with closing to occur on or about August 1, 2009.

He provided Council with (1) copy of a March 20, 2007, memorandum outlining projected costs for developing and maintaining the park, and (2) copy of a May 15, 2007, staff report outlining the transaction, including acquisition costs. Reference to the previous documents is made for a detailed explanation of the transaction, including "pros and cons".

The entire amount remaining due on the property for 2009 is $476,431, which includes principal and interest, and under the agreement, the City is responsible for all of it. Assuming that other pledges (including Buncombe County's pledge of $191,000) are fulfilled as expected, the remaining obligation will be $200,053. A recent conversation with representatives of TPL indicates that funds are on hand with TPL currently such that the City's obligation at closing is anticipated not to exceed $260,000. This is a conservative estimate (principal and interest), and assumes that TPL will receive no more donations for this project, and that some pledges will be unfulfilled. We have reasonable expectations that additional funding will be received, and representatives from TPL and private funding sources will be present at Tuesday's meeting to address this.

Application for the PARTF Grant referred to in the May 15, 2007 staff report, which was supposed to be used in year 2 of the agreement, has been deferred until this year. If the PARTF grant is awarded, it is possible that all of the City's costs for the third year lease payment (and other costs of acquisition) will be covered by it. For budgeting purposes, however, the City should plan on expenditures as outlined herein, and some amount (conservatively, $20,000) to cover closing costs and taxes. The proposed budget for 2009-2010 has sufficient funding to complete this transaction. As noted, this "account" remains open at TPL for the receipt of funds, and we will continue to be credited or reimbursed for our acquisition costs as pledges are fulfilled. In order to allow time for a decision to be made on the award of the PARTF grant and for other pledges to be fulfilled, we will see if it is possible to negotiate an extension of the August 1 closing date.

If Council desires to proceed with this acquisition, adoption of the resolution is recommended.

In response to Councilman Mumpower, Parks, Recreation and Cultural Arts Director Roderick Simmons said that he would be happy to provide Council with a comparison of the cost of our Parks, Recreation and Cultural Arts Department with other cities our size in North Carolina.

Mr. Slade Gleaton, representing the TPL, reported that they have $148,000 in pledges, noting that there are still questions on whether the pledges will be forthcoming due to the economy.

Councilwoman Cape said that the project was $2.6 Million and we still have the possibility of a $500,000 PARTF grant. She felt we have a good chance for that kind of grant because of all the participatory funding of private and public sources. She said that people that are interested in putting funds into the development but they can't do that until we own it. To offer this type of asset to our community and visitors is a great gift.

Ms. Stephanie Pankiewicz, member of the Greenway Commission, read a statement from the Greenway Commission. In part, it said that the Commission supports efforts to improve and expand parks and greenways throughout the City. The proposal concerning Overlook Park is an opportunity to do that. It also fulfills a commitment made by the Council to the TPL and to the citizens to take advantage of an opportunity to obtain a unique and desirable property at a fraction of the property's value. The $260,000 funding amount due now from the City represents 10% of the property's $2.6 Million value."

Councilman Mumpower thought this is a good purchase, however, he has trouble with promises made and not fulfilled (not intentional) and having the City taxpayer pick up the

pressure. He was concerned that the City would not receive the PARTF grant since the State is contemplating a $3 Billion reduction.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-105. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 66

VI. NEW BUSINESS:

A. ORDINANCE NO. 3734 - BUDGET AMENDMENT FROM WARREN WILSON SUMMER TO ENHANCE THE SUSTAINABILITY OFFICE PROGRAM

Summary: This is the consideration of a budget amendment, in the amount of $1,500, to appropriate revenue and budget expenditure accounts associated with the payment for a part time temporary intern in the Office of Sustainability.

The City of Asheville and Warren Wilson College formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. One of the specific elements of this partnership is to provide opportunities to Warren Wilson College students through internship. The Sustainability Management and Policy Intern will support the Energy Coordinators efforts in annual reporting requirements and data analysis part time for a 3 month period. The stipend associated with this work total $1,500.

Warren Wilson College will provide the necessary funds for payment to the Sustainability Management and Policy Intern upon approval of this budget amendment request.

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Expand partnerships with UNC-Asheville, AB Tech and other institutions; (2) Provide leadership in buying local products and services; and (3) Achieve short term and long term energy goals and reduce city carbon emissions by 2% each year.

Pros:

- Internship provides green collar job skills
- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operation
- No cost to the City.

Con:

- None identified.

The $1,500 to payment of intern wages will be provided by Warren Wilson College to be paid through the City of Asheville to the intern.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of intern wages.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3734. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 287

B. RESOLUTION NO. 09-106 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PURCHASE FAREBOXES FOR THE TRANSIT FLEET

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the N.C. Dept. of Transportation (NCDOT) as State match to purchase fareboxes for the transit fleet.

City staff is in the process of acquiring new fareboxes for the transit system. Part of the effort was to pursue 10% State match for the capital expenditure. Staff applied with the NCDOT and the funds were granted.

The fareboxes are an essential part of operations; they are used to collect the cash fares ensuring a safe environment for drivers and system users. The acquisition of new fareboxes will enhance driver effectiveness and work conditions. The proposed technology stores cash, and accept magnetic swipe cards which will expedite boardings and will increase safety. The farebox system records fares and passenger data and produce accurate and reliable reports about system usage. This technology can be upgraded to issue tickets, handle transfers and read smart cards.

Staff has developed the technical specifications for the fareboxes. The bid and selection process it is expected to take two months. Production process is estimated to take four months.

The estimated cost of this project is $220,400. The City is funding this project using Section 5307 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or $176,320. The City will provide 10% or $22,040 and with this Interlocal Agreement the State will contribute the additional 10%.

This action complies with the Strategic Operating Plan proactively leveraging funding from the State and other funding sources for regional transportation improvements.

Pro:

- Entering into an Interlocal Agreement with the NCDOT reduces the City's contribution to 10% of the cost of the project.

Con:

- None at this time.

The project cost will be $220,040, with 80% of this total to be paid by federal funds - FTA section 5307; 10% or $22,040 by the City and 10% or 22,040 by the State.

City staff recommends City Council authorizing the City Manager to enter into an Interlocal Agreement with the North Carolina Department of Transportation in the amount of $22,040 as State match to purchase fareboxes for the transit fleet.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower reminded Council we are using borrowed dollars from the federal government. He said the help we need from the State of North Carolina, at any level, is for help with the court system. We can buy fareboxes, but we can't fix the court system.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-106. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 67

C. RESOLUTION NO. 09-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2010 TRANSPORTATION DEMAND MANAGEMENT GRANT PROGRAM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE PROGRAM

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration authorizing the City Manager to apply for the 2010 Transportation Demand Management (TDM) grant program and enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for administration costs of the program.

TDM programs are programs which promote an alternative transportation option to the single occupant vehicle. Included among these alternatives are carpooling, vanpooling, telecommuting, transit, bicycle, flexible work hours, compressed work weeks, and parking policies and price structures.

NCDOT's Public Transportation Division is funding TDM programs across the state to support the provisions of the Ambient Air Quality Improvement Act of 1999, Senate Bill 953, to address growing concerns over ground level ozone pollution from motor vehicles and the need to deal with increasing vehicle miles traveled (VMT) and NO_x emissions. This bill established the goals of reducing emissions of nitrous oxides (NO_x) from motor vehicles by 25% by 2009 and reducing the growth of VMT in the State by 25% by 2009.

This program only funds the administrative costs associated with the TDM program, up to 50% of the total administrative expenses. This includes salaries, fringe benefits, marketing, etc.

There are six TDM strategies that the City of Asheville's TDM program is required to employ in order to accomplish the TDM Program Goals set by NCDOT. They are:

1. Conduct marketing efforts/activities identified in a marketing plan.
2. Coordinate with local transportation and land use planning efforts.
3. Facilitate ridematching services through the ShareTheRideNC website.
4. Promote the Best Workplaces for Commuters^{SM} Program.
5. Collect and calculate data on VMT and NO_x reductions through TDM activities.
6. Operate in a manner consistent with the NCDOT goals regarding making our transportation network safer, making our transportation network move people and goods more efficiently, and making our infrastructure last longer.

The City's TDM program began in August 2005 and was administered under the French Broad River Metropolitan Planning Organization (MPO) and the City of Asheville's Transportation and Engineering Department. Since the functions of the MPO have been relocated to the Land of Sky Regional Planning Council, the TDM program was given its own budget code of 1606 to help with accountability. The 2009/10 budget for this program is currently in the City of Asheville's budget process.

Programs currently being administered are, but not limited to:

- The *PASS*port (employer bus pass) Program
- The Emergency Ride Home Program
- Strive Not to Drive – annual promotional event
- Share the Ride NC – Statewide ridematching program

On March 10, 2009, the City of Asheville applied for the Fiscal Year 2010 TDM Grant. In June 2009, the Board of Transportation will vote on whether or not to approve the funds in the maximum amount of $84,636 for the City of Asheville's TDM Grant.

The total amount for this grant is $84,636, of which 50% is reimbursed by NCDOT.

This TDM program supports the City of Asheville's 2009/10 Strategic Plan by helping to promote emission-reducing options, as well as supporting the Asheville Transit System though programs such as the *PASS*port program.

Pros:

- The current 50% match is reimbursed by NCDOT.
- To date, these statewide programs have reduced the growth of VMT by 24.6% - the goal for Senate Bill 953 was 25%.
- This program funds 50% of the TDM Coordinator position.

Con:

- None.

The project cost will be $84,636; 50% of this total will be paid by NCDOT and 50% by the City.

City staff recommends City Council authorize the City Manager to apply for the 2010 TDM grant program and enter into an agreement with the NCDOT for administration costs of said program.

In response to Vice-Mayor Davis, Mr. Putnam said that he would be happy to provide Council with a report of performance measures on the effectiveness of the programs.

Councilman Mumpower said the help we need from the State of North Carolina, at any level, is for help with the court system. These are nice projects, but not necessary.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-107. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Russell and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 68

D. RESOLUTION NO. 09-108 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FEDERAL COST SHARE AGREEMENT WITH THE ARMY CORP OF ENGINEERS TO ASSIST IN THE COMPLETION OF THE SWANNANOA RIVER FLOOD RISK MANAGEMENT PROJECT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to complete negotiations and sign a Federal Cost Share Agreement (FCSA) with the U.S. Department of the Army ("Government'), represented by the U.S. Army Engineer, Nashville District for the Government services assisting in the completion of the Swannanoa Flood Risk Management Project (Project) approved by Council on April 28, 2009.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. The Biltmore Village area of the City of Asheville (within the Swannanoa River watershed) was named as a recipient of this funding. From December 2005 through August 2006 a planning study was conducted to identify and prioritize flood damage reduction projects for implementation in the community. This planning study was conducted by the North Carolina Department of Environment and Natural Resources Division of Water Resources (DWR) and stakeholders from the Biltmore Village, City of Asheville and the Swannanoa watershed, with the assistance of a project consultant. In September 2006, expenditure of funding for implementation of this Plan was reviewed without objections by the NC Government Operations Committee. The requested action complies with the City's plans and commitments to administer $2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 4, 2007.

Council approved a resolution on April 28, 2009, authorizing the City Manager to complete negotiations and sign a contract with Brown and Caldwell for the completion of the Swannanoa Flood Risk Management Project. The Project plan requires the involvement of the U.S. Army Corps of Engineers. The Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858 to allot appropriations for the implementation of small structural and non-structural projects for flood control and related purposes; provided that no more than $7,000,000 shall be allotted for a project at any single locality.

The FCSA will recognize a majority of the work completed by the Brown and Caldwell project team as "work-in-kind" matching to Section 205 funds allotted to the Project. However, in order to complete the work requested of the U.S. Army Corps of Engineers, agreement to a cash match of up to $110,000 is required. In addition, once identified flood control projects have proceeded to the final design and construction stages and as additional study needs (e.g. geotechnical or property acquisition services) are identified, additional funding may be required. The cost sharing ratio for final design and construction is generally 35% local, 65% Federal.

The agreement will cover basic services to be provided by the Government during the Project period (expected completion in June 2011). The total cost of this project is $1,958,000 of which the City of Asheville is responsible for 50% of this cost. Work in Kind (WIK) from the Swannanoa River Flood Risk Management Study can be used toward the match from the City. The total cash match for this project is $110,000 of which the monies will be budgeted in the Transportation and Engineering Department for $30,000 in Fiscal Year 2010 and $80,000 in Fiscal Year 2011 of which will be reimbursed from the SB 7 funds.

Pros:

- The cooperation of the U.S. Army Corps of Engineers and execution of a Federal Cost Sharing Agreement will position our community to receive Federal investment in flood control projects (35% local, 65% Federal sharing).
- The initial $110,000 cash cost sharing match will be paid from Senate Bill 7 funds.
- The City may proceed with a request that one-half of the future cost sharing (above the requested $110,000) be provided by funds allocated to the N.C. Division of Water Resources Capital Projects fund.

Cons:

- The City cannot currently know the ultimate cost of planning, design and construction of the projects to be recommended for implementation.

- The City's responsibilities during the study will require an approximately 20% full-time equivalent (FTE) staff assignment from the Engineering Department over the coming 2 years.
- It is expected that most of the flood risk reduction projects will be implemented in the Swannanoa watershed outside the City limits and extraterritorial jurisdiction.

The funds to be expended have been provided by the State in compliance with the Hurricane Recovery Act of 2005. City staff will provide project management oversight and will participate in a series of project meetings and workshops, public meetings, and meetings with regulatory agencies. Approximately 20% FTE staff assignment will be required over a two year period.

City staff recommends City Council adopt a resolution authorizing the City Manager to negotiate and then execute a Federal Cost Share Agreement (FCSA) with the Department of the Army for an amount not to exceed $110,000.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-108. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 69

E. RESOLUTION NO. 09-109 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND/OR UNFORTIFIED WINE TO WINDOWS ON THE PARK FOR A PRIVATE EVENT IN PACK SQUARE PARK IN PACK SQUARE ON THE LAWN AREA ON JUNE 6, 2009, FROM 3:00 P.M. TO 11:59 P.M.

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine to Windows on the Park for a private event in Pack Square Park in Pack Square on the lawn area on June 6, 2009, from 3:00 p.m. to 11:59 p.m.

Those Girls, LLC has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the lawn area in the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building.

The malt beverages and unfortified wine will be served in glass containers and bottles.

Those Girls, LLC have requested a temporary extension of their ABC permit (premise 0016753AJ) from the North Carolina Alcoholic Beverage Control Commission (NCABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the ability for the City of Asheville to issue an Outdoor Special Event permit for the lawn area in the Pack Square area in Pack Square Park and the event organizers receipt of the temporary extension from NCABC.

This action does not comply with the City Council Strategic Operating Plan nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None.

Cons:

- Potential for public safety issues;
- The event is not open to the public.

There is no fiscal impact.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine on the lawn area in the Pack Square area in Pack Square Park on June 6, 2009 from 3:00 p.m. to 11:59 p.m. for Those Girls, LLC.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-109. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 70

At 10:05 p.m. Councilwoman Cape asked to be excused from the remainder of the meeting due to her travelling schedule. Therefore, Councilman Mumpower moved to excuse Councilwoman Cape from the remainder of the meeting. This motion was seconded by Councilman Russell and carried unanimously.

F. ALTERNATIVE PROPOSAL ON RESOLVING THE WATER SYSTEM CONFLICT

Councilman Mumpower presented Council with an alternative proposal to the Asheville resolving the water system conflict.

He provided a bit of history as follows: (1) Asheville leaders purchased our two primary watersheds as Asheville City owned properties in the early part of the twentieth century – we are all blessed by their foresight and investment; (2) Sullivan Act I was passed in the early thirties during a time of major economic upheaval. It covered a limited number of private and public water systems that were absorbed into the Asheville water system – very little of the absorbed lines and infrastructure remain in use; (3) It is a fact that Asheville has taken money from the water revenue through the years – just like every other city in NC; (4) One of the biggest reasons is that Asheville, unlike every other city in NC and the country, refused to default on bonds during the Great Depression. To our credit we repaid our debt and used our resources to do the right thing; (5) There is a long standing history of neglecting water and other infrastructure in Asheville *and* every other city in NC and America (think bridges, roads, civic buildings, etc.) Some of the worst neglect occurred when we had a joint politicized water authority during the eighties, nineties, and the early part of this century; (6) When Mayor Worley, to his strong credit, took the leadership in legally retaking control of Asheville's water system, he demonstrated an unusual level of political courage that is to his permanent credit; (7) When Asheville leaders (unanimously) supported the Mayor, Buncombe county leaders immediately began a public misinformation campaign; (8) To add insult to injury, county staff collaborated with local legislative representatives in creating draft legislation for Sullivan Acts II and III in order to steal control of

Asheville's water system; (9) Our local legislative representatives at that time (Nesbitt, Goforth, Apodoca, & Fisher are currently serving) successfully convinced their Raleigh colleagues to pass Sullivan Acts II and III. These acts uniquely singled Asheville out from all other city owned water systems and effectively took control of Asheville's water resources; (10) City leadership (again unanimously) voted to legally fight this unprecedented state intrusion on local government affairs; (11) We lost at every level – *but* – in every case what was validated by the courts was the right of the state to seize our assets – *not* the rightness of doing so; and (12) Fast forward to last month and we have the Mayor and Asheville City Council majority inserting a last minute compromise plan into the agenda whereby we effectively surrender to an unprecedented state action to essentially seize control of an Asheville citizen asset worth $1.25 Billion (Brown and Caldwell study – 2008).

He explained a minority position of (1) We do not need to surrender control and thus realistic ownership of Asheville's water assets; (2) The City should stand strong until we have a change of heart by our local state legislators *or* Asheville residents see that a change of representation is in their interest; and (3) In the interim, there are options...

Option One (1) Continue to call for open public negotiations with county and state representatives; (2) Stand firm on treating Asheville like *all* other cities in North Carolina who own their water system; and (3) Cooperate on one point of compromise that insures fairness for city and county residents – *Implementing the equal treatment of Asheville over a longer term period – up to 10 years if such is necessary – to insure an agreement and permanent resolution of our water war.*

Advantages - fair; treats Asheville like other cities; places no unreasonable burden on city or county residents; resolves conflict in positive manner; provides a "political" out; and avoids complex political agreements that are difficult to implement and maintain.

Option Two (1) Accept the legislative theft of Asheville's water delivery system; (2) Separate the watersheds, reservoirs and treatment plant from the water delivery system; (3) Establish a regional water authority and deed control, debt, and responsibility for the water delivery system to that authority; (4) Invite other cities (Hendersonville and Weaverville for example) to join that regional authority; and (5) Charge a reasonable rate for water coming out of Asheville reservoirs and use this Asheville resource to off-set city resident's excessive tax burden.

Advantages - we are able to legally counter the theft of the most valuable components of our water system; we support the creation of a regional water authority; Asheville city residents will receive compensation for ownership of their watershed, reservoirs and water treatment facilities; and the conflict between the city, county, and state is ended.

Action steps forward include (1) Policy discussion tonight; (2) Review of our legal authority in this matter; (3) Public information campaign; (4) Public hearing; (5) Public discussion with state and county representatives; and (6) Timely movement forward.

He said that the legislative theft of our citizen's water resources is the most reprehensible political action in Asheville's history. As our city's elected officials, we should exhaust our options for resisting this action – we may lose – we should never surrender...

Councilman Newman asked for Council's support in asking our City Attorney to review any potentials to the points outlined in Option Two.

Councilman Newman felt that City Attorney Oast is constantly searching for a better outcome for the citizens of Asheville and feels confident that he would report back to Council if he uncovers anything useful.

Mayor Bellamy stressed that she did not think it was in the best interest of the City rate payers to have our water system (our number one asset) to be taken from us and placed into a body that is not elected and not accountable to the general public. If people don't like what we're doing with our water system, they can vote City Council out of office. She will not support an independent authority. She did not believe in any way that we surrendered our water system. We went to court and fought to work for changes to legislation on Sullivan Acts II and III and we lost that battle. Now we are working with our legislators to get some changes to make sure that we can at least use some of the revenue to improve stormwater upgrades and improve streets and sidewalks as we improve our water system. And, we will continue to show how well we have operated the system since 2005 through improvements and investments. We now have a new Water Resources Director who will take us to a better place with the system.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that he would have to research separating the watersheds, reservoirs and treatment plant from the water delivery system. Since the watersheds and reservoirs were acquired in a different manner, there may be some basis for treating them differently.

Councilman Newman explained why he didn't think a regional authority would be politically viable.

Councilman Russell would be open to asking City Attorney Oast to investigate a regional authority.

Vice-Mayor Davis agreed that we have not surrendered our water system. He recalled that the independent authority did not work. He felt the legislators now recognize there is some merit to the tremendous improvements we've made to the system since 2006.

Mayor Bellamy felt that to allow an authority to have oversight of rates and improvements is wrong. We know our system needs millions of dollars of investment and the authority would have control over those rate increases. It would not be the political body which is accountable to the citizens. That is not right. When others in our region were talking about mandatory drought conservations, we were doing voluntary conservation in an adequate manner.

Even though there was not the majority Council asking City Attorney Oast to review any potentials to the points outlined in Option Two, he said that as time permits he will continue to look into this matter.

G. RESOLUTION NO. 09-110 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Civic Center Commission.

The terms of Brian Woods, George Keller and J. Michael Burke, as members on the Civic Center Commission, expire June 30, 2009. In addition, Mr. Bill Lack resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2011.

At the May 12, 2009, meeting, it was the consensus of Council (1) to reappoint Mr. Woods, Mr. Keller and Mr. Burke to each serve a three-year term respectively, terms to expire June 30, 2012, or until their successors have been appointed; and (2) to interview J.L. Thompson.

Councilman Mumpower moved to (1) reappoint Mr. Woods, Mr. Keller and Mr. Burke to each serve a three-year term respectively, terms to expire June 30, 2012, or until their successors have been appointed; and (2) appoint J.L. Thompson as a member of the Civic Center Commission to serve the unexpired term of Mr. Lack, term to expire June 30, 2011, or

until his successor has been appointed. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 73

H. RESOLUTION NO. 09-111 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civil Service Board.

The term of Sharon West, as a member of the Civil Service Board, expired on May 21, 2008. Ms. West is not interested in reappointment.

On March 24, 2009, City Council interviewed Ms. Odom and Ms. Brown. Ms. Brown has moved outside Asheville's City limits and is therefore not eligible for appointment. Mr. Davidson Jones did not attend the interview.

On May 12, 2009, it was the consensus of Council to interview Larry Harris.

Councilman Mumpower moved to appoint Larry Harris as a member of the Civil Service Board to serve the unexpired term of Ms. West, term to expire May 21, 2010, or until his successor has been appointed. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 74

VII. OTHER BUSINESS:

Mayor Bellamy was pleased to announce the dedication of the new Veterans Memorial at Memorial Stadium which was unveiled on May 25, 2009. The tablets are engraved with the names of Western North Carolina servicemen who lost their lives in World Wars I and II. Councilman Mumpower was pleased to be a part of the dedication ceremony.

Claims

The following claims were received by the City of Asheville during the period of May 1-21, 2009: Gary N. Weaver (Transit), Yvonne Benson (Sanitation), John Retherford (Streets), Susan Feinblatt (Streets), AT&T (Streets), Charmane A. Cox (Sanitation) and Brooke D. Dickson (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:32 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – June 9, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower (excused from meeting at 8:59 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Miller gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 26, 2009

B. RESOLUTION NO. 09-113 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 51 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 51 Biltmore Avenue.

A bid has been received from McKibbon Hotel Group, Inc. in the amount of $889 for the purchase of 187 square feet of air space at the 51 Biltmore Avenue property, further identified by the PIN # 964849357600000.

The property at 51 Biltmore Avenue is the currently being used as a surface parking area. A public-private mixed use development has been proposed for the site, and includes the construction of a 145-room hotel; 2,600 square feet of retail space, an 83-seat restaurant and a public parking deck. This project has received approval from the Downtown Commission, the Planning and Zoning Commission, and the final Technical Review Committee approval was granted on April 20, 2009. Council approval was granted on October 14, 2008.

This air rights request is specific to the proposed hotel, the Aloft by Starwood, via McKibbon Hotel Group, Inc. According to the plans, the hotel building will be sited at the corner of Biltmore Avenue and Aston Street. At 90' above the sidewalk level on the Aston Street side, a decorative seam metal roof element, known as a "swoof", is designed that will extend 5'6" over the right-of-way boundary (sidewalk), with a corresponding length of 34'. The total area of this architectural feature that encroaches into the public right-of-way equals 187 square feet.

Past appraisals indicate that the value of air space over public rights of way is 20% of the per square foot land value of the property applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 51 Biltmore Avenue. The estimated value of the air space for 187 square feet is $889. The bid from McKibbon Hotel Management is to acquire the air space for the architectural details for the sum of $889.

This action complies with the City Council Strategic Operating Plan in that this development proposal supports the strategic goal of sustainability by providing infill growth where infrastructure currently exists and encourages economic development in the downtown.

Pros:

- The sale will be at fair market value.
- The architectural details will provide a more visually interesting roof feature on the building.

Con:

- None

The fiscal impact for this sale of air rights will be finalized once the upset bid process has concluded.

City staff recommends City Council adopt a resolution which will initiate the sale of the air space through the upset bid process.

There as a brief discussion, initiated by Councilman Mumpower, regarding the current formula to determine the value of air space. It was the consensus of Council to have staff review the current formula for possible revisions, along with best practices in other cities, and report their findings to the City Council Planning & Economic Development Committee for review.

Economic Development Director Sam Powers said that he would get a response to Councilwoman Cape's question regarding if the 187 square feet of air rights is included in the tax bill.

RESOLUTION BOOK NO. 32 – PAGE 76

C. RESOLUTION NO. 09-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KEEN IMPRESSIONS INC. FOR PRINT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement not to exceed $175,000 with Keen Impressions, Inc. for print services.

Approximately every three years, the City of Asheville conducts an analysis to determine the most cost effective means for fulfilling the organization's print needs. This exercise is consistent with best practices for ensuring internal services are provided at the lowest possible cost given defined standards for quality and responsiveness.

This year, city staff issued a Request for Proposals for print services to compare costs proposed by external print companies to the costs associated with operating an internal print shop. The lowest responsive bidder, Keen Impressions, demonstrated the ability to provide print services at rates 30 percent lower than the full cost recovery rates of the internal print shop. Keen Impressions also demonstrated the ability to meet the organization's expectations for turn around times, job delivery, and quality of print work.

As a result, staff is seeking City Council authorization to enter into an agreement with Keen Impressions that sets rates for a comprehensive set of print services utilized by the City of Asheville. These rates will remain in effect for a period of three years with an allowance for a fixed paper price increase of not more than 2 percent each year.

This action complies with the City Council Strategic Operating Plan by upholding Council's commitment to operate the city to the highest levels of fiscal responsibility.

Pros:

- Establishes print rates from a lowest responsive bidder established through a competitive process.
- Expected to yield a net cost savings to the General Fund in year two of contract implementation.
- Existing staff members from the internal print shop will be offered employment opportunities with the organization.

Con:

- Requires a transition period for the organization to learn the processes and procedures of facilitating print work through an external vendor.

The contract is structured not to exceed $175,000 throughout the course of each fiscal year, although staff expects the actual amount spent on print services to be less as a result of targeted efforts to limit paper use across the organization. The print services contract will be rebid after three years. The contract is expected to result in a net savings to the General Fund of at least $40,000 in year two of implementation.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Keen Impressions, Inc. in an amount not to exceed $175,000 for print services.

RESOLUTION BOOK NO. 32 – PAGE 77

D. ORDINANCE NO. 3735 - BUDGET AMENDMENT FOR TO SETTLE THE LAWSUIT CAPTIONED TROY WYATT VS. CITY OF ASHEVILLE, ET AL

Summary: The consideration of a budget amendment, in the amount of $150,000, to settle the lawsuit captioned Troy Wyatt v. City of Asheville et al. (file no. 1:09-CV-00023, WDNC).

On January 25, 2006, Troy Steven Wyatt was injured when the Asheville Police Department (APD) conducted a raid on a suspected drug house. APD deployed a distraction device into a room that was occupied by Mr. Wyatt and others. This action resulted in injury to Mr. Wyatt when the device burned him. Mr. Wyatt sued the individual officers and the City of Asheville on the basis that the officers used excessive force and falsely arrested him. The officers and City denied the allegations. The Asheville Claims Corporation, through its attorneys, has reached a settlement with Mr. Wyatt in the amount of $300,000. Because the proposed settlement amount exceeds the settlement authority of the Asheville Claims Corporation, City Council approval of it is required. Sufficient budget authority already exists in the City's liability insurance budget to pay for half of this settlement; however a budget amendment in the amount of $150,000 is needed to cover the full amount of the settlement. This $150,000 will be appropriated from the liability insurance fund balance reserves.

The Asheville Claims Corporation settles claims against the City of Asheville.

This action complies with the City Council Strategic Operating Plan – Sustainability, in that the fund balance exists to be used for this type of situation.

Pros:

- Settlement has been reached with Mr. Wyatt.
- This settlement will release the City and its officers from any future liability.
- The City's guidelines regarding the deployment of distraction devices have been reviewed and changes have been made.
- Settlement would be made under the City's actual damages administrative policy. Facts and law specific to this case have been reviewed by City Staff and City Council. Payment is not a waiver of governmental immunity.

Con:

- The Liability Claim Fund balance will have a net decrease of $150,000.

$150,000 will be appropriated from the liability insurance fund balance. The City itself is self insured up to $500,000 for liability claims rising against the City. The Asheville Claims Corporation mitigates and settles claims for the City of Asheville. Based on the most recent actuarial recommendation, the liability insurance fund balance will remain healthy to pay future claims. Because the liability insurance fund balance is considered reserved, the $150,000 appropriation will not impact the City's available fund balance.

The Asheville Claims Corporation requests that City Council adopt a budget amendment, in the amount of $150,000, for settlement of the lawsuit Troy Wyatt v. City of Asheville et al.

Councilman Mumpower said that this settlement has the potential to save City taxpayers a lot of money, but this settlement illuminates what is a nightmare problem in our country – a dysfunctional judicial system. We are going to pay someone who was in a crack house $300,000 and this action is very distasteful.

Mayor Bellamy noted that there is more to the story than someone going into a crack house and felt this settlement is the best outcome for all parties.

ORDINANCE BOOK NO. 25 – PAGE 289

E. MOTION WAIVING FIRE, ZONING AND TECHNICAL REVIEW FEES FOR DOWNTOWN ASHEVILLE RESIDENTIAL NEIGHBORHOODS TO CONDUCT A CULTURAL ART PROGRAM AT PRITCHARD PARK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 09-115 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR THE INSTALLATION OF POWER UTILITY LINES AND FACILITIES ON CITY PROPERTY ON RESERVOIR ROAD (WHITE FAWN RESERVOIR – UNITED STATES CELLULAR)

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the White Fawn Reservoir property for an extension to the United States Cellular (herein "US Cellular") tower on the site.

The land on which the White Fawn Reservoir is located is owned by the City of Asheville. The subject property contains a cellular tower used by US Cellular. The utility lines on the property will be installed underground, and three (or is it four) power poles will be removed. The new installation will involve a 36 foot span over Reservoir Road to a new pole, and then 270 feet underground to a new pad-mounted transformer and light. Approximately 300 feet of existing overhead line and at least two poles will be removed. The easement area will be 30 feet for the

new overhead facilities, and 10 feet on either side of the underground line, and 10 feet around the new transformer and light.

This action complies with the City's Strategic Operating Plan in that it supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center in the operation of the cellular telecommunications tower regional facility. The project has been reviewed by the City's arborist, who notes that one semi-mature tulip poplar will be removed, but no other significant vegetation. The new tower facility is expected to serve some of the City's communication needs.

Pros:

- Facilitates development of telecommunications towers
- New lines will be mostly underground; above ground lines removed
- City communication capability will be enhanced

Con:

- None noted

The fiscal impact is eventual cost saving to City from relocation and consolidation of communications facilities.

Adoption of the resolution is recommended.

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G. RESOLUTION NO. 09-116 - RESOLUTION SUPPORTING THE CITY OF ASHEVILLE BOARD OF ALCOHOLIC CONTROL'S OPERATION OF ABC STORES AND OPPOSING MERGER OF ABC BOARDS AND "AGENCY STORES"

Summary: The Asheville Board of Alcoholic Control has requested City Council support of spirit sales through ABC Stores and in opposition to "agency stores."

Councilman Mumpower, liaison to the ABC Board, felt that the state government is looking for additional revenue sources and intruding on local authority. This creates basically two lines of operational opportunity over the ABC services and urged Council to support the resolution opposing the merger of the ABC Boards and "agency" stores.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. MOTION WAIVING FIRE, ZONING AND TECHNICAL REVIEW FEES FOR DOWNTOWN ASHEVILLE RESIDENTIAL NEIGHBORHOODS TO CONDUCT A CULTURAL ART PROGRAM AT PRITCHARD PARK

286

Summary: The consideration of a request from Downtown Asheville Residential Neighborhoods (DARN) to waive fire, zoning and technical review fees in the amount of $286 for a cultural arts program at Pritchard Park.

DARN has proposed conducting a cultural art program at Pritchard Park during the park's regular operation hours according to the dates and event descriptions listed below. All of the events conducted by DARN will be free and open to the public.

The total event permits include park rental fees (valued at $8,725) as well as fire, zoning and technical review fees (valued at $286) for the said events. The Recreation Board will review DARN's request to waive the park rental fee (valued at $8,725) for the cultural art program at its meeting on June 8, 2009. If the Recreation Board does not waive the park rental fee, it will be reported to City Council at its meeting on June 9, 2009.

DARN is asking that the Asheville City Council consider waiving the fire, zoning and technical review fees, valued at $286, for the cultural arts programming. The Recreation Board does not have the authority to consider waiving these fees because they fall outside the scope of the Parks, Recreation and Cultural Arts Department.

Descriptions of the events and dates that will comprise DARN's proposed cultural arts program include:

- Entertainment every Tuesday and Thursday at 5–7 p.m.; and Wednesday at noon through September 2009. Activities will most often include music performances.
- Arts Market every Saturday at 10 a.m. – 4 p.m. through September 2009. Local artists will display and sell their work.
- Movies in the Park every Saturday in August 2009 at 8 – 10 p.m. An outdoor movie will be shown each night.
- Pritchard Park Birthday Party, August 1, 2009 at 10 a.m. – 1 p.m. Pritchard Park was originally dedicated as a public park on July 31, 1932. The event will celebrate the park's 77th year as a public park with children activities and music.
- Santa in the Park every Saturday November 28 through December 19 at 9 a.m. – 4 p.m. Santa will greet park visitors and holiday entertainment.

DARN is a neighborhood association for residents in the Central Business District of downtown Asheville to connect residents to the community and support neighborhood issues. Besides supporting Pritchard Park, DARN collaborates with Asheville Greenworks, MANNA Foodbank, Homeward Bound, Arts 2 People, Asheville Mural Project and the Asheville Downtown Association to benefit downtown Asheville.

DARN is working with the City of Asheville to enhance Pritchard Park to 1) partner with Asheville Downtown Association to provide and install holiday lights in the park, 2) beautify the park by donating and maintaining planters with seasonal plant material.

This item has been reviewed by the Council's Public Safety Committee at its meeting on May 19, 2009.

Pros:

- Enhances DARN's ability to provide cultural arts programming in Pritchard Park
- Supports recommendations of the Downtown Social Issues Task Force

Cons:

- Reduces the annual revenue in the included service areas.

In 2008, the City supported the entertainment and arts market component of the cultural arts program in Pritchard Park via an agreement with Art2People in which the City allocated $10,000 and waived the park rental fee and event permit fees for a total value of $17,585. The current proposal includes waiver of the park rental fee and event permit fees for a total value of $9,011. The remainder of the cost associated with the 2009 program is included in the volunteer services as provided by DARN.

City staff recommends City Council to approve the permit fee waiver in the amount of $286 for fire, zoning and technical review fees for the cultural arts program provided by Downtown Asheville Residential Neighborhoods in Pritchard Park.

Councilman Mumpower felt that providing cultural art programs at Pritchard Park is a City function. In addition, he didn't believe it was fair to create special deals to a special interest groups.

Councilwoman Cape felt this is an example of citizens taking responsibility and engagement with their neighborhood park. They have raised a lot of money, put in flower boxes and spent countless hours being engaged with that park. This feels like a partnership with DARN rather giving them a special deal.

Ms. Susan Griffin, Chair of DARN, said that they are partnering with two groups that have two main focuses in the park – (1) beautification; and (2) programming. They have installed 21 planters in the park and raised money for the maintenance of them. Also, this year they are not asking for any funds from the City for programming – they have raised all the funds themselves.

Mayor Bellamy said that other neighborhood groups often times have the opportunity to utilize their neighborhood park for very limited cost or not at all. She felt this is an opportunity for the City to continue their partnership with DARN especially since we have seen the curbing of some illegal activities in Pritchard Park due to the positive nature of the programming as well as the variety of people from across downtown that are actually utilizing the park.

Councilwoman Cape moved to approve the permit fee waiver in the amount of $286 for fire, zoning and technical review fees for the cultural arts program provided by Downtown Asheville Residential Neighborhoods in Pritchard Park. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ADDITIONS TO CONSENT AGENDA

A. RESOLUTION FAVORING AN INDEPENDENT ENERGY EFFICIENCY ADMINISTRATOR FOR THE STATE OF NORTH CAROLINA

Councilwoman Cape said that there is a bill in the legislature to create NC SAVES ENERGY, which legislation is to establish an independently administered statewide energy efficiency program to reduce energy usage and costs for low and moderate income households across the state. She felt this is an important tool, noting that the program will not be administered by the power companies. She explained that this would be a very low surcharge (approximately $1) on the power bill, which will go to reduce consumption.

She provided Council with the following resolution: "WHEREAS, the NC General Assembly has passed a very modest Renewable and Efficiency Portfolio Standard, which calls only for up to 5% efficiency by the state's electric utilities by 2021; and WHEREAS, electrical production is a major contributor to air pollution and greenhouse gases, and baseload power plants, less than 40% efficient themselves, constitute the single largest locus of inefficiency and wasted heat in NC's energy budget, as well as a significant contributor to drought vulnerability and degradation of aquatic ecosystems; and WHEREAS, studies by several energy experts have shown that efficiency gains of at least 19% are achievable cost-effectively, even before

implementation of any taxation or cap and trade limits for greenhouse gas emissions; and WHEREAS, low- and moderate-income households with poor quality housing use a disproportionate amount of energy to heat and cool their homes and thus disproportionately pay 'per unit used' energy surcharges, our state's energy plan should include weatherization and other energy efficiency programs to assist these households, which will provide a meaningful improvement to the quality of life of these citizens as well as a significant environmental impact, and WHEREAS, legislation to establish an independently administered statewide energy efficiency program for electric and gas customers, NC SAVE$ ENERGY, House Bill 1050, has been introduced into the House of Representatives of the NC General Assembly, to reduce energy usage and costs for low and moderate income households and a small program for government buildings, schools and hospitals, create thousands of green jobs, prevent the building of any new baseload power plants, and reduce pollution and climate changing emission. NOW THEREFORE, BE IT RESOLVED BY ASHEVILLE CITY COUNCIL that: Section 1.The North Carolina legislature and especially our region's representatives, are urged to pass House Bill 1050 in 2009, in order to create NC SAVE$ ENERGY, a statewide energy efficiency independent administrator, and the Governor is urged to sign the legislation, to begin implementation of the programs at the earliest possible date. Section 2. That such a North Carolina energy efficiency program be required to save significant energy and reduce greenhouse gas emissions; be fairly funded by all electricity and gas customers in proportion to their energy use; and provide incentives to customers to both conserve energy and implement energy efficiency measures, and finances and efficiency accomplishments be independently evaluated annually. Section 3. That the priorities for the North Carolina energy efficiency plan include addressing the unmet needs of working families and those on fixed incomes for assistance in implementing energy efficiency measures, as well as the need to create new North Carolina-based public and private jobs in the growing efficiency and conservation markets. Section 4. That such a program be fairly funded by electric and gas customers in proportion to their energy use, with exemptions for participants in a range of federal and state subsidy programs for low and fixed income and disabled persons. Section 5. This resolution shall be effective on and after its passage."

Councilwoman Cape said that the purpose in bringing this to Council at this meeting is because time is of the essence in that the bill is in the House Energy Committee now and will be moving forward into the Budget Committee. She noted that a lot of the particulars have not been worked out yet, but it's saying that we recognize the need for encouraging more opportunities for energy efficiency and that the consideration of an independent administrator is a good idea.

Councilwoman Cape moved to adopt a resolution supporting NC SAVES ENERGY, House Bill 1050. This motion was seconded by Councilman Mumpower.

After a short discussion, Councilwoman Cape asked that her motion be withdrawn and that she be allowed to bring the resolution back up for Council consideration at the next meeting after Council has had an opportunity to study and receive more information on the requested action.

B. RESOLUTION NO. 09-123 – RESOLUTION URGING STATE LAWMAKERS TO REDUCE CUTS IN PUBLIC EDUCATION FUNDING IN THE 2009 BIENNIAL STATE BUDGET

Mayor Bellamy said that as a result of the teacher's meeting last night there has been a request for Council to urge state lawmakers to reduce cuts in public education funding. The Buncombe County School Board has passed a resolution asking the state to minimize their projected cuts in funding for their education programs for 2009-10 so as to reduce teacher job loss, preserve manageable class size, and to ensure the continued availability of quality public education in North Carolina.

In response to Councilman Mumpower, Mayor Bellamy said the urgency in bringing this to Council at this meeting is the pending vote for the State budget.

Mayor Bellamy then read the following resolution: "WHEREAS, the State of North Carolina is experiencing financial problems of historic proportions, resulting in reductions of funding for many government programs; and WHEREAS, in response to anticipated budget cuts, public school systems across the State are eliminating teacher staff positions and increasing class size; and WHEREAS, a quality public education program is important to the State's future, and essential to the well-being of its population; and WHEREAS, a well-educated work force will be a key component of sustained economic recovery, and will buffer the State from the effects of future economic downturns; and WHEREAS, competent elementary and high school teachers and assistants, together with manageable class sizes and sufficient resources, are the foundation of a quality public education program. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The Governor and the State legislature are hereby respectfully urged to minimize projected cuts in funding for public education programs in the 2009 biennial budget so as to reduce teacher job loss, preserve manageable class size, and ensure the continued availability of quality public education in North Carolina."

When Mayor Bellamy asked for public comment, she received none.

Councilman Mumpower moved to adopt Resolution No. 09-123, with the following amendment: "WHEREAS, our State leaders continue to spend limited resources on non-essential services that have a direct impact on the education budget." This motion was seconded by Councilman Russell.

Councilman Miller asked for a friendly amendment to read "WHEREAS, local school systems are being required to provide additional math and science instruction, but are not provided with funds to hire the necessary personnel."

Councilman Mumpower and Councilman Russell accepted the friendly amendment and said amended motion carried unanimously.

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III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ASHEVILLE AND BUNCOMBE COUNTY FOR THE 2009 BYRNE JUSTICE ASSISTANCE GRANT PROGRAM

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

Staff is seeking City Council approval of a resolution authorizing the City to apply for additional funding under the 2009 Byrne Justice Assistance Grant (JAG) and enter into a Memorandum of Understanding (MOU) with Buncombe County.

Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation

The Asheville Police Department is applying for additional funding available for the JAG – Local Solicitation Award. This is a predetermined amount of funds based on Part 1 Uniform Crime Reporting. Asheville Police and Buncombe County Sheriff have been allocated $90,560 with Asheville receiving $64,516 and Buncombe receiving $26,044. As part of this additional allocation grant, APD must adopt another MOU with Buncombe County that authorizes APD to

administer the Grant and disperse the appropriate funds to the Buncombe County Sheriff's Department.

APD plans to purchase twelve (12) in-car cameras that are digital in nature and provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure storage device and wireless upload capabilities of the system create a user friendly video storage system that is extremely secure and versatile. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by police officers. This would allow for an even greater level of protection of police officers and citizens.

These cameras are based on Asheville Police Department's contract through risk management, which is scheduled to come to the Council Finance Committee in June.

12 Digital Ally In-Car Camera systems ($5,350 each)	$64,200.00
Cost of Equipment Rep to provide installation and training for staff	316.00
Total:	**$64,516.00**

This action conforms to the City Council's Strategic Plan under ***Safe*** to make Asheville the safest city in America based on approved metrics for similarly sized cities and by strengthening the enforcement of existing laws and regulations as opposed to adding new ordinances.

This is a 100% non-matching grant that will enable the APD to purchase and install 12 Digital Ally In-Car Camera systems which includes the cost of equipment representative to provide installation and training for APD staff.

Pros:

- The Police Department obtains needed in-car video equipment to document traffic stops and other incidents for prosecution.
- More video/audio recorded evidence is available to review when critical incidents occur.
- The Police Department will receive 12 new in-car video units that will compatible with the propose wireless upload system.

Con:

- The City will have to bear the full cost of maintaining the equipment in future budgets after the warranties expire.

The City will have the cost of maintenance in future budgets at an annual cost of $2,400 for all 12 cameras following a one-year warranty.

City staff recommends City Council adopt the resolution authorizing the City Manager to apply for the 2009 Byrne Justice assistance grant for additional funding and to into a Memorandum of Understanding (MOU) with Buncombe County.

Councilman Mumpower felt we should fund our own police services, noting these are nice, but not necessary expenses. He noted that these are borrowed federal dollars that will have to be repaid by our children and grandchildren.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-117. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET

Mayor Bellamy opened the public hearing at 5:41 p.m.

Chief Financial Officer Ben Durant said that this is a public hearing to receive public input on the budget issues before the Annual Operating Budget is adopted. This public hearing was advertised on May 29 and June 5, 2009.

The Fiscal 2009/2010 Annual Operating Budget was presented to City Council on May 12, 2009. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 29, 2009 and June 5, 2009. Adoption of the Budget Ordinance is scheduled for June 23, 2009, at the regularly scheduled City Council meeting.

The Fiscal Year 2009/2010 Annual Operating Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value. All essential City services are continued in the Proposed Budget.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

He recapped the budget by saying that (1) this has been a difficult budget yet with the sales tax decline and significant cost increases; (2) there is no property tax increase; (3) there are no service cuts; (4) there is no market or merit pay adjustments for employees; and (5) there is minimal capital funding.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2009/2010 Annual Operating budget and include public input in considerations on the Budget.

Mayor Bellamy said that adoption of the 2008-09 annual operating budget is scheduled for June 23, 2009.

As there was no public comment, Mayor Bellamy closed the public hearing at 5:44 p.m.

Mayor Bellamy urged the public to contact the Finance Department with any questions they may have on the budget. In addition, the budget is on-line and several bound copies are available in the Finance Department.

In response to Councilwoman Cape, Mr. Durant said that when you look at the budget you have to put it in some type of context. You have to decide if you are dealing with short-term cyclical issues that you can rebound in a couple of years or are you looking at some structural imbalances, meaning that you have costs that are on an on-going basis significantly outpacing your revenue growth. In the later scenario there are policy decisions that Council has to make, e.g., do you want to raise taxes to deal with that structural gap, do you want to curtail certain services or do you want to do a combination of both. Once you frame your budget situation you then need to gear your strategies toward that scenario. He explained why he personally felt we have some structural imbalances that will grow out of this recession that we're not going to be able to recover from immediately. Consumers are not going to be as free spending their money because they are going to have to replenish some of the wealth that they lost in their homes, their 401-K's and investments. He personally didn't think the economy will bounce back as quickly as it does when you are dealing with a typical recession. He thinks there are some structural issues that will be here for awhile that we will have to deal with.

Mr. Durant responded to Councilman Mumpower regarding the Consumer Price Index.

Housing & Community Development Committee Recommendations on Outside Agency Grant requests

Community Development Director Jeff Staudinger said that the Housing and Community Development Committee (HCD) has reviewed the Outside Agency Grant applications for 2009.

The City has tentatively budgeted $161,000 for Outside Agency Grants, level-funded from last year. Two of the previously funded organizations (Asheville Green Works and Asheville-Buncombe Community Relations Council) were exempted from the competitive process, and their funding removed from the pool of available funds, leaving a total of $101,000 available for competitive distribution. Seventeen organizations submitted applications totaling $368,325.

In a change from prior year practice, this year's recommendations are being made by the Housing and Community Development Committee (HCD). A three-person staff team from Community Development, Finance, and Economic Development, initially reviewed the applications, scored them according to criteria approved by the HCD, and presented application summaries, scoring, and funding recommendations to the HCD.

At the HCD meeting of May 27, 2009, the committee acted upon the funding applications, and is recommending that the City fund thirteen organizations for a total grant amount of $95,700.

A table of applicant organizations and recommended funding per organization is below.

This proposed action complies with the City Council's Strategic Operating Plan in that it directly relates to the Council's Strategic Goals of: Affordable: These funding recommendations directly support organizations in Asheville that promote affordability for Asheville residents; Green: Two of the programs have an environmental education component; Safe: Six of the programs address issues of abuse and safety; and Sustainable: Three of the programs include resources to prepare workers and businesses for future employment.

Pros:

- Approval of Outside Agency Grants provides operating and project support to Asheville-based organizations that improve the quality of life for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

Outside Agency Grants are funded from the City's general fund. The amount available is projected to be the same as last year.

The HCD recommends approval of the Outside Agency Grants as presented below:

Outside Agency	Summary Statement	2008-09 Amount Awarded	2009-10 Amount Requested	HCD Rec.
Asheville Area Arts Council	General operating support, targeted to three elements: expand website ($50,000); increasing support of area artists ($5,000); arts in education ($5,000) and general administration ($15,000)	$ 12,500	$ 75,000	$ -
Asheville Art Museum	Expansion planning: complete design development phase	5,000	50,000	$ 5,000
The Arc of Buncombe County	General operating support		15,000	$ -
Center for Diversity Education	Fee to show four traveling exhibits in mutually decided locations		1,200	$ 1,200
Child Abuse Prevention Services, Inc.	General operating support targeted to parenting education and outreach ($6,000) and crisis intervention counseling for non-offending parent support groups	-	10,000	$ 6,000
Children First /Communities in Schools	Project MARCH: after-school safe-haven program at three housing complexes in the City	22,500	40,000	$ 22,500
Design Center	Coordinating community and design professional work on public infrastructure projects		15,000	$ 5,000
Downtown Association	Hire executive director to support economic development and cultural development in downtown		50,000	$ -
Hall Fletcher PTO	Build playground and outdoor classroom in West Asheville		20,000	$ 5,000
Homeward Bound of Asheville-AHOPE	A HOPE Day Center outreach, intake and support for homeless persons. Operates mornings seven days a week, and afternoons Monday through Friday	20,000	25,000	$ 20,000
Kids Voting Buncombe County	Recruits and trains high school students to be advocates for voting	1,000	2,000	$ 1,000
Math mentorship (UNCA)	UNCA students act as mentors to prepare at-risk middle school students for algebra		20,125	$ -

Meet the Geeks	Provides classes, membership networking, job referrals to grow the IT sector of the local economy	3,000	10,000	$ 3,000
One Youth at a Time	Provides mentoring, job training and placement assistance to at-risk students	7,000	10,000	$ 7,000
United Way 2-1-1 and Hands On	Comprehensive community information and referral provider (2-1-1). Volunteer coordination for wide variety of community services (Hands-On)	5,000	10,000	$ 5,000
YWCA of Asheville and WNC	Support Our Students (SOS) is an afterschool and day-long summer camp for at-risk students; with screening and intervention services for students involved with gangs	10,000	10,000	$ 10,000
Housing Authority-Youthful HAND	After-school program for children residing at Lee Walker Heights housing development will purchase lap-top computers for the students' use	5,000	5,000	$ 5,000
Total		$ 91,000	$ 368,325	95,700

When Mayor Bellamy asked for any comments from the public, she received none.

Councilman Miller moved to direct staff to include the outside agency grant requests recommended by the HCD Committee in the budget. This motion was seconded by Councilman Newman.

Councilman Mumpower felt we are essentially supporting non-profit agencies who already receive the benefit of not having to pay taxes with another forced subsidy from taxpayers. He felt the reason we have non-profits is because those of us who care about the community and want to contribute can do so, and deduct those contributions.

Councilman Newman commented that the process used this year worked well. He noted that most allocations are very small amounts that in essence to a lot of different groups being able to list the City as an official partner on their projects is very important to them.

Vice-Mayor Davis did not want to second-guess the HCD Committee's recommendations, stating that he felt sure that the HCD Committee reviewed the projects thoroughly, but he did question some of the allocations, in particular the non-funding of the math mentorship at UNC-Asheville.

Mayor Bellamy explained this was a key time to invest in helping our students be successful in math and the math mentorship at UNC-Asheville would be a good place for the City to contribute to a real need. She asked for Council's support to help with this initiative and questioned the "low" staff rating the program received.

In response to Mayor Bellamy, Mr. Staudinger explained the 100 point rating system, which was an attempt to bring fairness in comparing applications to each other. Qualifications included whether the program directly supported the Council's strategic operating plan, whether it directly supported the goals of the City, how the organization would leverage the money, how responsible were the organizations handling of their own finances and their accountability for that,

etc. In terms of the Math mentorship program, the major issue was that the City was asked to pay for 100% of the cost of the project, which would have required 20% of the available funds to one applicant. In addition, the application did not clearly identify the direct relationship to Council's goals. As every application was worthy, in comparison with the other applications, it was difficulty to give them a high rating. He also explained that the goal for next year is to increase the transparency of this process and to bring early on in the process what the rating criteria would be so everyone will have a clear understanding of the process.

Councilman Mumpower did not argue against the programs, but argued against the forced taxpayer dollars and where we are spending them. He felt we are taking dollars that could be invested in things that no one else can do (e.g., paving streets, hiring additional police officers) and allocating those dollars to programs that others can do.

Mayor Bellamy noted that every budget our Police Chief has put forward has been approved. There have been good efforts arising from the Public Safety Committee including illuminating people who have been caught and we are also working with the Housing Authority to address problems at the public housing developments. She explained that there is a direct correlation between individuals who are not successful in school and the penal system. It has been repeatedly proven that those individuals who are not prepared for school are more likely to drop out and when they drop out, they are more likely to be found in our court system. If we are not investing in some of these programs, we will be investing in the police department. She noted there is more participation from the residents in the South French Broad area and as a result you see less crime happening in those neighborhoods. She didn't want to diminish in any way the work that has been done.

The motion made by Councilman Miller and seconded by Councilman Newman carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy supported the recommendations but noted that she would prepare a resolution to be placed on the next Council agenda asking for monetary support for the UNC-Asheville Math Mentoring Program because she felt it was something our community should support to help address the math concerns at the middle school.

Closed Session

At 7:01 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:16 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE MASTER DEVELOPMENT PLAN FOR MONTFORD COMMONS URBAN VILLAGE IN ORDER TO CHANGE THE DEVELOPMENT INTENSITY

ORDINANCE NO. 3736 - ORDINANCE AMENDING THE MASTER DEVELOPMENT PLAN FOR MONTFORD COMMONS URBAN VILLAGE

Mayor Bellamy opened the public hearing at 7:19 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to amend the master development plan for Montford Commons Urban Village in order to change the development intensity. This public hearing was advertised on May 29 and June 5, 2009.

The project area consists of 51 separate parcels with a combined area of approximately 11.3 acres (including unopened rights-of-way). The site, which is bounded by Hill Street to the south, Gudger Street to the east, the Montford Local Historic District to the north and Isaac Dickson School to the west, was rezoned to Urban Village by City Council on September 25, 2007. Adjacent zoning districts include RS-8, RM-8 and Office.

The rezoning to Urban Village is accompanied by a corresponding conceptual master development plan that indicates a general street network, mix of uses, development intensity, open space, pedestrian amenities and proposed parking configurations. This conceptual plan was also approved by Council on September 25, 2007.

Changes to the Master Plan

Section 7-8-23 of the Unified Development Ordinance (UDO) states that Council shall review any revisions to a master plan that ***increases the overall development intensity*** or ***changes the proposed mix of uses by increasing or reducing any use category by 25%*** or more, along with a number of other criteria. The developer has revised this project in the following ways, thereby requiring review by Council:

Mix of Uses:	Residential increased 38.6% Commercial decreased 26.7% Office newly designated
Overall Development Intensity:	Greater residential and office intensity; less commercial intensity

Other Changes (notable revisions, but do not trigger review by City Council):

- The site shall be traversed by a network of internal streets – which should seek to avoid dead-ends roads and other features that hamper connectivity. Roads may terminate at a green space – in such cases, a sidewalk or other connection must be provided to ensure the goals of connectivity.
  - Due to the placement of the Phase 1 building, the road layout has changed. A pedestrian pathway circles the Phase 1 structure, connecting an emergency access to the east and a turn-around for utility vehicles to the west.

- Phase 1 – Previous plan proposed 8 buildings, 5 of which were small, a mix of multi-family
  Options. Current plan proposes a single large multi-family apartment building
  Phase 2 – Previous plan proposed 1 building. Current plan shows 1 building but in a slightly different location
  Phase 3 - Largely unchanged

The following chart provides a breakdown of the overall development as previously approved by Council compared to the proposed revisions:

2007	2009
PHASE I • Approximately 5.67 acres • 145 residential units • +/- 25 units/acre	**PHASE I** • **Approximately 6.5 acres** • **280 residential units** • **+/- 43 units/acre**

• 48,000 square feet commercial
• 1-4 stories
  o 1A – commercial, 52 apartments
  o 1B – (2) senior living 81 units
  o 1C – (3) SF
  o 1D – (3) attached SF 9 units
• Parking in 2 garages (1 under, 1 above) and on-street
• Open space 0.28 acres
	• **20,000 square feet commercial**
	• 4 stories
	  o **1 building – commercial & residential (280 units)**
	• **Parking in 1 garage and on-street**
	• **Open space 0.33 acres**

PHASE II
• Approximately 1.5 acres
• 50 residential units
• +/- 33 units/acre
• 10,000 square feet commercial
• 4 stories
  o 2A – commercial, 50 apartments
• Parking lot and on-street
• No open space
	PHASE II
	• **Approximately 0.9 acres**
	• **0 residential units**
	• **0 units/acre**
	• **22,500 square feet commercial**
	• **67,500 square feet office**
	• 4 stories
	  o Commercial & office
	• Parking - surface lot
	• **Open space 0.05 acres**

PHASE III
• Approximately 4 acres
• 25 residential units
• +/- 6 units/acre
• No commercial
• 1-3 stories
  o 3C – 18 apartment units
  o 3D – (7) SF
• Private parking and on-street
• Open space 2.07 acres
	PHASE III
	• Approximately 4 acres
	• 25 residential units
	• +/- 6 units/acre
	• No commercial
	• 1-3 stories
	  o 3C – 18 apartment units
	  o 3D – (7) SF
	• Private parking and on-street
	• Open space 2.07 acres

OVERALL • 220 residential units • 19.4 units/acre • 58,000 commercial • 0 office identified • 4 story maximum • 2.35 acres open space	**OVERALL** • 305 residential units **(85 additional units – increase 38.6%)** • 26.9 units/acre **(Residential density increased 7.5%)** • 42,500 commercial **(15,500 SF less - decrease 26.7%)** • 67,500 office **(none previously)** • 4 story maximum • **2.45 acres open space**

Similar to the previously approved layout, this project is still divided into three phases. Where the proposal differs is that the residential density has increased overall, as has the amount of office space. Commercial space has decreased. The development phases still structure the proposed intensity of uses in a way that seeks to integrate with the surrounding neighborhood and existing uses. The office and commercial node and areas of highest density and building height remain along Hill Street in Phases 1 & 2, where there is an existing commercial/office/business presence. Development intensity tapers off into single-family homes towards the historic Montford neighborhood. *Where there were previously single-family or duplex*

uses proposed along the portion of the site that borders the Isaac Dickson School, there is now a single, multi-family apartment building. The lower density residential node incorporates large areas of public open space to create a more natural neighborhood feel and to buffer them from the higher-density multi-family and commercial development. The large apartment building in Phase 1 is buffered from the property adjacent to the west. Ample street trees and on-street parking throughout the project further seek to mirror a relationship with the adjacent neighborhood.

Buildings are proposed to be between one and four stories, with the two four-story structures sited towards Hill Street. In the previous plan, building heights, massing and project densities receded as the development moved away from Hill Street. In the current plan, *the area of greatest intensity is now more site-centered*. The revised layout complies with the Urban Village standard, although the design is not as visually complementary to the adjacent existing development as the original plan.

As mentioned earlier, the urban village district requires that the site shall be traversed by a network of internal streets – which should seek to avoid dead-ends roads and other features that hamper connectivity. Roads may terminate at a green space – in such cases, a sidewalk or other connection must be provided to ensure the goals of connectivity. The road network has changed notably from the previous plan, *resulting in less vehicular connectivity*, although pedestrian access has not been impeded as a clearly designated pathway is provided around the Phase 1 structure.

Required Reviews

At their May 4, 2009, meeting, the Technical Review Committee (TRC) approved this project with the conditions listed in their staff report. A number of Asheville residents were present to seek more information and to voice concern regarding stormwater and erosion control issues and property value impacts. Communication has been received from an adjacent property owner, expressing concerns regarding traffic and a strong desire to see the construction entrance moved from Jason Street due to the impact on residences and business along this roadway, not included in the Urban Village. The City's Transportation & Engineering Department included a condition to the TRC that Jason Street should not be used as the construction entrance.

The applicant attended a meeting of the Montford Neighborhood Association on May 19, 2009, and answered questions and concerns from the residents regarding increased traffic, pedestrian connectivity to downtown and loss of existing vegetation. The applicant also discussed including an area within the project site to connect into the City's greenways master plan trail system.

Summary

The amendments to the previously approved conceptual master development plan indicate a greater residential density, more office space, slightly less commercial space, larger (but not taller) structures and a diminished roadway network. These changes comply with the standards and requirements of the Urban Village district and although the resulting plan is not as complementary to the existing surroundings as the previous layout, it does not jeopardize the success of the proposed development.

Pros:

- Provides more residential units.
- Supports good pedestrian access and links to the City Greenway system.

Cons:

- Previous plan focused area of highest intensity along Hill Street whereas the current proposal shows the greatest intensity in the center of the site.

- Phase 1 of the previous plan showed a greater number of buildings, but smaller in scale whereas the current proposal has just one large structure.

The proposed revisions to this project comply with the requirements of the Urban Village district and staff still supports the project. The previous plan configuration and layout more directly fit the vision for the Urban Village district, but current market conditions appear to have made that layout less viable.

Mr. Vince Smarjesse, representing Frontier Syndicate, LLC, explained the reason for the requested amendment is the change in economy. They have re-designed the plan and feel this is a better than ideal project. All units are rental and vary in size from 540 square to 1700 square feet, ranging in price from $1.10 to $1.27 per square foot, which puts them in the range of workforce housing.

Mayor Bellamy closed the public hearing at 7:25 p.m.

Vice-Mayor Davis hoped the project would be successful and that the finished product would look like the conceptual plan, as that is not always the case.

Mayor Bellamy was pleased that we will be able to use visualization tools which will help Council and the community know what the finished product would look like. She suggested the City Council Planning & Economic Development Committee review at that tool.

In response Mayor Bellamy about alleviating traffic from using Hill Street, Mr. Smarjesse said that a hypothetical design was a new street from Montford Avenue to Gudger Street and that is actually on the Chamber of Commerce's property using their curb-cut off Montford Avenue. They have provided the Chamber with a traffic study and a civil design plan, and they are in the process of providing them with more requested information on traffic, specifically as it pertains to the high tourist season. That connection is still on the table and they are open to discussions with the Chamber for that use.

In response to Mayor Bellamy about the narrow sidewalks on Hill Street, Assistant Director of Transportation & Engineering Ken Putnam said that the sidewalks will be increased to 7 feet.

In response to Mayor Bellamy about the process for the greenway, Mr. Smarjesse said that he is working with City staff on implementing the greenway connection. Ms. Bernstein noted that staff has added the following condition in the amendment that "the site is in the Greenway Master Plan overly and a location for the greenway has been identified by City Staff. The applicant has agreed to work with staff on implementing the greenway connection (most likely will be integrated into Phase 3)."

Mr. Putnam responded to Councilman Newman's concern that if the connection through the Chamber's property does not happen, what other kind of improvements could be made to the Hill Street connector, e.g., traffic signals.

In response to Councilwoman Cape, Mr. Smarjesse said that the 507 parking deck is being built for all phases of the project, including the commercial component in Phase II.

In response to Councilman Mumpower, Mr. Putnam said that they will build a full bus shelter that is Americans with Disabilities Act compliant, to compliment the two Top A Stops in the area.

Councilman Mumpower felt the City was penalizing the developer by asking for upgrades to the street system when the traffic is not originating from the neighborhood or immediate area.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3736 amending the master development plan for Montford Commons Urban Village showing changes to the mix of uses and overall development intensity, adopting the proposed master development plan for the Urban Village subject to the standard conditions and the additional conditions recommended by staff: (1) The project must comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The site is in the Greenway Master Plan overlay and a location for the greenway has been identified by City staff. The applicant has agreed to work with staff on implementing the greenway connection (most likely will be integrated into Phase 3). This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 291

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE BILTMORE PARK TOWN CENTER SIGN PACKAGE

ORDINANCE NO. 3737 - ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGN PACKAGE

Mayor Bellamy opened the public hearing at 7:51 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Biltmore Park Town Center sign package. This public hearing was advertised on May 29 and June 5, 2009.

In July 2007, City Council approved a signage plan for the Biltmore Park Town Square (BPTS) urban village project. Comprehensive signage plans are allowed by ordinance and enable larger development sites to develop a custom plan for signage that addresses unique needs and contexts in a comprehensive and harmonious manner. The BPTS plan was the City's first and most comprehensive; however, as individual buildings begin to open for business and more and more units and commercial/office space comes available, the signage needs are becoming better understood and insufficiencies in the approved plan are being identified. The developer is now requesting some new signs that had not been contemplated as part of the original proposal.

For efficiency, only the amendments are detailed below.

Temporary Sign

Description: The applicant is requesting a temporary banner-style sign to be placed on the back side of the movie theater for a period of four months with a one-time renewal option of an additional four months. The sign is proposed to be 625 square feet to maximize visibility from I-40 and would contain a simple text message of "Apartments, Condos, Retail shops, Office Space" with simple high contrast colors. For context, the average billboard is typically 300 square feet.

Considerations: Council recently adopted a new standard to allow temporary style banners for new multi-family structures coming onto the market. The adopted standards restrict the

period of display to four months (no renewal) and to 10% of the building face up to a maximum of 400 square feet. Standards from other municipalities appear to limit the size of the sign to a percentage of the wall face between 10-20%. This sign appears to cover approximately 25-30% of the wall face.

Monument Sign

Description: Two 60 square foot stone monument signs were originally located at the entrance to the park. A recent road widening project removed one of the two signs and the remaining sign is designed primarily as a basic monument sign. With a number of national retailers locating to the development, the owner would like to replace this with a larger 188 square foot free-standing monument sign with individual panels used to advertise the large, national retailers.

Considerations: The site is very large (42 acres) and the entrance is located approximately 1000 feet from the primary intersection with Long Shoals Road. Consequently the monument signs are located off-site at the intersection of Schenck Parkway with Long Shoals Road. While current sign code standards do not allow off-premise signs, these particular signs had been grandfathered and could be maintained for a period of five years. The Highway Business zoning district does, however, allow free-standing multi-tenant signs with a maximum of 200 square feet of sign face. Thus, the proposed sign would be consistent with a free-standing multi-tenant sign in the HB district.

Project Identity Sign

Description: The developer is requesting a separate project identity sign to be attached to the side of the parking structure. The requested sign is designed to be more visible from the interstate at a size of 510 square feet than the originally approved sign.

Considerations: The original request had included a rooftop sign at 700 square feet. That request was amended to 350 square feet to be lowered from the roof and placed on the side of the structure. Prior to the installation of this permanent sign, staff has approved the installation of a 350 square foot temporary sign which has served as a reasonable study in determining the effectiveness of the sign's readability from the interstate (exit 37). Redesigning the existing sign could improve the readability (using darker letters and illumination), but it is clear that the 350 square feet limits the size of the letters. To increase the size of the letters would necessitate increasing the sign allowance.

The proposed sign would not be illuminated in the day but is proposed to be internally illuminated at night (LED lighting).

The developer is also proposing to remove two monument signs (75 square feet each) that had been previously approved as part of the original plan.

Staff feels that the unique context and nature of this large urban project warrants special consideration and there are no significant concerns for either the temporary or monument signage requested changes.

Increasing the size of the project identity sign also seems warranted; although it is unclear how much of an increase is necessary to afford relief. The submitted renderings appear awkward and out of proportion to the structure on which they are mounted. It is also difficult to determine from the renderings submitted how the design may (or may not) blend with the parking structure. Staff has requested additional photo examples along with other considerations from the applicant and will be prepared to discuss this request at the time of the hearing.

Regarding the City Council Strategic Operating Plan, this proposal most closely supports the goal of sustainability through improved identity and advertisement supporting the economic viability of the overall project.

Pros:

- Addresses a specific need and context
- Provides enhanced entrance identification and wayfinding from interstate
- (Generally) consistent and harmonious with other signage already approved

Cons:

- Size of temporary sign may create a feeling of disparate regulation and may elicit similar requests from other smaller developments
- Size of permanent identity sign appears out of scale with structures (covers openings in deck)
- Monument signs would remain off-premise (although still on property owned by the developer)

There will be no direct fiscal impact to the City. It could be argued that improved signage will contribute to the sale and leasing of available space along with improved identity, providing a positive fiscal impact through new property and sales tax.

Staff recommends approval of the signage plan amendments. Should Council members express concern over individual signs, staff recommends voting on the requests separately, as follows: (1) Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) Multi-tenant Monument Sign at 188 s.f. to be located at the entrance off of Long Shoals Road; and (3) Project Identity Sign at 510 s.f. to be located on the side of the parking structure.

Mr. Chris Squier of Crosland, representing the developer, said that the BPTS Master Sign Program was passed by City Council in August of 2007 and this is the first request for amendment (1) temporary sign to create awareness; (2) modification of entrance monument sign; and (3) modification of project identity sign. He explained the temporary sign (4 to 8 month) would (1) be 625 square feet; (2) based on context, not "minimum square feet" or "% of façade"; (3) be entirely on their own property; (4) adjacent property is the N.C. Dept. of Transportation right-of-way; and (4) from an economic standpoint they need people to know what they are. The entrance monument sign (1) of the existing two 60 square feet signs at the entrance (120 square feet total), they would replace with one 158 square foot sign; (2) Long Shoals Road and their tenants have changed; and (3) allows for better visibility and quicker decisions for drivers. Regarding the project identity sign, the buildings shield view of new sign for all but intended viewers. The current approved 350 square feet is just too small. A compromise solution would be (1) lowered off a parapet down to side of deck; and (b) reduced from requested 700 square feet down to 350 square feet. They are requesting (1) a modern adaption of the historic identity sign; (2) still below rooftops; not visible from Biltmore Park homes; (3) modified to be more readable; and (4) more energy efficient using LED lighting. The specifications would be (1) Navy Blue lettering, non-illuminated during day; (2) square footage = 510 square feet; (3) modify deck by using perforated metal backer; (4) at night, internally illuminated using LED lighting; and (5) energy use is approximately 24% of standard lighting. Physical and economic hardships include (1) current approved size (350 square feet) not visible; and (2) new size of 510 square feet more feasible. In exchange, they will not build currently approved (1) two 75 square feet monument signs near Biltmore Park homes; and (2) one 350 square feet identity sign (combined 500 square feet). This will promote city goals of wayfinding and business identification without negatively affecting surrounding homes.

Ms. Cathy McCartan, President of the Biltmore Park Association, could not support the large Biltmore Park identity sign for the side of the parking deck for the following reasons (1) the original sign "Biltmore Park Town Square" correctly identified the commercial/retail/residential center being advertised and they request the "Town Square" reference remain on any sign; (2) the proposed Biltmore Park identify sign is unattractive and does not convey that Town Square is an upscale, desirable destination; (3) the proposed sign is too large and the opaque backing adds

to the mass making the sign completely dominate the space in an unappealing way; and (4) the maximum letter height should equal the height of the concrete deck wall and not extend above or below – the width of each word needs to be proportionally increased to accommodate the letter height and they would prefer a frame support rather than the proposed opaque backing. Basically, the Biltmore Park Association supports a larger illuminated version of the originally approved sign.

Mayor Bellamy closed the public hearing at 8:15 p.m.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not read.

Councilwoman Cape moved to approve the (1) Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) Multi-tenant Monument Sign at 188 s.f. to be located at the entrance off of Long Shoals Road; and (3) Project Identity Sign at 510 s.f. to be located on the side of the parking structure. This motion was seconded by Councilman Mumpower.

Regarding the project identity sign, there was some discussion, initiated by Councilwoman Cape, about allowing the developer construct the parapet sign that they originally requested back in July of 2007. Mr. Squier said that they would have to go through their own internal process, but structurally they lost the opportunity to build that because the parking deck was structurally built on what was approved by Council. To construct a parapet sign now would not be feasible.

Discussion surrounded amending the project identity sign to include "Town Center", noting that the developer would need a sign 650 square feet. Options at this meeting could be that Council approve the temporary sign and monument sign amendments and (1) approve a 650 square foot project identity sign and ask the developer to develop a revised sign with the words "Town Center" and bring the revised sign back to Council at their next meeting; or (2) approve the project identity sign at 650 square feet and give the developer the flexibility to develop an attractive revised sign with the words "Town Center" in keeping with the theme of the project.

Councilwoman Cape moved to amend her motion to (1) approve the Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) approve the Multi-tenant Monument Sign at 188 s.f. to be located at the entrance off of Long Shoals Road; and (3) instruct the developer to work with City staff and the Biltmore Park Association on a revised Project Identity Sign at 650 s.f. to include the words "Town Center" to be located on the side of the parking structure, said sign not being contingent upon the Biltmore Park Associations' approval. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy noted that she supported the temporary sign and the multi-tenant monument sign, but not the project identity sign.

ORDINANCE BOOK NO. 25 – PAGE 294

D. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3738 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ARTICLE 5: SITE PLAN REVIEW: CUMULATIVE DEVELOPMENT THRESHOLD)

ORDINANCE NO. 3739 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ARTICLE 11: ACCESS REQUIREMENTS FOR FLAG LOTS)

ORDINANCE NO. 3740 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (STREET TREES)

ORDINANCE NO. 3741 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (LANDSCAPING ALTERNATIVE COMPLIANCE)

ORDINANCE NO. 3742 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ATTACHED SIGNAGE FOR TENANTS IN PED-ORIENTED AREAS)

ORDINANCE NO. 3743 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (INTERIM PARKING AND CONSTRUCTION STAGING USES)

ORDINANCE NO. 3744 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ACCESSORY STRUCTURES ON NON-CONFORMING LOTS OR LOTS WITH NON-CONFORMING STRUCTURES)

Mayor Bellamy opened the public hearing at 8:41 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of seven amendments to the Unified Development Ordinance (UDO) for the purposes of responding to the current economic climate to assist businesses and development proposals to open and operate more easily, while still meeting the technical UDO standards along with City adopted goals. This public hearing was advertised on May 29 and June 5, 2009.

This series of economic relief amendments is proposed to relax certain non-life safety standards that affect businesses and smaller economic endeavors while still addressing public welfare and supporting city adopted goals.

The first phase of the economic relief amendments was brought before City Council on March 10, 2009. At the time City Council supported the amendment as a starting point and directed staff to continue to review applicable ordinances for additional opportunities to provide relief and encourage economic opportunities for large and small scale commercial endeavors.

The current list is derived from a review of the UDO and requests from the development/ business community for relief from specific standards that have affected business or development opportunities. While offering relief is currently an important consideration, careful attention has also been paid to the impacts or consequences of relaxing standards that have been long held. The benefits and impacts are identified for each item.

Staff is proposing seven (7) separate code changes that will assist enterprises facing difficulties and offer additional opportunities for small business ventures. The seven changes are grouped together for purposes of this report although they are distinct in their directives and will therefore be described separately below. Each item will require a separate vote.

The proposed wording amendments are focused in four areas of the UDO:

- Threshold requirements that affect cumulative development (Article V)
- Design and development standards (Article XI)
- Sign regulations (Article XIII)
- Uses by right subject to special requirements (Article XVI)

The changes included in this report are the second set of changes as requested by Council. Staff continues to meet with neighborhood representatives, property owners, members of the business community and other stakeholders to consider these and other additional changes.

1. **Issue: Modify the distance criteria that require that projects be cumulatively combined for purposes of plan review submittal processes.**

   Current: Development proposals that are within 1500 feet of each other and are permitted within three (3) years and are under the same ownership, are required to be combined and considered as a single development for the purposes of determining development review thresholds and criteria. This has required that somewhat separate and independent projects be combined and reviewed together in a fashion similar to multi-phased projects. This often results in a higher standard of review and, in some instances, can evolve into a Level III Conditional Use Permit application.

   Proposal: The change would be to reduce the distance of projects from 1500 feet down to 500 feet and maintain the three (3) year time frame of the permit approval time period overlap.

   Relevant Code Sections: 7-5-9(a)(1)b., 7-5-9(b)(1)b. and 7-5-9(c)(1)g.

   Pros:
   - Potentially reduces the permit review time for project applications
   - Reduces the disincentive for successful developers (owners) to initiate new investment in proximity to earlier projects
   - Maintains sufficient technical review of development proposals
   - May reduce the number of conditional use permits (CUP)

   Cons:
   - May remove some incremental developments from coming before the public hearing process (limits public input)
   - Reduces the ability to mitigate the impacts of incremental development(s) by holding them to a higher standard

2. **Issue: Reduce the width of the access way at the street (flagpole) from 25 feet to 20 feet for flag lots in order to match the requirement for alternative access subdivisions.**

   Current: Flag lots are required to provide a 25 foot wide access way where the lot connects to the public street (the rest of the lot must meet the lot size standard by district for the buildable portion of the lot). Alternative access subdivisions are special subdivisions requiring the establishment of a lesser 20 foot right-of-way (ROW) with a 16 foot wide paved private driveway to serve up to four lots.

   Proposal: Having identified no apparent problems with the narrower ROW areas for the alternative access subdivisions, and as a matter of consistency, it was recommended that the flagpole portion of the lot be reduced to 20 feet wide to match.

Relevant Code Sections: 7-11-2(j)(1)c.2.

Pros:

- May allow more lots to be subdivided
- Provides consistency between access methods for different types of subdivisions
- Benefits the smaller scale developers and the individual property owner
- The maximum length of the flag pole section remains unchanged

Cons:

- The narrower access way limits the ability to adjust the driveway profile in steeper grade situations - reduces design flexibility in general

3. **Issue: Offer more options for providing street trees in urban, pedestrian-oriented development areas to respond to developer preference and site conditions.**

Current: The landscape section for street trees (Article XI) prescribes a single option for urban street trees that specifies a structural soil vault under a sidewalk at a rate of 200 square feet per tree. After implementation of several proposals in recent years, it is clear that additional options in satisfying the street tree requirement in response to specific site conditions would be beneficial.

Proposal: Amend the section to reduce the dimensions of the root zone area in structural soil plantings from 200 square feet to 300 cubic feet (for example, 10'X10'X3'). A second change would be to allow the option of providing amended soil or structural soil in the tree planting area. Finally, this proposal provides additional tree planting space options:

1) A reinforced suspended sidewalk system around a tree grate;
2) A continuous planting area between trees that is a minimum of 4-feet wide;
3) A system of tree grates or pervious paving that allows water infiltration and oxygen exchange for tree root systems;
4) An on-street bulb-out which has been reviewed and approved by the traffic engineer for traffic safety.

Relevant Code Sections: 7-11-3(d)(3)e.

Pros:

- Reducing the root zone dimensions better accommodates typical downtown sidewalks
- Additional options for street trees provides flexibility to respond to site conditions such as underground utilities and narrower streets and sidewalks
- Tree bulb-outs can provide protection for on-street parking spaces and may be a cost savings
- Using a cubic foot standard instead of square feet is more appropriate to address the growth requirements for trees that include de-compaction of soil to the depth of the root run

Cons:

- Structural soil plantings have provided mixed results for street trees
- Field verification of cubic volume may be difficult

4. **Issue: The Tree Commission needs expanded authority to approve alternative compliance requests in situations where existing buildings and utilities are the cause of the constraint and the reason for the non-compliance.**

Current Procedure: The landscape code allows the Tree Commission to consider alternative compliance requests from the standards of the landscape ordinance with specific stipulations. In addition to the stipulations, the Tree Commission is not permitted to approve an alternative that reduces a standard by more than 50%. This provides a particular hardship for existing buildings that are required, through expansion or renovation, to bring an entire site into compliance with the ordinance.

Proposal: Allow the Tree Commission to consider requests for a greater than 50% reduction in required landscaping in situations with existing buildings when the existing utilities or buildings are the reason for the non-compliance. For these specific situations, the Tree Commission will consider on-site alternatives to the landscape standard to mitigate the loss of the required landscaping in addition to the existing seven (7) alternative compliance standards.

Relevant Code Sections: 7-11-3(e)(5)

Pros:

- Allows greater alternatives for sites that have limited options
- Provides some incentive for renovation and improvement of existing sites
- Supports the goal of adaptive reuse of structures that may be non-conforming
- Allows the Tree Commission greater flexibility to work with developers (owners) to provide an appropriate and effective alternative to the landscape standards

Cons:

- Some sites have minimal / low value structures that are better replaced
- Neighboring properties may not receive the benefits of landscape improvement

5. **Issue: Provide a new option to allow up to two signs for tenants in multi-tenant developments where the projects or developments meet standards for pedestrian oriented design with minimal building setbacks from the right of way area. For these more urban forms of development the sign allowance could be split between two different types of attached signs (window sign and a wall sign; or projecting sign and a window sign) that would better inform an individual approaching the business from multiple directions.**

Current Procedure: Businesses in multi-tenant buildings may place a single sign at the side of the building with the primary entrance based on the allowances provided in the ordinance.

Proposal: Allow up to two attached signs split between an attached sign and a window sign or other combination that in total would not exceed the square footage allowance. This would be limited to buildings that meet the standards for pedestrian oriented design that are placed a minimal distance from the right of way line (or such setbacks to create pedestrian oriented amenities).

Relevant Code Sections: 7-13-4(c)b.2.b.

Pros:

- Provides a new option for better meeting the identification needs of pedestrian oriented developments
- Encourages the types of signage that enhances the pedestrian experience of the district
- Does not result in additional sign area allowances

Cons:

- Increases the number of signs
- Opens the door to additional requests to increase allowances

6. **Issue: As denser urban areas are redeveloped, there are often few viable options for providing for interim needs related to construction such as staging of materials and equipment, parking for construction staff and queuing areas for delivery vehicles etc. as well as displacement for existing parking for the new building or project.**

   Current Procedure: As new districts are redeveloped in a more urban form (as encouraged by the comprehensive plan and city council goals), there are few viable options to locate temporary uses related to, or displaced by, the new construction. This issue includes construction support for development occurring on another parcel or parking displaced by construction particularly common in the Central Business District.

   Proposal: The proposal is to allow commercial lots as a use by right subject to special requirements on an interim (but renewable) basis to be used for staging in support of other commercial development without specific site improvements commonly required of development (street trees and parking lot landscaping) using the following standards:

   - The parcel is not zoned residential or is located within 500 feet of residentially zoned districts
   - The temporary use is permitted for a period of two years and may be extended along with a valid open building permit by reapplying and referencing the open building permit
   - The lot may be used in succession with subsequent building permits on other parcels but must be reestablished by permit
   - Activities may include: parking for construction workers and stand alone parking, materials staging, delivery queuing, equipment storage
   - Site improvements will not be required during this time except that sidewalks will be constructed and traffic issues will be reviewed
   - Grading and other applicable permits will be applied for separately
   - Use of the lot, as a stand alone use (aside from this interim-use provision) will be governed by applicable UDO standards

   Relevant Code Sections: 7-16-1(b) and 7-16-1(c)

   Pros:

   - Facilitates redevelopment activity in commercial districts
   - Mitigates negative impacts of construction by providing suitable areas for staging on a interim basis
   - May provide a temporary economic driver for underdeveloped parcels

   Cons:

   - Nearby parcels may experience the impacts of additional construction traffic without mitigation (landscaping)

7. **Issue: Provide a new option for accessory structures on non-conforming lots in residential districts as an amendment to the Uses by Right, Subject to Special requirements section (USSR).**

Current Procedure: It is a particular hardship to construct additions to, or provide new accessory structures on non-conforming residential lots because the use is subject to USSR standards and are only allowed on conforming lots.

Proposal: Allow accessory structures on non-conforming lots subject to the following changes to the USSR standards:

- New buildings or expansions will comply with setback standards
- New structures will be limited to 350 square feet
- Structures will meet all building code requirements

Relevant Code Sections: 7-16-1(c)

Pros:

- Allows homeowners to fully utilize their parcels
- Provides relief for what is a fairly common situation in older parts of the city or recently annexed and ETJ areas (and not previously subject to City subdivision standards)

Cons:

- May create concern from nearby residential property owners
- Increases the intensity of use on a property that already has some other size or dimensional disadvantage

Items regarding landscaping changes were presented to the Tree Commission at their meeting on Monday, May 18, 2009. The Tree Commission supported the changes to provide more options for street trees in urban areas and the landscape alternative compliance changes. This report was shared with the Coalition of Asheville Neighborhoods and their only comment was regarding using the lot on an interim basis for construction and they felt it should be renewed on a yearly basis, instead of every two years.

Collectively, these amendments may encourage some additional or small scale development or re-development without increasing a need for service. Fiscal benefits include those typically associated with new development or re-development but are difficult to predict.

The Planning and Zoning Commission recommended approval of the seven UDO amendments as presented by a vote of 5-0. City staff also recommends approval of the code amendments.

Mayor Bellamy closed the public hearing at 8:48 p.m.

In response to Mayor Bellamy, Ms. Bernstein said that all these changes are permanent changes to the UDO.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3738 (Article 5: Site Plan Review: Cumulative Development Threshold). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 298

Vice-Mayor Davis moved for the adoption of Ordinance No. 3739 (Article 11: Access Requirements for Flag Lots). This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 300

Councilman Newman moved for the adoption of Ordinance No. 3740 (Street Trees). This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 302

Councilman Mumpower moved for the adoption of Ordinance No. 3741 (Landscaping Alternative Compliance). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 304

Councilman Mumpower moved for the adoption of Ordinance No. 3742 (Attached Signage for Tenants in Ped-Oriented Areas). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 306

Councilman Mumpower moved for the adoption of Ordinance No. 3743 (Interim Parking and Construction Staging Uses). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 308

Councilman Mumpower moved for the adoption of Ordinance No. 3744 (Accessory Structures on Non-Conforming Lots or Lots with Non-Conforming Structures). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 310

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-118 - RESOLUTION ADOPTING THE 2009 UPDATE TO THE TEN YEAR SOLID WASTE MANAGEMENT PLAN FOR THE JURISDICTIONS OF BUNCOMBE COUNTY

Solid Waste Manager Wendy Simmons said that this is the consideration of a resolution by City Council to adopt the 2009 Update to the Ten Year Solid Waste Management Plan for the jurisdictions of Buncombe County.

Pursuant to NC General Statute 130A-309A(b), each unit of local government is required to develop a Ten Year Solid Waste Management Plan and update the plan every three years. In Buncombe County, the original plan was adopted in 1997 and has been updated every third year since. The 2009 plan update was completed in cooperation with all six local municipal governments in Buncombe County and was prepared in accordance with the latest Ten Year Solid Waste Management Plan Guide issued by NC Division of Waste Management. The plan presents a progressive vision for managing solid waste in the jurisdictions of Buncombe County through the development of intended actions for solid waste planning elements which include: reduction; collection; recycling and reuse; composting and mulching; incineration; transfer; disposal; education; special wastes; illegal disposal/litter; purchasing of recycled products; disaster response; collection of discarded electronics; and management of abandoned manufactured homes.

She reviewed some Plan highlights for Asheville, including 23% City recycling rate in Fiscal Year 2008 opposed to 11% Buncombe County recycling rate in Fiscal Year 2008; 8.6% increase in amount recycled from 2005 to 2008; and increased types of recycling materials collected.

The following jurisdictions participated in the development of the plan update: Asheville, Biltmore Forest, Black Mountain, Montreat, Weaverville, Woodfin, and Buncombe County.

Pros:

- Maintains compliance and fulfills the requirements of the Solid Waste Management Act of 1989
- Promotes City of Asheville recycling efforts
- Promotes waste diversion from the landfill, decreasing tipping fees

Con:

- None

There is no additional funding impact to accepting the Plan update.

City staff recommends City Council adopt a resolution accepting the 2009 update to the Ten Year Solid Waste Management Plan for the jurisdictions of Buncombe County.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower pointed out that the City has dramatically failed in waste reduction. According to the statistics, the average person in Buncombe County generated .91 tons of solid waste in 1999 and most recently we generated 62% more than that.

Ms. Simmons explained that the Plan was originally put in place with the goal that the entire state would reduce the amount of solid waste that is generated by 40% by 2001. We didn't, nor did the state as a whole, reach that goal. The rate Councilman Mumpower mentioned was a rate that the members of the Committee who wrote the Plan set – it was a self-inflicted goal that we didn't reach. It has been adjusted to a more realistic rate of 10% over the next 10 years.

Councilman Mumpower and Councilwoman Cape felt that the 10% reduction over the next 10 years is too low.

Councilwoman Cape said that one way the City can play into this conversation is to switch the dynamic of what we charge for and what we don't charge for. Now it's free to throw things away and it costs to recycle. What we should do is implement a "Pay to Throw Program" with weights on the side of our trucks that measures the amount of waste thrown away and charge them for that amount. And then let people recycle for free. That would encourage them to shift on how they react to their trash. We must be willing to have this conversation even if it's not a politically comfortable one.

In response to Councilman Newman, Public Works Director Mark Combs said that staff would be happy to put together a program at Council's direction. The program will result in a lot of administrative costs, and a lot of equipment and capital costs. He said pros would be a disincentive to throw waste away and to compost. The cons would be billing, up front capital costs, maintaining the weight systems on the trucks, working out the billing, additional customer service staff and additional field staff. One neighbor may complain that their other neighbor is putting their trash into their can and making them pay for it. He felt that program would be far more costly than the roughly $3-4 Million to collect the solid waste every year now.

Vice-Mayor Davis explained some of the items that were discussed when he served on the Environmental Affairs Board for Buncombe County. The result of those efforts was a state of the art landfill and that is now beginning to fill. He felt that this will require a regional approach as

there are budget implications. There is also the issue of exporting household and commercial waste to another county or state. That is not a good thing but something we will have to consider in the near term.

In response to Councilman Mumpower on any policy direction Council can give to staff to help reduce solid waste per person, Mr. Combs said that we should strengthen the recycling program more, and promote solid waste and recycling education from K-8, along with strengthening composting and other peripheral programs.

Councilman Mumpower suggested we ask staff to come up with some incremental steps that they might recommend to us for policy consideration and that we review this issue on an annual basis.

Mr. Combs responded to Councilwoman Cape on why the City of Asheville does not recycle downtown.

In response to Mayor Bellamy, Mr. Combs said that the pending legislation about mandatory recycling will not impact the City. If it is mandatory for the households, City staff would have to knock on doors and leave notices on homes where we don't see their recycling bins out when it's their pick-up time. That could impact us in terms of staff. Eight out of 10 households recycle now and we would concentrate on the other 20% of households. Mayor Bellamy asked staff to be prepared with a plan if the state does call for mandatory recycling. She looked forward to hearing some options going forward on how we can better outreach to our community.

Councilman Russell felt our society is a throw away society instead of a recycling society, so until some of these programs and ideas come into reality, we still have to manage what is put on the curb now.

Mayor Bellamy suggested sending these ideas to the City Council Finance Committee prior to coming before the full Council because if there are changes, there will be budgetary impacts. She also noted that the Sustainability Advisory Committee on Energy and the Environment can review the ideas as well. She asked staff to bring include this Plan in Council's quarterly Strategic Plan update.

It was the consensus of Council to ask staff to review some best practices and come up with some incremental no-cost small steps that they might recommend to Council for policy consideration and that this Plan be included in Council's quarterly Strategic Plan update.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-118. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 82

B. RESOLUTION NO. 09-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CURBSIDE MANAGEMENT INC. TO PROVIDE CURBSIDE RECYCLING COLLECTION PROGRAMS AND RELATED SERVICES

ORDINANCE NO. 3745 - ORDINANCE AMENDING THE FISCAL YEAR 2009-10 FEES AND CHARGES MANUAL TO REVISE THE RECYCLING CHARGE

Solid Waste Manager Wendy Simmons said that this is the consideration of (1) a resolution authorizing the City Manager to enter into a contract with Curbside Management, Inc. (CMI) to provide curbside recycling collection programs and related services for City of Asheville residences and facilities; and (2) an ordinance amending the Fiscal Year 2009-10 Fees and Charges Manual in order to revise the Recycling Charge to $2.95 per household per month.

The City issued a request for proposal for curbside recycling collection and related services in April 2009. A five member City Review Committee evaluated each bidder's proposal for providing economical, efficient, uniform, and safe curbside recycling collection services to residences and City facilities. The committee unanimously recommended CMI as having the lowest responsive and responsible bid. The contract is for an initial term of five years with one-year renewal options for each successive year.

The monthly bid prices received through the biding process for City facility collections and bi-weekly residential collections are listed below:

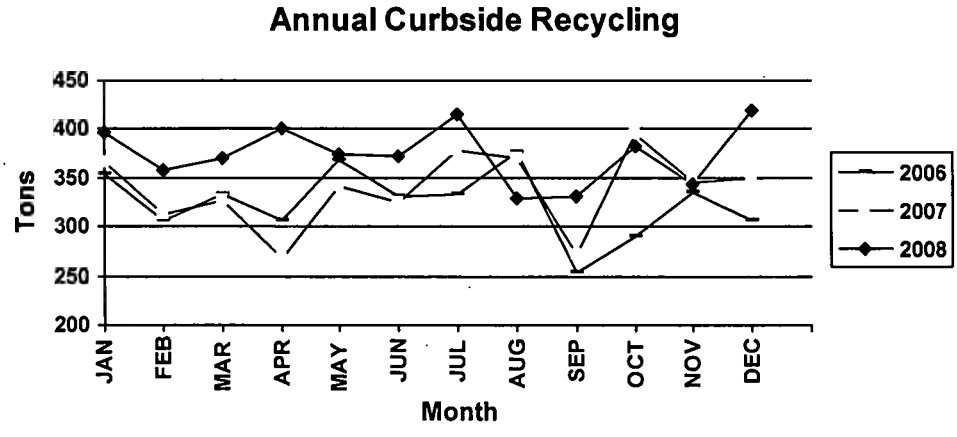
Curbside Management, Inc.	$ 73,542.00/month
Waste Management of Carolinas, Inc.	$ 124,378.00/month
Waste Industries	$ 133,229.70/month

CMI's bid includes the familiar bin collection system for residential customers on a bi-weekly basis. It also includes scheduled collections from City facilities.

A detailed cost structure proposed by CMI is listed as follows:

Service Recipient	Collection Frequency	Container Type	Cost/recipient/month
Residential	Bi-weekly	Bins (min. 2)	**$2.66/household/month**
Residential On-premise	Bi-weekly	Bins (min. 2)	**$5.98/household/month**
City Facilities	Weekly	Bins (min. 2)	**$8.00/facility/month**
City Facilities	Weekly	Roll out cart	**$32.00/facility/month**
City Facilities	Bi-weekly	Bins (min. 2)	**$4.00/facility/month**
City Facilities	Bi-weekly	Roll out cart	**$16.00/facility/month**
City Facilities	Monthly	Bins (min. 2)	**$4.00/facility/month**
City Facilities	Monthly	Roll out cart	**$12.00/facility/month**

This action complies with the Strategic Operating Plan in that it promotes the City's strategic priorities to be green and environmentally sustainable by reducing waste and encouraging recycling. The City has one of the most efficient recycling programs in the state. In 2008, 9,748,813 pounds of recyclables were collected through the City's curbside recycling program. The below chart graphs historical data for the amount of recyclables collected through the curbside recycling program.



Pros:

- Most efficient and cost effective proposal
- New recycling materials will be added to the collection program
  - aluminum pie plates and aluminum trays
- CMI provides current recycling service, resulting in no disruption of service to residential and City facility service recipients.
- Promotes City of Asheville recycling efforts
- Promotes waste diversion from the landfill, decreasing tipping fees

Cons:

- Five year contract term
- The recycling fee proposed for next fiscal year does not cover the increased contract costs by $0.30

The initial term of the contract is for five years. Based on the pricing structure previously outlined in this report, the total annual cost to the City for the CMI contract is $910,066 with pricing subject to adjustment based on the Consumer Price Index each year on July 1st.

Currently, the City charges $1.32 per household per month for the recycling program. The Manager's projected budget for the recycling program for Fiscal Year 2009-10 provided for full cost recovery of the entire recycling program. The entire recycling program includes the curbside collection contract costs as well as the costs for the following services: recycling drop-off center, advertising, outreach materials, Mobile Environmental Learning Center, and recycling supplies. To obtain full cost recovery, the budget included an overall increase of $1.33 per household per month or $2.65 per household per month. CMI's bid exceeded the projection by $0.30. Consequently, to fully recover the increased costs for the CMI contract through the residential recycling fee, the rate charged per household per month will need to be adjusted by $0.30 for fiscal year 2009-10 to $2.95 per household per month. If the rate is not increased from $2.65 per household per month to $2.95 per household per month, the cost of the recycling program will exceed the amount included in the Fiscal Year 2009-10 Manager's recommended budget by $132,957.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into contract with Curbside Management, Inc. to provide curbside recycling collection programs and related services at an annual estimated cost of $910,066 for residential and City facility collections, as amended; and (2) adopt an ordinance amending the Fiscal Year 2009-10 Fees and Charges Manual in order to revise the Recycling Charge to $2.95 per household per month.

When Mayor Bellamy asked for public comments, no one spoke.

Councilwoman Cape moved to adopt resolution authorizing the City Manager to enter into contract with Curbside Management, Inc. to provide curbside recycling collection programs and related services at an annual estimated cost of $910,066 for residential and City facility collections, as amended. This motion was seconded by Councilman Mumpower.

Councilman Newman initiated discussion regarding making curbside recycling a basic City service and that this fee be phased out in the next 3-4 years. He then asked for an amendment to the motion that it is the intent of Council to phase this fee out in the next 4 years.

Councilwoman Cape accepted the amendment. Councilman Russell also accepted the amendment noting that even though the citizen will not be paying the fee, it will have to be paid for out of the General Fund.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-119, as amended by phasing the recycling fee out in the next 4 years. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 83

Councilman Russell moved for the adoption of Ordinance No. 3745 as amended. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 312

C. ORDINANCE NO. 3746 - BUDGET AMENDMENT FOR FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21st CENTURY COMMUNITY LEARNING CENTER IN ASHEVILLE'S WEED & SEED TARGETED AREA

Mr. Danny Hopkins, Recreation Superintendent, said that this is the consideration of a budget amendment, in the amount of $103,000, for funding from the N.C. Dept. of Public Instruction for the 21st Century Community Learning Center in Asheville's Weed & Seed targeted area.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of target area residents and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life.

Weed & Seed sites are required to leverage additional funds to carry out their respective goals and objectives. The 21st Century Community Learning Center grants funds for academic based afterschool programs serving youth who are not performing at grade level. Asheville's model will serve any middle and high school student attending Asheville City Schools. Programs will take place at the Pisgah View Community Center and the Burton Street Recreation Center, both of which are designated Weed & Seed Safe Havens. This grant represents the first time these highly competitive funds have been awarded in Buncombe County.

This action complies with the City Council Strategic Operating Plan in that it expands community policing initiatives and supports recreation and employment alternatives for youth at risk of gang exposure. In addition, this action complies with the community driven Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults. The program also meets needs identified in other citywide collaborative efforts such as the Mayor's RICH Taskforce and Asheville City Schools' School Success Council.

Pros:

- Program will bring much needed academic assistance to middle and high school students who are struggling in school.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the target area.

Con:

- Additional funds will need to be leveraged during the 2010-2011 school year to sustain the program since funding decreases by 20% in that year and 40% the following year.

Grant revenue in the amount of $103,000 will cover all operating expenses related to the afterschool program at no additional cost to the City in FY 2009-10. However, as noted above, grant revenue will not cover all of the expenses if the program continues in FY 2010-11. Expenses include, but are not limited to: salary for a full time program director, part-time assistants, contracted tutors and resource providers, and supplies and transportation costs.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to establish a budget in the amount of $103,000 for the 21st Century Community Learning Centers which will occur in Asheville's Weed & Seed target area.

Councilman Mumpower was concerned that we are asking the State to fund our Weed & Seed target area at the same time they are firing teachers in public education.

Mr. Hopkins responded to Councilwoman Cape when she questioned where the 40% funding for the following year would come from.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3746. This motion was seconded by Councilman Miller and carried on a 6-1 vote with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 314

D. RESOLUTION NO. 09-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2009 FEDERAL TRANSIT ADMINISTRATION APPORTIONMENT AND AUTHORIZING THE MAYOR TO EXECUTE SAID GRANT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to apply for the 2009 Federal Transit Administration apportionment in the amount of $1,945,172; and the authorize the Mayor to execute said grant.

The City of Asheville has received the 2009 Federal Transit Administration apportionment under Division I of the "Omnibus Appropriations Act 2009". Section 5307 authorizes Federal funding for capital and in some cases, for operating assistance, and planning activities for transit in Urbanized areas. The City was reclassified as Urbanized Area, as part of the 2000 Census and therefore restricted in its ability to use operating assistance. However, the City, among others, will be allowed to use part of this year's allocation in operating assistance, in the amount of $484,022.

As part of the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal

allocation. The County will receive approximately $439,911 of the total allocation. The City and the County had signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The city is responsible before FTA of the use of these funds and owns all the capital items Henderson County purchases with the allocation.

The City is intended to use these funds for operating assistance, and for capital items allowed under the Master Agreement, such as preventive maintenance, Americans with Disabilities Act (ADA) service, and for other minor capital items (repairs to the Transit Garage and Transit Center, small equipment for the buses, etc.). 1% of the allocation must be used for security purposes.

This action complies with the Strategic Operating Plan proactively leveraging funding from the Federal Government and other funding sources for transportation improvements.

Pro:

- These funds were budgeted in the 2009 City Budget and will offset costs related to operations, preventive maintenance and ADA services.

Con:

- The city has to contribute with 20% of the capital items, including preventive maintenance and ADA services; and 50% of the operational expenses. The city has already incurred in these expenses.

The project cost will be $1,945,172, with $439,911 being allocated to Henderson County. The City's contribution to transit this fiscal year was $1,814,313.

City staff recommends City Council authorizing the City Manager to apply for the 2009 Federal Transit Administration apportionment in the amount of $1,945,172; and the Mayor to execute said grant.

Councilman Mumpower felt that we have a terrible state deficit and we are receiving borrowed funds that our children and grandchildren will have to repay.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-120. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 84

E. RESOLUTION NO. 09-121 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2009 INGLES 4TH OF JULY CELEBRATION

RESOLUTION NO. 09-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2009 BELE CHERE FESTIVAL

Ms. Diane Ruggiero, Cultural Arts Superintendent, said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2009 Ingles 4th of July Celebration and the 2009 Bele Chere Festival.

2009 Ingles 4th of July Celebration

Benevolent Patriotic Order of the Does have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer at the 2009 Ingles 4th of July Celebration and allow for consumption at this event.

The 2009 Ingles 4th of July Celebration will be held at Martin Luther King, Jr. Park on Saturday, July 4, 2009 from 4:00 PM – 10:00 PM. The festival area will be open on Saturday, July 4 from 4:00 PM – 10:00 PM. The sale of malt beverages will end at 9:30 PM. However, the possession of open containers of malt beverages or consumption of malt beverages would be allowed during the festival hours of 4:00 PM – 10:00 PM.

2009 Bele Chere Festival

The following organizations: Asheville Ski Club, The Mediation Center, Benevolent Patriotic Order of the Does, Phi Beta Lambda –AB Tech, Cataloochee Ski Patrol, Brother Wolf Canine Rescue, Xi Omega Chapter of Beta Sigma Phi, Sigma Nu Fraternity, Wild South, Asheville Inner City Outings, and Friends of the Nature Center have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2009 Bele Chere Festival and allow for consumption at this event.

The 2009 Bele Chere Festival's Festival Area will be open on Friday, July 24, 2009 from12:00 PM – 10:00 PM, Saturday, July 25, 2009 from 10:00 AM – 10:00 PM and Sunday, July 26, 2009 from 12:00 PM – 6:00 PM.

The sale of malt beverages and/or unfortified wine will end at 9:45 PM in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows:

Friday, July 24, 2009, from 12:00 Noon to 10:00 PM
Saturday, July 25, 2009, from 10:00 AM to 10:00 PM

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 26, 2009.

This action does not tie-in with the Strategic Operating Plan. This action does not comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

The fiscal impact will be overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2009 Ingles 4th of July Celebration and the 2009 Bele Chere Festival.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-121. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 85

Councilman Newman moved for the adoption of Resolution No. 09-122. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 88

At 8:59 p.m., Councilman Mumpower asked to be excused in order to observe the Phish concert at the Civic Center. Councilman Russell moved to excuse Councilman Mumpower. This motion was seconded by Vice-Mayor Davis and carried unanimously.

F. BOARDS & COMMISSIONS

Councilman Newman moved to instruct the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson, Fred Pratt and Harold Garland; and appoint Phil Wilson and Randy Osborne to the Board of Electrical Examiners. This motion was seconded by Councilman Russell and carried unanimously.

Councilwoman moved to instruct the City Clerk to prepare the proper paperwork to reappoint Brad Brock and Beth Gillespie to the Historic Resources Commission. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Miller moved to instruct the City Clerk to prepare the proper paperwork to reappoint Jim Fink (regular), Barbara Hodgson (regular) and John Hayes (alternate) to the Noise Ordinance Appeals Board. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Russell moved to instruct the City Clerk to prepare the proper paperwork to reappoint Wanda Hawthorne, Sara Manuel and Spencer Hardaway to the Recreation Board; and to re-advertise for the two other vacancies on the Recreation Board. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilwoman Cape moved to instruct the City Clerk to prepare the proper paperwork to appoint David Erb to the Transit Commission. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy moved to instruct the City Clerk to prepare the proper paperwork to appoint Dale Joyner for a vacancy on the URTV Inc. Board of Directors. This motion was seconded by Councilwoman Cape and carried unanimously.

Vice-Mayor Davis said that the Pack Place Board of Directors is willing to amend their regular meeting time and date in order for a Council member to be appointed to replace former Council Member Holly Jones. It was the consensus of Council to appoint Councilman Russell to the Pack Place Board with Vice-Mayor Davis coordinating the new schedule with the Pack Place Board Chair Karen Tessier and Councilman Russell.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:09 p.m.

Magdalen Bateson
CITY CLERK

MAYOR

Tuesday – June 23, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (arrived at 6:22 p.m. from a N.C. League of Municipalities Board of Directors meeting in Raleigh, N.C.); Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 2009 AS "I NEED U2 KNOW ITS TIME TO END THE HIV/AIDS STIGMA MONTH"

Councilwoman Cape read the proclamation proclaiming July, 2009, as "I Need U2 Know Its Time to End the HIV/AIDS Stigma Month" in the City of Asheville. She presented the proclamation to Dr. Jamie Whitehouse and Mr. Lee Nesbitt, who briefed City Council on some activities taking place during the month.

B. RECOGNITION OF STRIVE NOT TO DRIVE AWARD WINNERS

Vice-Mayor Davis was pleased to recognize the following award winners: (1) Golden Spoke Award - Zac Altheimer who works for the Music Allies and was nominated by Lynn Player. Zac has made it his goal to ride his bike to work every day for the past 5 years to reduce his carbon footprints. Rain and snow do not deter him from riding his bike. He encourages others to do the same. Lynn says, she has started riding her bike to work because of Zac's encouragement; (2) Golden Sneaker Award - Marilyn Tondy who has given up driving. Marilyn works in landscaping and carpools or walks to landscaping jobs often carrying her tools. She also uses the Greyhound Bus extensively for getting around on longer trips. She was nominated by a friend, Roberta Greenspan who says, "Marilyn serves as an example to all our friends ALWAYS walking and she often refuses an offer for a ride as she prefers to walk."; (3) Golden Wheel Award - Blake Esselstyn who uses a combination of his bike and the bus to commute to work because he leaves the one car that he owns for his wife and small daughter to use. He has done this for 5 years. Blake works in city planning and was nominated by Yuri Koslen & Shannon Tuch; and (4) Employer Challenge Award - the Grove Park Inn who was the only employer who actually saw an increase in the bus-pass program. The others had a decline of employees. Mr. Ron Morin accepted the Award on behalf of the Grove Park Inn.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "C", "D", "G", "H" and "O" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 9, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ONTARIO INVESTMENTS INC. FOR GOLF CARTS AND MAINTENANCE EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION AFFIRMING THE IMPORTANCE OF EXISTING INTERCITY TRANSIT ROUTES TO THE CITY AND TO THE REGION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. MOTION SETTING A PUBLIC HEARING FOR A SUBSTANTIAL AMENDMENT TO THE 2009-10 ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE $1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND $1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 09-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MULTI-YEAR LEASE AGREEMENT AND AN EQUIPMENT LEASE AGREEMENT WITH HAW CREEK FIRE AND RESCUE INC.

Summary: The consideration of a resolution authorizing the City Manager to enter into a multi-year lease agreement and an equipment lease agreement with Haw Creek Fire and Rescue, Inc.

Haw Creek Fire and Rescue, Inc. has asked the City of Asheville to assume fire protection responsibility for a portion of the Haw Creek Fire District beginning July 1st, 2009. The Buncombe County Commissioners passed a resolution on June 16th, 2009, authorizing the County Manager to enter into a fire protection agreement with the City of Asheville for this portion of the Haw Creek Fire District. The multi-year lease agreements allow for the operation of the Haw Creek Fire Station and Equipment to be operated by the Asheville Fire and Rescue Department. The lease agreement is for an annual payment of $1. The City of Asheville will receive the proportionate share of Haw Creek Fire District taxes to which the City will be entitled to in consideration of performing its duties under this agreement.

Regarding the City Council Strategic Operating Plan, by authorizing, this resolution assists in making Asheville a safer city based upon metrics of similarly sized cities, by increasing the standard of cover within the City of Asheville. This resolution also is an opportunity to consolidate city and county services.

Pros:

- This agreement allows for a strong fire and rescue presence to be maintained in the Haw Creek Community while strengthening the level of service provided within the City of Asheville.
- This agreement is an excellent city and county partnership that consolidates services.

Cons:

- None

This agreement has a negligible fiscal impact as the amount of the lease is $1 annually.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a multi-year lease agreement and an equipment lease agreement with Haw Creek Fire and Rescue.

RESOLUTION BOOK NO. 32 – PAGE 96

F. RESOLUTION NO. 09-127 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES PLLC FOR AUDITING SERVICES FOR FISCAL YEAR 2008-09

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes, PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2008-2009.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In response to the aforementioned general statute, staff recommends retaining the services of Dixon Hughes to conduct the basic audit of the city's accounts for the fiscal year ending June 30, 2009. Staff has previously worked with Dixon Hughes and they have consistently provided a thorough and high quality audit for the City.

Staff also anticipates needing to contract with Dixon-Hughes to provide various auxiliary financial services that are beyond the scope of their basic audit engagement but are necessary for its completion. Those services include preparation of various city financial statements and production of the Comprehensive Annual Financial Report, which are traditionally performed in-house by various accounting staff. Due to staff's current commitment to converting the City to a new core financial system, which has a scheduled "go-live" date of January 1, 2010, staff currently does not have the capacity to perform the auxiliary financial services without additional support from Dixon-Hughes.

A base fee of $110,000 has been proposed for the basic audit and is included in the Finance Department's portion of the Fiscal Year 2009-2010 annual operating budget scheduled for adoption on June 23, 2009.

Dixon-Hughes is currently developing an estimate for the necessary auxiliary financial services, the cost of which be funded from professional services accounts in the Finance Department and the Business Technology Improvement (BTIP) project budget.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for basic auditing services in the amount of $110,000 for fiscal year 2008-2009. Staff will ask for Council's consideration of an amendment to the contract at a future date at such time that an estimate for various auxiliary services becomes available.

RESOLUTION BOOK NO. 32 – PAGE 97

G. RESOLUTION OF SUPPORT FOR THE UNC-ASHEVILLE MATH MENTORING PROGRAM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION FAVORING AN INDEPENDENT ENERGY EFFICIENCY ADMINISTRATOR FOR THE STATE OF NORTH CAROLINA

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION NO. 09-128 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO PLACE THE ENERGY LOOP SCULPTURE IN THE NEW PLAZA LOCATED ON THE COLLEGE STREET SIDE OF PROPERTY LOCATED AT 35 WOODFIN STREET

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with Buncombe County to place the Energy Loop sculpture in the new plaza located on the College Street side of property located at 35 Woodfin Street in Downtown Asheville.

The Energy Loop sculpture is Asheville's first piece of public art. Created in 1983 by local artist Dirk Cruiser and commissioned by Quality Forward (now Asheville Greenworks), the Energy Loop was located in the what is now Pack Square Park. In 2006, the sculpture was removed for a complete restoration by local artist R.S. Gursky.

Original hopes were that the Energy Loop would be placed back in Pack Square Park, but as the plans for the park developed, the environmental conditions that the sculpture requires were not able to be met.

In an effort to keep the Energy Loop in a prominent, downtown location staff identified the County-owned plaza which was recently completed along with the new parking deck. The new location meets all of the environmental considerations required along with the site selection criteria adopted by the Public Art Board:

Sites where public art is to be displayed should:

- Experience high levels of pedestrian traffic and be part of the city's circulation paths;
- Be easily visible and accessible to the public;
- Serve to energize and identify the site;
- Enhance the overall public environment and pedestrian streetscape experience;
- Locations that allow for reflection and provide a break from social activity;
- Locations that are enhanced by public art (such as, the location is void of visual interest, or the addition of artwork would complete the location's visual experience);
- Help to create a place of congregation and activity; and
- Establish landmarks and neighborhood gateways.

Other guidelines about public art site placement include:

- Artworks should not block windows or entranceways, nor obstruct normal pedestrian circulation in and out of a building (unless such alteration is specifically a part of the experience or design of the artwork);
- Art should not be placed in a given site if the landscaping and maintenance requirements of that site cannot be met;
- Work displayed in interior public spaces will be accessible to the public at least during normal building operating hours without requiring the public to obtain special passes or permits to view the work;

- Work displayed in exterior public spaces should be accessible to the public 24 hours per day. If a work is sited in a park or similar setting, it should be accessible during the normal operating hours of that site or facility;
- Work should not block windows or entranceways or obstruct normal pedestrian circulation entering or exiting a building (unless it is specifically a part of the experience or design of the work); and
- Art should not be placed in a site where it is overwhelmed by nor competing with the scale of the site or adjacent architecture, large retail signage, billboards, etc.

Pursuant to this agreement the City agrees to the following:

- Shall be responsible for the installation of the Sculpture including but not limited to all moving and installation costs, site alterations and restoration.
- Shall be responsible for the ongoing care and maintenance of the Sculpture including, but not limited to, routine conservation measures, preservation measures, and cleaning of the Sculpture.
- Shall be responsible for determining if major restoration of the Sculpture is required and will hire a professional conservator to assess and repair the Sculpture.
- Shall endeavor to remove graffiti from Sculpture as soon as possible after notification. Only materials and methods approved by a professional conservator will be used to remove graffiti.
- Shall be responsible for the marketing and promotion of the Sculpture in conjunction with the entire City's public art collection.

Public comment regarding the location selected was solicited in two ways: online questionnaire and public meetings. For the online questionnaire, 85 people responded to the survey with over 62.3% of the respondents rating the proposed location as between fair and excellent (7.1% were not familiar with the proposed location). When asked what was most important in considering a location for the Energy Loop 61.2% said "a downtown location", 50.6% said "easy to see from the street and sidewalk" and 42.4% said a "grass area". City staff held two public meetings on Friday, June 12 at 9:00am and at noon at the Public Works building and was announced through a press release. The morning meeting was attended by one person who felt that the location was "just fine". The noon meeting was not attended.

This action supports the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it enhances public confidence and appreciation of the arts, and builds public and organizational capacity for the arts.

The location has been voted on and approved by the Public Art Board at the April, 2009 meeting.

Pros:

- Provides a prominent, Downtown location for the Energy Loop;
- The location meets the environmental needs of the sculpture.

Con:

- The location is not City-owned property.

The City will maintain the area around the sculpture.

City staff recommends City Council adopt a resolution authorizing the Mayor to enter into an agreement with Buncombe County to place the Energy Loop sculpture in the new plaza located on the College Street side of property located at 35 Woodfin Street in Downtown Asheville.

J. RESOLUTION NO. 09-129 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

Summary: The terms of Tommy Wilson, Ronnie McAbee, Fred Pratt, Brian Kintner and Harold Garland, as members on the Board of Electrical Examiners, expire on July 1, 2009.

On June 9, 2009, it was the consensus of Council to (1) reappoint Mr. Tommy Wilson (electrical contractor), Mr. Fred Pratt (utility representative), and Mr. Harold Garland (layman); and (2) appoint Mr. Phil Wilson (journeyman electrician) and Mr. Randy Osborne (licensed engineer) to each serve a three-year term respectively, terms to expire July 1, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 99

K. RESOLUTION NO. 09-130 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The terms of Brad Brock and Beth Gillespie, as members of the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2009.

On June 9, 2009, it was the consensus of Council to reappoint Mr. Brock and Ms. Gillespie to each serve a three-year term respectively, terms to expire July 1, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 100

L. RESOLUTION NO. 09-131 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Summary: The terms of Mr. James Fink (regular member), Ms. Barbara Hodgson (regular member) and Mr. John Hayes (alternate member) on the Noise Ordinance Appeals Board expire July 1, 2009.

On June 9, 2009, it was the consensus of Council to reappoint Mr. Fink (regular member), Ms. Hodgson (regular member) and Mr. Hayes (alternate member) to each serve a three-year term respectively, terms to expire July 1, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 101

M. RESOLUTION NO. 09-132 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Summary: The terms of Wanda Hawthorne, Wind Peter Motika, Sara Manuel, Spencer Hardaway and Adam Pittman, as members on the Recreation Board, expire on June 30, 2009. Mr. Motika and Mr. Pittman were not interested in reappointment.

On June 9, 2009, it was the consensus of Council to reappoint Ms. Hawthorne, Ms. Manuel and Rev. Hardaway to each serve a three-year term respectively, terms to expire June 30, 2012, or until their successors have been appointed.

Also on June 9, 2009, it was the consensus of Council to re-advertise for the two vacancies on the Recreation Board.

RESOLUTION BOOK NO. 32 – PAGE 102

N. RESOLUTION NO. 09-133 - RESOLUTION APPOINTING A MEMBER TO THE TRANSIT COMMISSION

Summary: There currently exists a vacancy left by Mr. Larry Chapman until December 31, 2010.

On June 9, 2009, it was the consensus of Council to appoint David Erb to serve the unexpired term of Mr. Thompson, term to expire December 31, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 103

O. RESOLUTION APPOINTING A MEMBER TO THE URTV INC. BOARD OF DIRECTORS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

P. RESOLUTION NO. 09-134 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Summary: The term of Bill Fishburne, as a member of the Public Art Board, expired on December 31, 2008. He is not eligible for reappointment.

At the May 12, 2009, meeting, it was the consensus of Council to appoint Robert Todd to serve a three year term, term to expire December 31, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 104

Vice-Mayor Davis asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ONTARIO INVESTMENTS INC. FOR GOLF CARTS AND MAINTENANCE EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease agreement with Ontario Investments, Inc. for golf carts and maintenance equipment at the Asheville Municipal Golf Course.

The City of Asheville currently leases 72 golf carts and maintenance equipment located at the Asheville Municipal Golf Course via three separate lease agreements with Ontario Investments at a cost of $152,000 per year.

The City conducted a request for proposals for golf course equipment lease services and Ontario Investments, located at 2519 James Street in Syracuse, New York was the sole bidder and is proposed to be selected as the provider of the lease.

A new lease with Ontario Investments will consolidate the three leases for the existing equipment into one lease. The term of the lease is from September 1, 2009 through August 31, 2010 at a cost of $114,000 with an option to extend the Lease for an additional twelve (12) months. The consolidated lease will result in a savings of $38,000.

Funding for the lease in the amount of $114,000 is proposed in the City's FY 2009-2010 operating budget for the golf course. Funding for the twelve (12) month extension, if exercised, will be contingent upon City Council approving the funds for 2010-2011.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the city maintenance program to conduct ongoing facility maintenance. It is also consistent with the Parks, Recreation and Cultural Arts Master Plan in that it provides ongoing maintenance and care for the City's parks and recreation system.

Pros:

- Provide resources for ongoing maintenance services at golf course
- Retain and maintain quality golf course equipment
- Cost savings by consolidating three existing lease agreements into one agreement

Con:

- None

Funding in the amount of $114,000 for the lease agreement is contingent upon City Council approving the funds as part of the FY 2009-2010 operating budget. Funding for the twelve (12) month extension, if exercised, will be contingent upon City Council approving the funds as part if the FY 2010-2011 operating budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a lease agreement for golf course carts and maintenance equipment with Ontario Investments Inc. for a total of $114,000, with any extensions, contingent upon City Council approving the funds for each fiscal year applicable to the lease agreement.

Councilman Mumpower felt that as long as there is prostitution and an open air drug market he did not feel the City should be in the golf course business.

Councilman Russell moved for the adoption of Resolution No. 09-124. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 94

C. RESOLUTION NO. 09-125 - RESOLUTION AFFIRMING THE IMPORTANCE OF EXISTING INTERCITY TRANSIT ROUTES TO THE CITY AND TO THE REGION

Summary: The consideration of a resolution affirming the importance of existing intercity transit routes to the city and to the region.

As you have been made aware through other presentations, the Asheville Transit System (ATS) operates intercity routes that connect Black Mountain and Weaverville to Asheville. The routes began operation in 2002 and 2005 respectively and thereby fulfilled elements of the City Development Plan 2025.

Each route operates five times a day, Monday-Saturday. The Black Mountain routes operates along US 70 (Tunnel Road) between downtown Asheville and Black Mountain. The Weaverville Route operates along US 25 (Merrimon Avenue/Weaverville Highway) and then to Weaver Boulevard and Arvato Digital Services (formerly Sonopress). Each makes stops along the route. Once in their respective cities, these routes connect to local Mountain Mobility deviated route service.

In the past, the North Carolina Department of Transportation (NCDOT) has contributed 90% of the operation costs for these two routes, and the remaining 10% has come from the towns of Black Mountain and Weaverville, Buncombe County, and from the routes' farebox revenue.

The Federal Transit Administration (FTA) defines intercity bus service as:

> ...regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not close in proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.

The model that you may be familiar with is the service offered by Greyhound or Trailways, rather than a regular city bus service model. NCDOT has notified the city that this service, as currently configured, does not meet the FTA definition, and will be ineligible for funding in the future unless it conforms to FTA's intercity definition.

City and ATS staff are working with the Institute of Transportation Research (ITRE), North Carolina Department of Transportation (NCDOT), and HDR, the transit master plan consultants, to determine how best to modify the service to meet FTA requirements for funding. Once possible solutions have been identified and evaluated for conformance with the requirements, Council will be asked to act on those recommendations.

The need for these routes is made clear by both the willingness of the Town of Black Mountain to invest in the operation of the routes, and by the ridership. The Town of Weaverville has decided not to contribute with the route anymore since the route is not serving their population. FY 2008 ridership on the ATS Weaverville route was 13,935, and ridership on the ATS Black Mountain route was 42,902. Ridership on the Black Mountain Route grew 18% from FY 2007 to FY 2008. Ridership on the Weaverville route declined by 5%. The Black Mountain Trailblazer has carried approximately 7,200 passengers in 2007 and grew 13% in 2008 carrying close to 8,000 passengers.

As a step in the process of saving this valuable service, city staff has asked for an expression of City Council sentiment on the importance of intercity service to connect Black Mountain and Weaverville to Asheville.

The Transit Commission has passed a resolution requesting City Council's support to the intercity service between Asheville and Black Mountain and Asheville and Weaverville.

This action supports the City Council Strategic Operating Plan in the green and sustainable focus areas. Specific tasks are to "fully leverage funding from the State and other funding sources for regional transportation improvements," and to "establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements."

Pros:

- This is a step toward retaining the service and funding

- It does not commit the City of Asheville to any specific action

Cons:

- None

City staff recommends City Council adopt a resolution supporting intercity transit service between Asheville and Black Mountain and Asheville and Weaverville.

Director of Transportation and Engineering Cathy Ball responded to various questions/ comments from Council, some being about the Asheville-Weaverville route.

Councilman Mumpower was concerned about the amount the City is subsidizing for transit.

Councilwoman Cape moved for the adoption of Resolution No. 09-125. This motion was seconded by Councilman Miller and carried on a 4-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 95

D. MOTION SETTING A PUBLIC HEARING FOR A SUBSTANTIAL AMENDMENT TO THE 2009-10 ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE $1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND $1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

Summary: The consideration of a motion setting a public hearing for July 14, 2009, to obtain citizen input on a Substantial Amendment to the Consolidated Action Plan for Fiscal Year (FY) 2009-10, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

The City submitted its Consolidated Action Plan for 2009-2010 to HUD on May 15, 2009. Since that time, the City has received an allocation of and submitted required documentation for CDBG-R funding, freeing up 2009-2010 regular HUD funding. The City also learned after the submittal that its 2009-2010 allocation of HUD and HOME funding had increased. The Housing and Community Development Committee, and the Asheville Regional Housing Consortium have both met and are recommending the distribution of these additional funds. Both recommending bodies decided to fund applications that either had not been chosen for funding in the original round, or to enhance funding for applications that had been funded for less than their original request.

HUD requires that communities follow their Citizen Participation Plans when adjustments in the Action Plan are necessary. The adjustments recommended by the HCD and Consortium Board require a Substantial Amendment, which necessitates a 30 day public comment period, and a public hearing and City Council approval. A notice of public hearing was published in the Asheville Times-Citizen on June 12, 2009.

This action complies with the City Council Strategic Operating Plan in that the draft Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, supports the city-owned land redevelopment process, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pros:

- The public hearing process gives citizens the opportunity to comment and affect public decision-making regarding the use of public funds.

Con:

- There are no cons to this public hearing process.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be over $3.9 million for 2009-2010.

Staff recommends that Council set the public hearing for the Substantial Amendment to the 2009-2010 Consolidated Action Plan for July 14, 2009.

Councilman Mumpower could not support this action because these are borrowed federal dollars and this is basically a trust fund for non-profits.

Councilwoman Cape moved to set the public hearing for the Substantial Amendment to the 2009-2010 Consolidated Action Plan for July 14, 2009. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

G. RESOLUTION OF SUPPORT FOR THE UNC-ASHEVILLE MATH MENTORING PROGRAM

Summary: This resolution expresses Council's support for the UNC-A math mentorship program. This was prepared as directed by Mayor Bellamy at Council's June 9, 2009, meeting.

The resolution recognizes the value of the program, and notes that it was not recommended for funding through the outside agency appropriation in the FY 2009-10 budget. The resolution authorizes the City Manager to enter into an agreement with UNC-Asheville and to reallocate $5,000 in the 2009-10 Fiscal Year budget for this purpose.

Councilman Mumpower said that the Housing & Community Development Committee reviewed applications and this one did not make the cut. He felt this Council process has been side-stepped.

Vice-Mayor Davis explained why this resolution has been brought forward and why he felt Council should support the program.

Councilman Newman felt the entire outside agency funding program needs to be reviewed to get a sense of what criteria will be used to decide which partnerships make sense for Asheville to be involved with. There are many great organizations in the community that we could potentially partner with but we can't partner with all of them. He felt that once you fund an organization one time, the need will not go away, so he wondered if we are basically making a commitment to fund the program indefinitely. He felt that conversation should be held before funding a new organization that the City has not funded in the past.

Councilwoman Cape was concerned that we will only be supporting five students with the $5,000 allocation. She understands the value of the program, but she was not sure exactly what we would be getting for the $5,000. She appreciated the idea of the program and looked forward to having an opportunity to dive into the program deeper to see how we can lend our support.

Vice-Mayor Davis moved to adopt the resolution expresses Council's support for the UNC-A math mentorship program and to reallocate $5,000 in the 2009-10 Fiscal Year budget for this purpose. This motion failed to due a lack of a second.

H. RESOLUTION FAVORING AN INDEPENDENT ENERGY EFFICIENCY ADMINISTRATOR FOR THE STATE OF NORTH CAROLINA

Summary: Councilwoman Cape said that there is a bill in the legislature to create NC SAVES ENERGY, which legislation is to establish an independently administered statewide energy efficiency program to reduce energy usage and costs for low and moderate income households across the state. She felt this is an important tool, noting that the program will not be administered by the power companies. She explained that this would be a very low surcharge (approximately $1) on the power bill, which will go to reduce consumption.

She provided Council with the following resolution: "WHEREAS, the NC General Assembly has passed a very modest Renewable and Efficiency Portfolio Standard, which calls only for up to 5% efficiency by the state's electric utilities by 2021; and WHEREAS, electrical production is a major contributor to air pollution and greenhouse gases, and baseload power plants, less than 40% efficient themselves, constitute the single largest locus of inefficiency and wasted heat in NC's energy budget, as well as a significant contributor to drought vulnerability and degradation of aquatic ecosystems; and WHEREAS, studies by several energy experts have shown that efficiency gains of at least 19% are achievable cost-effectively, even before implementation of any taxation or cap and trade limits for greenhouse gas emissions; and WHEREAS, low- and moderate-income households with poor quality housing use a disproportionate amount of energy to heat and cool their homes and thus disproportionately pay 'per unit used' energy surcharges, our state's energy plan should include weatherization and other energy efficiency programs to assist these households, which will provide a meaningful improvement to the quality of life of these citizens as well as a significant environmental impact, and WHEREAS, legislation to establish an independently administered statewide energy efficiency program for electric and gas customers, NC SAVE$ ENERGY, House Bill 1050, has been introduced into the House of Representatives of the NC General Assembly, to reduce energy usage and costs for low and moderate income households and a small program for government buildings, schools and hospitals, create thousands of green jobs, prevent the building of any new baseload power plants, and reduce pollution and climate changing emission. NOW THEREFORE, BE IT RESOLVED BY ASHEVILLE CITY COUNCIL that: Section 1.The North Carolina legislature and especially our region's representatives, are urged to pass House Bill 1050 in 2009, in order to create NC SAVE$ ENERGY, a statewide energy efficiency independent administrator, and the Governor is urged to sign the legislation, to begin implementation of the programs at the earliest possible date. Section 2. That such a North Carolina energy efficiency program be required to save significant energy and reduce greenhouse gas emissions; be fairly funded by all electricity and gas customers in proportion to their energy use; and provide incentives to customers to both conserve energy and implement energy efficiency measures, and finances and efficiency accomplishments be independently evaluated annually. Section 3. That the priorities for the North Carolina energy efficiency plan include addressing the unmet needs of working families and those on fixed incomes for assistance in implementing energy efficiency measures, as well as the need to create new North Carolina-based public and private jobs in the growing efficiency and conservation markets. Section 4. That such a program be fairly funded by electric and gas customers in proportion to their energy use, with exemptions for participants in a range of federal and state subsidy programs for low and fixed income and disabled persons. Section 5. This resolution shall be effective on and after its passage."

Councilman Mumpower could not support the resolution in that he felt the first thing we need from the State of North Carolina is a functional court system.

Councilwoman Cape agreed that the court system is an important part of our community, but so is our climate and we are capable of giving simultaneously attention to more than one agenda at a time. This is an independent organization that focuses on taking money from a fund generated from power bills and utilizing it to fix people's homes - people who are often the victims of other social and economic challenges who need help meeting their expenses every month.

Councilwoman Cape moved for the adoption of a resolution favoring an independent energy efficiency administrator for the State of North Carolina. This motion was seconded by Councilman Newman.

Councilman Newman offered a friendly amendment to the resolution that it be clarified that this resolution is not meant to indicate a lack of support for the energy efficiency programs that are being implemented and developed by North Carolina's utility companies but that this is meant to compliment the initiatives by the State's utility companies with an independent energy efficiency organization. Councilwoman Cape accepted the friendly amendment.

Councilman Miller supported the resolution but noted there is a lot of open-ended dialogue in Section 2 of the resolution causing him some concern. He hoped that at the state level they would look closely at that language.

Vice-Mayor Davis felt he could not support the resolution in that it was too open-ended for his comfort.

The amended motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 3-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

O. RESOLUTION APPOINTING A MEMBER TO THE URTV INC. BOARD OF DIRECTORS

Summary: The term of Sandra Bradbury, as a member of the URTV Inc. Board of Directors, will expire on June 30, 2009.

On June 9, 2009, it was the consensus of Council to appoint Ms. Dale Joyner to serve a two-year term, term to expire June 30, 2010, or until her successor has been appointed.

Mr. Alan Rosenthal contested Ms. Joyner's appointment to the URTV Inc. Board of Directors. He presented Council with documents supporting his opinion why he didn't think she was fit to be on the Board.

Councilman Mumpower moved to postpone action on this item and refer it to the Boards & Commissions Committee. This motion was seconded by Councilwoman Cape and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. RESOLUTION NO. 09-135 - RESOLUTION ADOPTING THE FINAL INTERNAL SUSTAINABILITY MANAGEMENT PLAN AS THE STRATEGIC PLAN FOR MUNICIPAL SUSTAINABILITY GOALS AND ACTIVITIES

Energy Coordinator Maggie Ullman said that this is the consideration of a resolution to approve the Internal Sustainability Management Plan (SMP) as the strategic document to guide internal sustainability initiatives.

In April 2007 City Council passed a resolution committing to reduce the municipal carbon footprint 80% by the year 2050 and requiring a strategic plan to lead this effort. The internal SMP brings together the organization's carbon footprint reduction policy and the sustainability initiatives of various departments in a coordinated and comprehensive plan. The outcome of this internal sustainability management plan is a consensus-based set of 23 sustainability goals, a comprehensive list of 107 prioritized action items, and an implementation plan for moving forward.

She summarized the plan reviewing the snapshot of carbon footprint, assessment of existing activities, and opportunities for improvement. The implementation strategy is (1)

determine annual priorities by department; (2) develop a staff green team; (3) use opportunity ranking tools; and (4) annual Council approval of resource allocations.

The full plan and the executive summary of the plan can be reviewed online at www.ashevillenc.gov/green.

This action complies with the following areas of the City Council Strategic Operating Plan: (1) Expand community education programs to attract volunteers to initiatives, including climate awareness, water conservation, recycling, storm water and sustainability; (2) Operate the City of Asheville's organization to the highest fiscal responsibility; (3) Achieve short term and long term goals to reduce city carbon emissions by 2% per year; (4) Receive and evaluate the Energy Management Plan for conservation, technology and retrofitting, and sustainability management; and (5) Develop a long-term plan to address the City's aging infrastructure including facilities and sidewalks.

The Sustainability Advisory Committee on Energy and the Environment (SACEE) reviewed the plan and recommends adoption of the plan by City Council.

Pros:

- Save taxpayer dollars through energy efficiency and transportation initiatives
- Demonstrate leadership through planning and implementing sustainability programs
- Improve air quality and public health through reduction of emissions associated with municipal actions

Con:

- Availability of resources will determine the rate at which the plan is implemented

There is no direct fiscal impact with adopting the internal Sustainability Management Plan. Any financial decision associated with implementing the plan will be brought forth to Council through the budgetary process.

City staff recommends City Council adopt a resolution approving the internal Sustainability Management Plan for use as the guiding document for staff to achieve carbon footprint reduction goals.

When Vice-Mayor Davis asked for public comments, none were received.

At this time, Mayor Bellamy arrived at the meeting and Vice-Mayor Davis turned the gavel over to her.

Councilman Newman moved for the adoption of Resolution No. 09-135. This motion was seconded by Councilwoman Cape.

Throughout discussion, Ms. Ullman responded to various questions/comments from Council, some being, but are not limited to: will you have measurable numbers in the goals and objectives for the plan and if not, why; what are the total utility costs for the City; and how much did the study cost and how much staff time was invested in the study.

In response to Councilman Mumpower, Ms. Ullman explained that while there are other models, our plan is different in that it provides tools for implementation. She also noted that our plan will be very helpful to other community organizations who will look to our plan for our leadership.

Councilman Mumpower was pleased that staff will pursue measured results. However, he does not find plans terribly productive. He felt they are expensive and sit on a shelf and collect dust. He felt that if the City wants to do better with conservation of energy, he suggested (1) incentivizing our employees and asking for their suggestions; and/or (2) look for ways to reduce the number of fire department calls for service, since Asheville has roughly twice the calls of a city of our size. He pointed out that Council adopted a Solid Waste Management Plan 10 years ago and the plan was not put to productive use since we have actually increased our solid waste by a significant number.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that this Plan is extremely beneficial to the City. The process of getting to this product built an awareness and education that has brought significant tools to our process. We are a leader in this area but if we want to achieve Council's goal to be green, we need a top notch plan.

Mayor Bellamy looked forward to the Mountain Green Conference which will be held tomorrow. In Raleigh, she spoke with the Secretary of the Dept. of Environment and Natural Resources and he pointed out that his department did not have a plan for the Clean Smokestack Act but that plan would be developed. In addition, she spoke with the Deputy Secretary of Commerce and noted that the State Energy Office will be moving to the Department of Commerce. One of the things they will be tracking is energy dollars that are coming through the recovery program and how it will be spent. They also will develop a plan. She stressed that planning is important. With our Plan, it will track the dollars and results and provide that transparency to the community.

Mayor Bellamy asked for a friendly amendment to the motion that Council receive quarterly updates in their quarterly status reporting on how this Plan is being implemented. Councilman Newman and Councilwoman Cape accepted the friendly amendment.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-135, with the amendment that Council receive quarterly updates in their quarterly reporting on how this Plan is being implemented. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-136 - RESOLUTION TO APPROVE LOAN FROM THE CITY'S HOUSING TRUST FUND TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

MOTION TO AUTHORIZE THE CITY TO SUBMIT AN APPLICATION TO THE DEPARTMENT OF HOMELAND SECURITY'S ASSISTANCE TO FIREFIGHTERS FIRE STATION CONSTRUCTION GRANTS FOR THE CONSTRUCTION OF ONE NEW FIRE STATION AND REHABILITATION OF AN EXISTING FIRE STATION

MOTION TO AUTHORIZE THE CITY TO SUBMIT AN ENERGY EFFICIENCY AND CONSERVATION STRATEGY TO RECEIVE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT ENTITLEMENT FUNDING

Ms. Lauren Bradley, Assistant to the City Manager, updated Council on the following applications for the economic stimulus package.

She said that as part of city staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of three items including:

- A resolution allocating $40,000 in Housing Trust Fund (HTF) financing to the Housing Authority of the City of Asheville in support of a federal grant opportunity available through the Public Housing Capital Fund Program (PHCFP) under ARRA to create 10 handicapped accessible units in the Aston Park Towers development;

- Authorization for the city to submit an application to the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG) for the construction of one new fire station and rehabilitation of an existing fire station, and;

- Authorization for the city to submit an Energy Efficiency and Conservation Strategy to receive Energy Efficiency and Conservation Block Grant (EECBG) entitlement funding.

Housing Trust Fund Application - Housing Authority Aston Park Tower

Councilman Newman asked to be excused from participating in this action due to a conflict of interest. Therefore, Councilwoman Cape moved to excuse Councilman Newman from participating in this action due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously.

The Housing Authority of the City of Asheville (HACA) is requesting a $40,000 loan from the Housing Trust Fund for the renovation of ten (10) units in Aston Park Tower at 165 S. French Broad Avenue to create handicap accessibility as required under the Uniform Federal Accessibility Standards (UFAS). The total project development cost is $678,500 of which $638,500 will be entirely funded by federal grant funds. The PHCFP guidelines require a minimum 5% match from non-public housing funds. HACA will be in the best position to receive funding if the commitment of HTF loan funds can be secured prior to submission of the application.

The terms of the loan as requested are $40,000 for 15 years at 2% interest. The per unit subsidy is extremely low at $4,000 and the HTF funding would be highly leveraged at $16 per dollar invested. The lack of ADA accessible units in Aston Park Tower was noted as a key deficiency in a recent study. The project will serve tenants earning less than 60% of the area median income. HACA has committed to retaining these rent standards throughout the term of the loan. Repayment will be made from the entire project revenue and will not be limited to the rents received on the ten (10) rehabilitated units. It should be noted that the proposed rehabilitation will result in the net loss of three (3) public housing units.

The Aston Park Tower has been part of the HOPE VI grant application discussion and the long term plans for the building have not yet been finalized. HACA has agreed to refrain from drawing HTF funds until the HOPE VI analysis has been completed. No funds will be spent if it is determined that the preservation of the Tower is not feasible.

The Housing and Community Development Committee reviewed the proposal at a special meeting on June 9, 2009 and is supportive of the request. There is a current available balance in the Housing Trust Fund of $72,275.

Pros:

- Allows the City to heavily leverage scarce housing resources.
- Provides ADA accessible units in a public housing project designated for the elderly and disabled.
- Provides 15 years guaranteed affordability on the subject units for tenants below 60% AMI.

- If grant application is not successful, funds can be reallocated to another eligible project.

Cons:

- The inability to mortgage public housing developments requires that another property be secured as collateral.
- The long term future of the Tower has not yet been decided so the benefit may be short lived.
- Construction cost estimates have not yet been documented.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville. This action is also supportive of the City Council 2008-09 Strategic Plan in that the project will aid in offering a standard of living that is affordable and attainable for people of all income levels, life stages, and abilities.

Funding for the Housing Trust Fund has been previously appropriated. The current balance in the Trust Fund is $72,275.21. The remaining available balance if the project is funded at the terms requested will be $32,275.21.

As recommended by the HCD Committee, the Staff recommends adoption of a resolution authorizing the City Manager to approve a Housing Trust Fund loan in the amount of $40,000 to the Housing Authority of the City of Asheville at the terms requested.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower felt we will be using borrowed money that will need to be paid back by our children and grandchildren.

Councilwoman Cape spoke in support of the action.

Councilwoman Cape moved to adopt Resolution No. 09-136. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no". Councilman Newman was excused.

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Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG)

Staff is seeking City Council authorization to submit an application to the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG). The grant will provide financial assistance directly to fire departments on a competitive basis to build new or modify existing fire stations in order for departments to enhance their response capability and protect the community they serve from fire and fire-related hazards. The authority for SCG is derived from the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5). Congress appropriated a total of $210 million for this Fiscal Year (FY) 2009 program. The proposals must not exceed $5 million per project and can not total more than $15 million per agency.

Asheville Fire and Rescue is seeking permission to submit applications through the grant for the construction of one new fire station and the rehabilitation of an existing fire station. The new fire station will be constructed on city owned land off of Sandhill Road. This fire station was approved in the FY 2008/2009 5-year CIP adopted budget for FY 2009/2010; however the project

is currently unfunded. The rehabilitated fire station located at 300 Merrimon Ave. will increase standard of cover service levels by allowing a fire company to operate out of this station. The CFAI Accreditation process has identified this area as needing improvement.

Applications are due by July 10, 2009. Funding is awarded to individual projects based on the merits of the proposal.

Pros:

- Access to DHS funds will allow the City of Asheville to complete two important projects that will increase levels of service.
- DHS will fund 100% of the construction projects, which are currently unfunded needs.
- Asheville Fire and Rescue's Standard of Cover will increase from 47% to 100% in the area that will be served by the rehabilitated fire station.
- The Sandhill Road project is a strong candidate for this grant due to the shovel ready site and plans that are already available. The 300 Merrimon Avenue project is a strong candidate for this grant due to the significant service level increases that it will provide.
- The projects will pursue LEED certification.
- No staff or apparatus will be immediately needed as existing fire companies could be re-deployed.

Con:

- Grant funding does not include furniture, so there will be a minimal so there will be a minimal cost associated to furnish the stations.

Submission of these projects meets City Council's strategic goal to proactively pursue funding through the federal economic recovery program. It also aligns with City Council's commitment in the 2008-09 Strategic Plan to be one of the safest and most secure communities when compared to other cities.

The City of Asheville will request $5 million for the Sandhill Road fire station project and $5 million for the rehabilitation of the Merrimon Avenue fire station project, for a total request of $10 Million. DHS will fund 100% of the construction projects, and existing fire companies will be re-distributed to staff these stations; therefore, there will be no direct financial impact to the City with the exception of purchasing furniture for each station. Furniture is not included in the grant, therefore there will be a minimal cost associated to furnish the stations.

City staff recommends that the Mayor and City Council authorize the staff to submit an application to the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG) program.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower felt we will be using borrowed money that will need to be paid back by our children and grandchildren. Councilman Mumpower felt we should pay for this out of our own tax base.

Councilman Newman moved to authorize staff to submit an application to the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG) program. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Energy Efficiency and Conservation Block Grant (EECBG)

The EECBG program through the Federal Department of Energy (DOE) is funded for the first time through ARRA. The City of Asheville has been allocated $804,700 of entitlement funds

through this program. The funds must be committed within 18 months of receipt of award and expended within 36 months. The primary goals for use of this funding include: job creation, energy reduction, renewable energy production, carbon emissions reduction, and partnership creation. DOE requires cities to submit an Energy Efficiency and Conservation Strategy for their consideration before funds will be released. This strategy is due June 25, 2009.

As part of the Energy Efficiency and Conservation Strategy submitted to DOE, Asheville must identify how the funds will be used for specific projects and programs. Staff has evaluated several programs and projects that coincide with the goals established in the internal Sustainability Management Plan. After thorough analysis and a collaborative decision making process, staff selected the following programs to recommend for Council approval:

Funding Category	Program Description	Project Funding	% of total allocation
$224,700	**Internal Sustainability Programs**		
	Bike Sharing Program for City staff	$13,500	**2%**
	Solar thermal for Fire Station	$16,000	**2%**
	Building Inspector and Building Maintenance Energy Efficiency Training	$35,000	**4%**
	Sustainability Outreach Coordinator	$35,000	**4%**
	Civic Center Banquet Hall HVAC Replacement	$125,000	**16%**
$250,000	**Internal Energy Revolving Fund**		
	Fire Station 8 Windows and Insulation Retrofit	$50,000	**6%**
	IT Server Downsizing	$100,000	**12%**
	City Hall Lighting Retrofit	$100,000	**12%**
$250,000	**Competitive grants for community projects ***	$250,000	**31%**
$ 80,000	**Grant administration**	$80,000	**10%**
$804,700	**TOTALS**		**100%**

* Guidelines for these awards will be determined after necessary guidance is provided by the Federal Department of Energy.

At its May 5, 2009, meeting, the City Council Finance Committee reviewed preliminary details released about the EECBG program. At that point, the Finance Committee: (1) set the amount of funds available for a community sub grant process at $250,000, the maximum amount allowable under the program; (2) directed staff to come back to the full Council with recommendations for funding caps for awards made through the community sub grant process, and; (3) designated the Housing and Community Development Committee to serve as the oversight and review board for making awards through the community sub granting process.

It is staff's recommendation that the community sub grants be awarded through a competitive application process based on defined criteria and measurement requirements. Staff recommends that one award be made up to $100,000 to a model program that maximizes community collaboration with significant community impact. Staff further recommends that the remaining three to six grants range from a minimum award of $25,000 up to a maximum award of $50,000 for programs that meet selection criteria. These funding parameters are recommended

to maximize the impact of community projects while taking into consideration the staffing resources needed to track and monitor grant awards according to ARRA requirements.

Pros:

- Approval of the programs and projects for the Energy Efficiency and Conservation Strategy will ensure continuation of the EECBG application process. If awarded, the City of Asheville will receive funding to move forward programs and projects that support sustainability goals set forth by City Council, thereby realizing energy and cost savings.

Cons:

- If the programs and projects are not approved, the application process and funding potential for these projects will not move forward, and the City of Asheville will lose the opportunity to receive entitlement funding for Council's strategic initiative.

Approval of these projects meets City Council's strategic goal to proactively pursue funding through the federal economic recovery program. It also aligns with City Council's commitment in the 2008-09 Strategic Plan to be the southeastern leader in clean energy and environmental sustainability.

The City of Asheville will receive $804,700 in EECBG entitlement funds if the Energy Efficiency and Conservation Strategy is approved and submitted as described. Of this amount, $250,000 will be sub granted to community programs and projects, $474,700 will be invested in internal City of Asheville sustainability initiatives, and $80,000 will be used for grant and project administration. There are no local matching requirements for this funding.

City staff recommends that the Mayor and City Council: (1) authorize staff to submit the Energy Efficiency and Conservation based on the program breakdown provided and (2) determine that the Housing and Community Development Committee manage the community sub grants process such that awards are made through a competitive application process based on defined criteria with one award made up to $100,000 and three to six awards ranging from $25,000 and $50,000.

Mr. Mike Soule, representing Asheville on Bikes, encouraged Council to adopt the bike sharing program for City staff in order to advance our City's commitment to sustainability.

Upon inquiry of Mayor Bellamy, Ms. Bradley and Energy Coordinator Maggie Ullman explained how the bike sharing program for City employees was developed and what the $13,500 included.

Councilwoman Cape moved to (1) authorize staff to submit the Energy Efficiency and Conservation based on the program breakdown provided, but encourage staff to revisit the bike sharing program for enhanced efficiencies; and (2) determine that the Housing and Community Development Committee manage the community sub grants process such that awards are made through a competitive application process based on defined criteria with one award made up to $100,000 and three to six awards ranging from $25,000 and $50,000. This motion died for a lack of a second.

After a brief discussion, initiated by Mayor Bellamy, it was the consensus of Council to support Mayor Bellamy's suggestion that we look for transit dollars or another local source for the bike program and reprogram the $13,500 into the sustainability outreach coordinator position for education outreach of energy conservation, water, stormwater, recycling, sewer, etc. while partnering with the Metropolitan Sewerage District on the sewer education outreach.

Councilman Russell moved to (1) authorize staff to submit the Energy Efficiency and Conservation based on the program breakdown provided, except that we look for transit dollars or another local source for the bike program and reprogram the $13,500 into the sustainability

outreach coordinator position for education outreach of energy conservation, water, stormwater, recycling, sewer, etc. while partnering with the Metropolitan Sewerage District on the sewer education outreach; and (2) determine that the Housing and Community Development Committee manage the community sub grants process such that awards are made through a competitive application process based on defined criteria with one award made up to $100,000 and three to six awards ranging from $25,000 and $50,000. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION NO. 09-142 – RESOLUTION TO AFFIRM REQUIRED ASSURANCES AND AGREEMENTS AND DESIGNATE AN AUTHORIZED REPRESENTATIVE TO FILE THE APPLICATION, TO MAKE NECESSARY CERTIFICATIONS, AND EXECUTE SUCH AFFIDAVITS AS ARE REQUIRED BY THE RULES AND REGULATIONS

Ms. Lauren Bradley, Assistant to the City Manager, said that to receive Economic Stimulus Funding from the State, the Water Resources Department must submit a Governing Board Resolution to the N.C. Treasurer's Office by June 26th, 2009, that contains exact wording outlining the City's responsibilities with respect to the Pumping System Installation Water Stimulus Project.

On February 27, 2009, Water Resources submitted four Council-approved applications for ARRA Funding for projects totaling $4,410,990. The department was notified that no funding would be awarded. However, on June 22nd, 2009, the department was notified that one project may be funded if more paperwork is submitted by June 26th, 2009. The additional paperwork must include a signed resolution with exact wording as dictated by the State.

The project selected by the state is the Pumping System Installations Project in the amount of $510,000. This project will include replacement of the North Fork Water Treatment Plant High Service Pump, replacement of the Black Mountain High Service Pumps, and installation of an automatic valve on a 24-inch water line to control water volume to the south end of the water distribution system. This project replaces large, inefficient pumps with smaller, more efficient pumps to reduce the energy needed to distribute water. The total amount requested, $510,000, includes materials, installation, engineering, a project contingency, and a departmental fee. The department will be expected to fund 50% of that amount, or $255,000.

This project is part of City Council's strategic plans to create jobs to aid in economic recovery, improve city infrastructure, and promote the green sustainable initiative.

Pro:

- Approval of this resolution should allow the department to receive reimbursement of 50% of the total cost, or $255,000, for the Pumping System Installations Project.

Con:

- If this resolution is not approved, Water Resources will not receive any outside funding for this project.

If this project is approved by the State, the Water Resources Department will be required to provide 50% of the funds, which would be approximately $255,000. These funds have already been requested in the Fiscal Year 2010 Capital Improvement Projects budget.

Water Resources staff recommends that the Mayor and City Council authorize the resolution outlining the City's responsibilities with respect to the Pumping System Installation Water Economic Stimulus Project.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved to adopt Resolution No. 09-142. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

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At 7:03 p.m., Mayor Bellamy announced a short recess.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED AT 128 BINGHAM ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3747- ORDINANCE REZONING PROPERTY LOCATED AT 128 BINGHAM ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 7:25 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance rezoning 128 Bingham Road from Industrial District to Commercial Industrial District. This public hearing was advertised on June 12 and 19, 2009.

Mr. Esselstyn said that this 23-acre site, though still referred to by many as the Square D Plant, has undergone a noteworthy change since the departure of that manufacturer. The property is now named the Blue Ridge Business Center, and while a manufacturing operation (Aprotech Powertrain, a maker of engine parts) continues to occupy a large portion of the building, there is increasing interest by non-industrial uses in areas of the facility. The area's current zoning classification, Industrial, does not lend itself easily to this mix of uses, and thus the owner is requesting a rezoning to Commercial Industrial.

According to the Unified Development Ordinance (UDO) Article 8, the purpose of the Industrial District is to "reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees."

The stated purpose of the Commercial Industrial district (also known as CI) is "to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development." Further, "assembly, packaging, processing, production and manufacturing" uses are permitted in CI, as in Industrial; the only industrial uses permitted in the Industrial district but not in CI are recycling plants and certain other types of recycling facilities. With regard to open space, however, the Commercial Industrial district is more restrictive than the Industrial; the IND district is exempt from the open space requirements applied to most other districts (including CI).

The site constitutes the majority of a block encircled by three roads: Bingham Road, Adams Hill Road, and Pearson Bridge Road, though there is no entrance to the property from

Pearson Bridge Road. (The other property on the block is Emma United Methodist Church.) The building contains almost 300,000 square feet of floor area, and the site provides almost 7 acres of vehicular use area. The site is situated just inside City Limits, and has been in the City's jurisdiction since 1981.

The applicant's request for Commercial Industrial zoning stems from a desire to be able to attract a wider range of possible tenants. The Industrial zoning district allows relatively few commercial uses, and does not include general retail sales, general office uses, medical clinics, or residential occupation by non-employees in the list of permitted uses. In recent years, the City has permitted some office uses on the site with the requirement that they remain subordinate to the principal manufacturing use of the property. However, the Business Center has attracted two employers providing new jobs in the area (a VA call center and a Census Bureau office), and would like to be able to expand the floor area available for such uses as well as for potential future retail options.

In May of 2008, a Level II site plan review was undertaken for this site, for the renovation of 52,449 square feet of the facility into offices subordinate to the primary manufacturing use, and an additional 451 square feet of new floor area. The improvements related to the original project are still in progress. It was noted at the time that for a larger scale conversion of the building for other uses, a rezoning would have to be pursued. A conditional zoning was discussed, but the applicant would prefer to have the adaptability of not being committed to a specific plan for future modification.

As is noted in the sections above, the Comprehensive Plan includes a policy stating that Industrially zoned land should be preserved for industrial uses. This is further emphasized in the Sustainable Economic Development Strategic Plan that identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area. However, there are recent precedents, most notably the BASF plant rezoning in January of this year, for City Council approval of similar zoning changes. Two other 30+ acre areas were recently rezoned from Industrial to Residential zoning districts.

After recent rezonings of industrially-zoned land were approved despite the City's adopted policy, City Council felt that stakeholders should be consulted about their perspective on the policy given changing views about the future of this region's economy. Director of the Office of Economic Development Sam Powers attended these discussions, and, applying the findings to the similar BASF rezoning, stated that "OED staff feels a case can be made for recommending approval." Mr. Powers has also attended discussions related to this rezoning petition and expressed the same position.

One further characteristic of this site which renders it less suitable to be fully occupied by a modern large-scale manufacturing operation is that it is served by relatively small roads and does not have convenient access to any nearby interstate for large trucks. The owner's inability to offer such a feature to a potential industrial tenant compounds their need to be able to recruit non-industrial tenants less dependent on large truck traffic.

At their June 3, 2009, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed rezoning.

As of this writing, staff has received no communications from the public regarding this rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning district is compatible with the surrounding area.

- Rezoning could encourage development and further job growth.
- Site's road access makes it less than ideally suited for modern large Industrial tenants.
- CI zoning district would require open space preservation, unlike current zoning.

Con:

- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. Both the Planning and Zoning Commission and City Council have, however, supported similar rezoning in the recent past, and since 2006 stakeholders have not expressed significant concern about the rezoning of such land to Commercial Industrial. If the City Council wishes to consider this rezoning independent of the existing policies, staff feels a good case can be made for recommending approval.

Ms. Donna Logan, representative of the owner of Blue Ridge Business Center, urged Council to support the rezoning in that she was pleased to see the building being brought back to life and provide jobs and a tax base for the City.

Mr. Carroll Hughes, architect with Spaceplan Architects and project manager for the project, felt changing the complexion, the use and the visual characteristics of the industrial building will make it a much better neighbor. It will also recycle the building instead of demolishing it. With the Industrial zoning there is no requirement for open space, but with this requested rezoning they will have almost 4 acres of open space. He urged the Council to support the rezoning.

Mayor Bellamy closed the public hearing at 7:34 p.m.

When Councilman Mumpower noted that the Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, policies state that we should preserve industrially zoned land for industrial uses, Mr. Esselstyn said that after staff discussion, it was staff's recommendation that these projects be reviewed on a case by case basis, recognizing the overall policy is a sensible one.

In response to Councilwoman Cape, Economic Development Director Sam Powers felt that this rezoning allows for greater flexibility since it does not preclude most of the uses in the industrial district.

There was a brief discussion, initiated by an observation by Councilman Newman, of a possible policy amendment for industrially zoned properties having greater flexibility. City Manager Jackson felt it would be appropriate for the Planning & Development Director meet with the Planning & Economic Development Committee to review a map of the industrially zoned areas along with a brief assessment of each property.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3747. This motion was seconded by Councilman Russell and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN AMENDMENT FOR THE INGLES DEVELOPMENT PROJECT LOCATED AT 85 TUNNEL ROAD

TO ALLOW FOR A 16 SQUARE FOOT, WALL-MOUNTED "STARBUCK'S" SIGN TO THE INGLES ON 1141 TUNNEL ROAD

ORDINANCE NO. 3748 - ORDINANCE AMENDING THE SIGNAGE PLAN AMENDMENT FOR THE INGLES DEVELOPMENT PROJECT LOCATED AT 85 TUNNEL ROAD TO ALLOW FOR A 16 SQUARE FOOT, WALL-MOUNTED "STARBUCK'S" SIGN TO THE INGLES ON 1141 TUNNEL ROAD

Mayor Bellamy opened the public hearing at 7:51 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the approved signage plan to apply a specific sign detail to the store located at 1141 Tunnel Road (Oteen). This public hearing was advertised on June 12 and 19, 2009.

On September 25, 2007, Asheville City Council approved the sign package presented for the two separate Ingles developments located on Hendersonville Road and Tunnel Road respectively. The plan included both attached and freestanding signage including:

- Multiple signs for the principal Ingles supermarket (Ingles, American Owned, Fresh Foods, Café, Video, Pharmacy Drive-thru)
- Attached signage for a convenience store (The i Market)
- Attached signage for the retail gasoline sales (Gas Express)
- Attached signage for the car wash (Laser Wash)
- Free-standing monument sign for Ingles
- Free-standing sign for Gas Express

Additionally, the plan included a Starbuck's franchise sign for only one of the two stores and was later amended to include the second store once the franchise was obtained. The applicant is now seeking to add the same Starbuck's franchise sign to the Oteen store. The applicant is not prepared to add other signs to this request at this time.

The "Starbuck's" franchise sign is identical to that approved with the original application and will be a 16 square-foot wall-mounted sign, located at one end of the store.

In context with the approved package, the additional request is in keeping with the stated intent and purpose for the signage.

Regarding the City Council Strategic Operating Plan, this proposal most closely supports the goal of ***sustainability*** through improved identity and advertisement supporting the economic viability of the overall project.

Pro:

- Provides identification of a franchise business located inside the larger grocery store.

Con:

- Contributes to the proliferation of signage along the city's corridors.

There is no direct fiscal impact to the City has been identified.

Staff recommends City Council approve the signage plan amendment for the Ingles development project located at 85 Tunnel Road to allow for a 16 square foot, wall-mounted "Starbuck's" sign at their 1141 Tunnel Road store.

A representative of Ingles Markets spoke in support of this amendment noting that this is an on-going program to enhance Ingles services.

Upon inquiry of Mr. Paul Van Heden, the Ingles representative said that this sign will be identical to the other Starbuck's signs on other Ingles.

Mayor Bellamy closed the public hearing at 7:57 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3748. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 318

V. UNFINISHED BUSINESS:

A. MOTION TO ACCEPT THE RECOMMENDATIONS OF THE REPORT ON CIVIL SERVICE LAW REVISIONS

Mayor Bellamy said that earlier in this legislative session, Senate Bill 556 (Civil Service Law) was introduced in Raleigh and subsequently passed through the Senate and is now being considered in the House of Representatives. She said that she, Vice-Mayor Davis and Councilman Mumpower met on June 5, 2009, with NC General Assembly members Senator Martin Nesbitt and Representative Susan Fisher, and representatives of the police/fire organizations to discuss proposed changes to Asheville's Civil Service Law (SB 556).

The Asheville City Council also assembled a Blue Ribbon Commission to review the Civil Service Law in February, 2009. This Commission provided suggested changes to the existing Law based on a Best Practices analysis on May 12, 2009, for City Council's consideration.

Suggested changes requiring outside legal counsel and clerk recording services impact the General Fund in Fiscal Year 2009-10 at $100,000.

The proposed changes and how those changes were incorporated into the City's proposed revision of the draft Senate Bill was provided to Council.

She said that she would be happy to outline the minutes resulting from the June 5, 2009, meeting, but due to the length and complexity of the issue, she said the only item that did not reach majority support was that police/fire representatives wanted the current law to remain trial de novo and City Council wanted to amend the language to have a review of the record. We are leaving that item up to Senator Nesbitt and our legislators to work out.

When Mayor Bellamy asked for comments from the public, none were received.

Vice-Mayor Davis moved to accept the recommends of the report made by Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower's revisions to the Civil Service Law. This motion was seconded by Councilman Mumpower and carried unanimously.

Mayor Bellamy said that these revisions will be provided to our State legislatures.

B. 2008-09 END OF THE YEAR BUDGET AMENDMENTS

ORDINANCE NO. 3749 - BUDGET AMENDMENT REGARDING AUTOMATED METER READERS

ORDINANCE NO. 3750 - BUDGET AMENDMENT REGARDING RANKIN AVENUE PARKING GARAGE RESTORATION

ORDINANCE NO. 3751 - BUDGET AMENDMENT REGARDING PURCHASE OF FIVE HYBRID BUSES

ORDINANCE NO. 3752 - BUDGET AMENDMENT REGARDING THE HEALTH INSURANCE PROGRAM

ORDINANCE NO. 3753 - BUDGET AMENDMENT REGARDING WORKERS COMPENSATION PROGRAM

ORDINANCE NO. 3754 - BUDGET AMENDMENT REGARDING CERTIFICATES OF PARTICIPATION BONDS, SERIES 1997C

Chief Financial Officer Ben Durant said that this is the consideration of the technical year-end budget amendments that are presented below.

Technical Amendment #1: Automated Meter Readers: $500,000

City Council approved funding in the Fiscal Year (FY) 2008-09 Water Resources Fund budget for the purchase of 2,500 automated meter readers (AMRs) to increase meter reading efficiency and reduce the department's carbon footprint from vehicle emissions. Staff anticipated that all of the funding for the AMRs would be spent in the 2008-09 fiscal year, so this expenditure was budgeted in the Water Resources operating budget instead of the capital budget. The purchase of the AMR's, however, was delayed while staff pursued Economic Stimulus Funding for this project. In the end, no stimulus funds were awarded for AMR purchase. Because the purchase of the AMRs was delayed, no purchase order was issued in the current year, and thus this funding will revert back to the Water Resources fund balance. Staff is requesting that Council amend the budget the Water Resources capital budget to allow for the carryover of $500,000 in AMR funding to FY 2009-10.

Technical Amendment #2: Rankin Garage Restoration: $500,000

The FY 2008-09 Parking Services adopted operating budget included $500,000 in debt service for the proposed parking garage at 51 Biltmore Avenue. Due to the timing of this project, no debt service payment will need to be made in FY 2008-09. At the April 14, 2009, City Council meeting, staff presented to Council a proposal to use this debt service savings to fund renovations to the Rankin Avenue Parking Garage. On April 14, Council approved staff moving ahead with procurement of engineering services for both the Rankin and Wall Street garage renovations. Staff is now requesting that Council amend the budget the Parking Service capital budget to allow for the carryover of $500,000 in AMR funding to FY 2009-10.

Technical Amendment #3: Hybrid Bus Purchase: $2,625,000

In 2008 City staff requested assistance from the N.C. Dept. of Transportation (NCDOT) to purchase five new hybrid buses. The City of Asheville was awarded $2.1 Million to acquire these buses in May 2008. The City requested 10% match contribution to the NCDOT and the funds were granted in the amount of $262,500. The City has allocated $262,500 as 10% match contribution from the transit capital fund. This technical amendment will allow for the establishment of the total $2,625,000 budget for this project.

Councilman Mumpower felt that since the technology for hybrid technology is in a high degree of influx and hybrid buses are dramatically more expensive, he could not support this budget amendment.

Upon inquiry of Mayor Bellamy, Director of Transportation and Engineering Cathy Ball explained the reasons why we are not purchasing compressed natural gas buses. She said that we don't have the infrastructure to gas the 150 gallon tanks, keeping parts for three types of buses would be expensive, and even though costs are higher for hybrids, the benefit of the carbon footprint associated with them is significantly different.

In response to Mayor Bellamy, Ms. Ball said that everything to date is just replacing existing buses.

Technical Amendment #4: Health Insurance Program: $1,400,000

As discussed with City Council during the Quarterly Financial Updates and Budget Presentations, the City has experienced a significant increase in health care costs over the last five years due to several factors, including an aging workforce, overall general inflation in health care costs, and the occurrence of a number of high dollar claims. In the current fiscal year, the total estimated costs for the health care program are expected to be $11.7 million, which is 10.7% higher than FY 2007-08 costs, and $1.4 million more than the original budget estimate of $10.3 million.

Staff is recommending that Council appropriate $1,400,000 million from the Health Care Program's fund balance to help cover the costs in the current fiscal year that have exceeded budget. As of June 30, 2008, the fund balance reserve for the Health Care Program was $2.6 million. The $1.4 million appropriation requested tonight will lower the estimated June 30, 2009, health care reserve to $1.2 million. The recommended level of reserves to protect against the volatility of the health care market and provide a sufficient "rainy day" is $4.5 million. Continued policy discussion is needed regarding the distribution of health care costs between the City and employees as well as the relative priority of the city's health care program compared to other programs.

When Councilman Mumpower asked about how the City will be planning to prevent this type of loss with the health care program in the future. Mr. Durant said it was his opinion that we have structural issues that need to be addressed and we need to engage in a rigorous prioritization process. With doing that rigorous prioritization process and making structural changes he felt we will continue to be in a situation where we are trying to catch up with health care. The prioritization process needs to occur throughout the year and as part of the budget process is a good starting point. There are some basic policy questions, e.g., how much of the health care program should be borne by employees vs. how much should be covered by the City, or how much should retirees be paying for health insurance in comparison to current employees, etc. He explained that staff will be looking at the health care program at the time of open enrollment and asking these type policy questions.

Councilman Mumpower expressed concern that problems might not be fixed if the City doesn't start looking at our health insurance fund until the January timeframe. He suggested a more timely deliberation on some of those policy matters raised and we need to begin looking for ways to save money.

In response to Councilman Russell, Mr. Durant said that it's only been recently (within the past 2-3 years) that the health care expenses began to outpace our budget. Prior to the past few years we have actually turned in money to the health care program. There is some volatility with health care that you can't predict. What we need to look at is our current trends going forward.

Mayor Bellamy asked that the health insurance program be placed on the agenda for the City Council's retreat.

City Manager Jackson said staff (1) needs to provide Council a white paper which outlines what we are currently doing, what policy issues we have with the health care plan and what our timeframe is for bringing those issues to Council, with recommendations; and (2) will update Council on the overall financial picture at Council's retreat and have recommendations for Council in the February-March timeframe which is before Council gives the information to staff to build a budget.

In response to Councilwoman Cape, Mayor Bellamy said that she has provided President Obama's Chief of Staff with a lot of data on the Asheville Project. When Council has their meeting with Mission Hospitals leadership next week, she will bring up the fact that the summit they held was highly attended by doctors and not a lot of other individuals at the table. She would recommend another summit be held to have a more inclusive agenda so that we can present a comprehensive white paper.

Technical Amendment #5: Workers Compensation Program: $95,000

The City's total FY 2008-09 budget for the Workers Compensation program, which includes funding for premiums, claims and administrative expenses, totals $1,134,000. In a typical year, this level of funding is adequate to cover all of the expenses in the program. In FY 2008-09, however, claims expenses have been slightly higher than anticipated. As a result, the budget needs to be increased by $95,000. Funding for this budget increase will be taken from the Workers Compensation fund balance reserves.

Technical Amendment #6: Certificates of Participation Bonds, Series 1997C: $166,140

In 1997, the City of Asheville issued COPs Series C in the amount of $2,612,367 to support the renovation of the Grove Arcade Public Market. Under an agreement with the Grove Arcade Public Market Foundation (GAPMF), GAPMF assumed responsibility for repayment of the debt service associated with the COPs. Based on the City's understanding of this agreement, the COPs debt was recorded in the City's financial reports as conduit debt. Conduit debt occurs when a governmental entity issues debt not for its own use but for the use of a third party, typically a not-for-profit, in this case the Grove Arcade. The governmental entity that issues the debt does not have any subsequent liability for repaying it; instead, the third party for whom the debt was issued is obligated to repay the debt directly to the bank trustee. Because the governmental entity is not the obligor, only limited disclosure of the debt is required in the governmental entity's financial statements.

The City has been making the annual debt service on the COPs since 1997, offset by payments from GAPMF to the City for reimbursement of the debt service, based on a separate agreement with City has with the GAPMF. Because the City interpreted this arrangement as conduit debt, our debt service payments were not included in the City's annual operating budget and only limited disclosure was provided in our financial statements. Recent research, however, has determined that this is not conduit debt but actually a direct obligation of the City. That is, the City is contractually obligated to make debt service payments directly to the bank trustee, and in case of default, bondholders would have recourse against the City not the Grove Arcade for fulfillment of the debt obligation. As such, the City will need to bring the debt on to its books in FY 2008-09. In addition to the reporting issue outlined above, there is also a funding gap that this amendment will address. In recent years, GAPMF has been unable to fully reimburse the City for the debt service payments, creating a net cost for the City.

At present, the outstanding balance for the COPs is $1,845,000. For FY 2008-09, the City will need to amend its operating budget to reflect an annual debt service payment on the COPs in the amount of $166,140. This additional budget expense will be partially offset with a $30,000 revenue payment that has been received from GAPMF. The City will have to

appropriate $136,140 in fund balance to cover the remaining amount of the payment for FY 2008-09. Prior to its adoption on June 23rd, staff will also adjust the Manager's Recommended FY 2009-10 Budget to include the debt service payments scheduled for next fiscal year.

The only amendment that will impact the City's General Fund fund balance is the appropriation for the COPs 1997 Series C. The City will appropriate $136,140 in fund balance to fund this amendment. This appropriation will lower the estimated year-end fund balance amount to $17,737,120 or 19.7%.

Mr. Durant responded to Councilman Newman when he asked how much has the GAPMF reimbursed the City over the past couple of years. He noted that City staff has had several discussions with the GAPMF about re-financing or helping in other ways to create opportunities for them to pay their debt payments.

In response to Councilwoman Cape, Ms. Ruth Summers, representing the GAPMF, explained that Progress Energy controls floors 2-5 in the Grove Arcade and they have a 99 year agreement with the City. The GAPMF has a 99 year lease to operate the ground floor. Her understanding of this loan was to basically be used for renovation costs when the building was originally renovated. Her records show that they have missed the full payment in 2007 and the remainder they owe for 2008 is $34,607. They have met with City staff and asked that the payment be restructured from a 20-year payment to a 40-year payment. It is her understanding that the payment has something to do with the City's bond rating, so they weren't able to accommodate them on that restructuring of the payment schedule.

Councilman Mumpower recalled that when the City undertook this partnership with other partners it was clear that the City would not acquire debt or responsibility for the Grove Arcade renovations. A plan was sold on the basis of visions of special success. He was concerned that City taxpayers are now being asked to pick up a significant tab for a nice project, but something we have been repeatedly assured would not come back to haunt City taxpayers.

In response to Councilman Newman, Mr. Durant briefly explained the way the payment was structured with the GAPMF. At the end of the 19-year term, there will be a balloon payment that they will make to catch up on the amount of principle and interest that the basic payment didn't cover. Any payment or partial payment they don't make will be added to that balloon payment that will be have to be caught up at the end of the amortization schedule. There is an expectation that the GAPMF, with the City's help, will continue to work towards fulfilling that obligation. The overall expectation is that the City of Asheville will be made whole by the end of this agreement, unless there is another policy decision made by City Council.

Councilwoman Cape felt that the City needs to invest in economic development. She supported the agreement moving forward and was proud that the City of Asheville made that investment in this wonderful asset for our community.

In response to Councilman Miller, Mr. Durant said that a standard procedure with balloon loans is that at the end of the term, you can re-finance the balloon payment.

Ms. Summers responded to Councilman Miller regarding the possibility of adding a special assessment to the tenants in the Grove Arcade. She noted that their occupancy is down and they must share in the 34% of the expenses for maintenance with Progress Energy.

Mayor Bellamy stressed that the City of Asheville is the owner of the Grove Arcade. It is our building and we worked with the GAPMF for them to renovate it and pay for it. To act as if we don't have any ownership is not true. She was on Council when the debt service was approved and she did not recall where the City of Asheville didn't expect to have ownership. She asked City Clerk Burleson to research the minutes on that point. She said it the taxpayers building and it is our responsibility to keep the building up. At the end of the day, if the GAPMF defaults, the

building is still our responsibility. The GAPMF went out and got Progress Energy to partner with them and fix up one of Asheville's assets.

Councilman Newman suggested the Planning & Economic Development Committee have a more detailed discussions on this issue.

City staff recommends City Council approve the technical year-end budget amendments.

When Mayor Bellamy asked if anyone from the public would like to speak on any of the year-end budget amendments, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3749. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 320

Councilman Miller moved for the adoption of Ordinance No. 3750. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 322

Councilwoman Cape moved for the adoption of Ordinance No. 3751. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 324

Councilman Mumpower moved for the adoption of Ordinance No. 3752. This motion was seconded by Councilman Russell.

Councilman Mumpower withdrew his motion since there was no willingness on Council's part to address this issue on a more timely basis.

Councilman Russell then moved for the adoption of Ordinance No. 3752. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 326

Councilman Mumpower moved for the adoption of Ordinance No. 3753. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 328

Councilman Miller moved for the adoption of Ordinance No. 3754. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 330

ORDINANCE NO. 3755 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE RENOVATION COSTS ASSOCIATED WITH CONVERTING EXISTING SPACE IN

THE PUBLIC WORKS BUILDING INTO A ONE STOP SHOP FOR DEVELOPMENT SERVICES

Assistant City Manger Jeff Richardson said that this is the consideration of a budget amendment, in the amount of $390,000, to establish a budget for the renovation costs associated with converting existing space in the Public Works Building into a one stop shop for development services.

The Asheville City Council, through its annual strategic planning process, previously identified under the Focus Area of "Sustainable", as one key goal, the need to reform and streamline the development review process to improve the ease and efficiency of the customer's experience without compromising the quality of standards or other strategic goals. City staff have guided this process forward and is in the process of executing physical renovation efforts to the first floor of the Public Works Building, which when completed, will serve as the city's Development Services One Stop Shop.

Mr. Richardson then used a drawing to explain in detail the Development Services One Stop Shop.

In order to save costs, some of the demolition and renovation work will be completed by Building Safety staff. Estimated timeline to complete this project and open for services is August 31, 2009.

The anticipated cost for completing the necessary renovations in the Public Works Building is not to exceed $390,000. Funding for this project will come from a variety of City funds and departments as outlined below:

- **$100,000:** In FY 2007-08, funding was set aside in the Water Resources Capital Fund to pay for costs associated with the establishment of a one stop shop at Innsbruck Mall.

- **$40,000:** In FY 2008-09, City Council established a 4% technology fee surcharge that was added on to all development permits to create funding for technology projects that would enhance the development review process. To date approximately, $150,000 has been collected from this fee. $40,000 of this will be used for technology related items associated with establishing the one stop shop.

- **$50,000**: Stormwater Fund, staff has identified $50,000 in savings in the Stormwater Fund's FY 2008-09 professional services budget. This savings occurred due to a delay in the watershed study for Lower Ross Creek.

- **$200,000**: The City currently has approximately $220,000 available in its capital reserve fund from projects that were previously completed under budgeted.

Pros:

- Improves the customer experience by one physical location to provide for better coordination of the development review services currently provided by Building Safety, Planning, Engineering, Water Resources, and Fire & Rescue Departments.
- Utilizes existing city space through space redesign, thus significantly lowering initial cost estimates for this consolidated space design.
- Eliminates the city's need for leased space, thus further lowering budgetary impact.
- Provides opportunities for consideration for additional city space needs in city hall as certain development services are relocated to this facility.

Cons:

- Will reduce the amount of capital reserve funding available to fund other projects.

- Current space allocation at Public Works, due to size of building and services provided, will not allow for future expansion/growth.

The funding from the Water Resources Capital Fund, the technology fee, and the Stormwater Fund was previously budgeted and therefore there will be no impact on those funds. The $200,000 appropriation from the capital reserve fund will lower the amount left in that fund to approximately $20,000.

City staff recommends City Council approve the budget amendment in the amount of $390,000 to establish a budget for the renovation costs associated with converting existing first floor space in the Public Works Building into a Development Services One Stop Shop.

When Mayor Bellamy asked for public comments, none were received.

Mr. Richardson responded to various questions/comments from Council, some being, but are not limited to: are there any concerns about timing due to our economy; will there be additional staffing costs associated with this reorganization; and what happened to the fichus trees that were located in the lobby of the Public Works Facility.

In response to Councilman Mumpower, City Manager Jackson said that the point of urgency on this is we are here for no other reason than to serve the community. The community demands efficiency and customer friendly. For developers and people who want to invest in our community, they need this now more than ever, as it will save them time and money.

Councilwoman Cape noted that the timing on this going on line is perfect because she couldn't imagine putting City staff under this kind of pressure in full blown development mode.

In response to Councilwoman Cape, Mr. Richardson said that the Public Works Facility does not have any room for future expansion; however, an option could be relocation of the 2nd Floor activities.

City Manager Jackson recognized Mr. Richardson, Assistant Director of Building Safety Mark Case (project manager), and others for their work on this project and their leadership to relocate 70 people.

In response to Mayor Bellamy about staff in the Purchasing Division on Hunt Hill, Mr. Richardson said that with the relocation of 45 staff out of City Hall to Public Works, it does open up opportunities for other reorganizations and relocation of services. No decision has been reached short-range, but in our long-range plans along the South Charlotte Street corridor we have looked at Water Maintenance and hunt hill Purchasing with some redevelopment opportunities.

Mayor Bellamy felt that long-range plans should include how we can better utilize the Hunt Hill property, in that she felt there are great opportunities for some shared parking for the tourists and the development pattern over there. She also felt that the relocating of people from City Hall is an opportunity for Council to have offices in the City Hall building.

Mayor Bellamy wanted to make sure that all Unified Development Ordinance requirements, e.g., landscaping, signage, additional parking, etc., are covered in this budget amendment. If additional parking is required, she suggested contacting Mt. Zion Church. Mr. Case responded that this project will not trigger any additional needs.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3755. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 332

C. ORDINANCE NO. 3756 - ADOPTION OF THE FISCAL YEAR 2009-10 ANNUAL OPERATING BUDGET

Chief Financial Officer Ben Durant said that this is the consideration of adoption of the Fiscal Year 2009-10 annual operating budget. Mayor Bellamy announced that the public hearing on the budget was held on June 9, 2009.

The Fiscal Year 2009/2010 Annual Operating Budget was formally presented to City Council on May 12, 2009. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on May 29, 2009, and June 5, 2009. City Council conducted a public hearing on the budget on June 9, 2009.

Operating Budget Adjustments

The net proposed operating budget presented to City Council on May 12th was set at **$135,700,029**, including a General Fund appropriation of **$92,156,972**. Since the proposed budget was presented to City Council, there have been four adjustments that have altered the total of the budget that is presented to you tonight for your adoption.

1) **Increase in the Cost of Recycling Contract**: As discussed with Council at the June 9th meeting, the final cost for the FY 2009/2010 recycling contract exceeded initial budget estimates by **$132,957.** At that meeting, Council approved the contract and also approved increasing the monthly household recycling fee from $2.65 to $2.95 to cover the increased cost of the recycling program.

2) **Funding for Sidewalk Crew Re-Instated** - During the budget process, Public Works staff agreed to hold vacant the positions on one concrete crew in FY 2009-10 and only fill those positions if funding for projects is obtained from the American Recovery and Reinvestment Act (ARRA). This budget balancing strategy produced $140,000 in savings. Staff recently received information that two of the projects that staff had hoped to fund with ARRA funding, the Patton Avenue Sidewalk and the Clingman Avenue Streetscape, do not qualify for ARRA funding. ARRA funding for other traffic safety projects is still pending, but staff feels that given the uncertainty associated with the level of ARRA funding that may eventually be received, it is prudent to restore funding for the concrete crew in the adopted budget by appropriating **$140,000** from fund balance. If ARRA funding is eventually received for any traffic safety projects, then a portion of that funding can be used to restore fund balance. Either way, it should be noted that the disadvantage of this funding strategy is that we are using a one-time funding source (i.e. fund balance or ARRA funds) to fund the ongoing costs of staffing the concrete crew.

3) **Inclusion of COPs 97c (Grove Arcade) Debt:** In a separate agenda item at tonight's meeting, Council was asked to amend the FY 2008/2009 budget to bring on to the City's books the debt service payment for the COPs 97c debt issuance. Historically, this COPs 97c debt was reported as conduit debt, and as such, these payments were not included in the City's annual operating budget. Recent research, however, has determined that

appropriating fund balance to cover this additional debt service payment which was not included in the Manager's Recommended FY 2009/2010 Budget.

4) **Buncombe County tipping fees:** The City of Asheville received a letter from Buncombe County on June 18, 2009, advising that tip fees at the Transfer Station are increasing from $42/per ton to $47/per ton effective September 1, 2009. Based on 2007-08 annual tonnage of 25,621 this represents an increase of **$106,764** for the 2009-10 budget year. This amount was not originally budgeted in the Public Works budget request as this information was just recently received. As a note on an annual basis the increase is $128,105. Staff recommends appropriating fund balance to cover the additional tipping fees.

The net result of these changes increases the operating budget by **$531,321** to **$136,231,350**, and the General Fund appropriation to **$92,688,293**.

Budget Ordinance Additions

RENCI/Grove Arcade Lease: As previously presented to Council, the City has entered into a partnership with RENCI for the rental of office space at the Grove Arcade. The total annual lease cost with the Grove Arcade will be $34,902.12 (paid monthly at $2,908.51 beginning late August 1, 2009). RENCI will contribute $9,902.12 toward the annual lease obligation and the remaining $25,000 will be funded with proceeds from Senate Bill 7 funds that were previously budgeted in the City's grant budget. The City has also agreed to perform improvements to the rental space at a cost of up to $20,000. RENCI will reimburse the City for the full cost of these improvements. A summary of the budget for this project is presented below and included in the FY 2009-10 budget ordinance for Council's adoption.

Revenue:	
Senate Bill 7 Funds	$25,000
RENCI	$29,903
Total	$54,903
Expenditures:	
Annual Lease	$34,903
Improvements	$20,000
Total	$54,903

ARRA CDBG Grant Entitlements: The City has been awarded two entitlement grants from HUD as a part of the ARRA funding, and the budgets for these two grants are included in the ordinance that Council is adopting tonight. The Community Development Block Grant Recovery Act Funding (CDBG-R), which totals $332,942, will be distributed to three non-profit subrecipients and to the City. The Homeless Prevention and Rapid Rehousing Program Grant (HPRP), which totals $509,460, will be distributed to non-profit and faith-based subrecipients this fall. The award amounts for these two entitlements have been approved by HUD, and the City is simply awaiting HUD approval of the City's documentation of its spending plans for the grants. Because these are entitlement grants and funding has been assured through HUD, staff is recommending that Council proceed with adoption of these budgets. Staff will return to Council with budget amendments as other ARRA grant fund awards are received during FY 2009-10.

Staff requests that Council review the FY 2009/2010 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Councilman Mumpower anticipated a decline in our economy and that means revenue and cost hits will be dramatic. He felt there are extravagances in this budget that are less than responsible under the current economic realities.

Mayor Bellamy said that this was not an easy budget and Council has not raised the tax rate. There are several things in the budget she did not support, but it is part of the bigger picture and since we have strategic updates on a quarterly basis we can continue to monitor and make changes through budget amendments. She did look forward to the audit of the Fiscal Year 2008-09 budget. She felt this budget is a good foundation. We tried not to hurt basic city services, gave public safety and public works what they need to perform basic City services and at the same time we are making technological advances.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3765. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 334

D. RESOLUTION NO. 09-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE 51 BILTMORE AVENUE PARKING GARAGE DOWNTOWN DEVELOPMENT AGREEMENT TO INCLUDE AN EXTENSION OF THE OPTION TO PURCHASE 51 BILTMORE AVENUE

Director of Transportation & Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to extend the Downtown Development Agreement decision making period for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue for six months.

In October 2008, City Council approved a Downtown Development Agreement with McKibbon Hotel Group, Public Interest Projects and the City of Asheville for the purpose of constructing a parking garage. The design of the parking garage is complete. The architect is in the process of applying for all applicable permits.

As designed, the project consists of the following:

- four hundred ten (410) parking spaces;
- public restrooms;
- four (4) parking spaces for electric vehicles;
- ten (10) bike lockers; and,
- public art component.

Due to economic conditions, McKibbon Hotel Group has not received confirmation of their funding. They are hopeful they will have this component of the project completed in three to five weeks.

The Downtown Development Agreement is structured to expire on July 1, 2009. The agreement allows two additional six month extensions. Staff is requesting that Council authorize the City Manager to execute the extension of the agreement which includes extensions of the option to purchase the property at 51 Biltmore Avenue and the "Decision Period" for evaluating the continued feasibility of the project.

This project is in alignment with the Strategic Plan by promoting sustainable, high-density, in-fill growth that makes efficient use of resources and by making environmentally efficient capital improvements. In addition, this action complies with the Parking Action Plan adopted by City Council.

Pro:

- The extension of the development agreement will position the City to continue to pursue the economic development benefits of an expanded tax base, additional jobs, needed public parking and other benefits, including the potential for workforce housing, associated with this project.

Con:

- The original development agreement called for a total of 439 parking spaces, with 239 reserved for public use. Based on current engineering design requirements, approximately 29 spaces have been removed from the deck design, leaving 210 spaces available for public use.

The cost to extend the option for the property at 51 Biltmore Avenue for an additional six months is $5,000. Other costs for extending this agreement are not measurable at this time.

City staff recommends City Council authorizing the City Manager to extend the Downtown Development Agreement for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue.

When Mayor Bellamy asked for public comments, none were received.

Ms. Ball explained to Councilman Mumpower the loss of 29 public parking spaces.

Upon inquiry of Councilman Mumpower, Ms. Ball explained that we have gotten very favorable preliminary budget numbers in – about 20-25% less than what we anticipated.

Upon inquiry of Councilman Mumpower, Mr. Wes Townsend, with McKibbon Hotel Group, explained that the debt capital market is very cold, but not frozen. It is challenging to find lenders who are willing to make a loan on commercial projects in many sectors; however, they have in hand a turn sheet from a large regional bank and they are negotiating with them now. Their projection is that the hotel will open in March of 2011 including deck construction.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-137. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 108

E. RESOLUTION NO. 09-141 - RESOLUTION EXPRESSING THE CONTINUED INTEREST IN DEVELOPMENT OF AN ANNEXATION AGREEMENT WITH THE TOWN OF WOODFIN

Mayor Bellamy said that last week some members of Council met with some members of the Town of Woodfin Board to discuss annexation plans and to discuss some of the concerns we had with their annexation going west. This resolution expresses the continued conversations with Woodfin to look at the opportunities for us to come together and develop an annexation

agreement going west and possibly north. At the next meeting, representatives from the Leicester community will be invited. She said that Asheville staff took some maps with them to the meeting – map of what Leicester representatives proposed for incorporation, Asheville's map of our extraterritorial jurisdiction, Asheville's Resolution of Consideration annexation map adopted in 2007, and maps including Woodfin's annexation area. Woodfin Mayor VeHaun has said that the door is not closed on this conversation and they look forward to continued discussions on what Asheville would like as a Council, and hearing from representatives from Leicester.

Mayor Bellamy read the following resolution: "WHEREAS, the City of Asheville and the Town of Woodfin began discussions regarding their mutual boundaries prior to 2005; and WHEREAS, the City of Asheville and the Town of Woodfin began discussions regarding an annexation agreement in 2006 but did not reach a mutually acceptable agreement; and WHEREAS, the Leicester community proposed to incorporate in 2008, and the Town of Woodfin proposed an annexation in 2009 that included parts of the area that was to be in the Town of Leicester and some areas in Asheville's designated extra-territorial jurisdiction; and WHEREAS, mutually agreed upon annexation agreements are a best practice of incorporated governments as a growth management tool for mutual infrastructure planning; and WHEREAS, most recently on Friday, June 12 the Town of Woodfin hosted a meeting with representatives of the City of Asheville to reestablish dialogue between these two municipalities; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The City of Asheville is committed to continuing dialogue with the Town of Woodfin on the topic of determining a mutually acceptable annexation agreement for the future."

Councilman Newman noted that when Leicester representatives talked with the Asheville City Council about incorporation, City Council was not aware that Leicester representatives were not required by law to consult with the Town of Woodfin in the same way they were required to consult with Asheville. He felt Woodfin raised legitimate concerns about the extent of Leicester's incorporation into areas that they think logically might fit better in the Town of Woodfin in the future. Woodfin said that they were pursuing a fairly aggressive annexation was in response to Leicester's incorporation plans. Asheville also have some legitimate concerns about Woodfin's very extensive annexation plans.

Councilman Newman moved for the adoption of Resolution No. 09-141. This motion was seconded by Councilman Russell.

Councilman Newman asked for a friendly amendment to the resolution that we request that Leicester incorporation representatives meet with the Town of Woodfin and take the Town of Woodfin's concerns into consideration as they work their incorporation efforts in relation to the boundary between those two areas. Councilman Russell accepted the friendly amendment.

Vice-Mayor Davis agreed with Councilman Newman in that he believed that the Town of Woodfin felt left out of the conversations with Leicester representatives. He thanked Mayor VeHaun and Woodfin's staff for meeting with City Council. It was a good opportunity to exchange some viewpoints and exchange dialogue on future expansion plans.

Mayor Bellamy noted that when Asheville adopts their Resolution of Consideration map for annexation areas every two years, it is just making it clear that the areas are just under consideration. The fact is, a lot has not changed over the years and Asheville has not aggressively annexed compared to other cities our size across the state.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-141, as amended. This motion was seconded by Councilman Russell and carried unanimously.

When Mayor Bellamy asked that the resolution be transmitted to the representatives of the Leicester incorporation, City Attorney Oast noted that he was taking notes to that affect.

RESOLUTION BOOK NO. 32 – PAGE 114

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-138 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE 10% STATE MATCH TO PURCHASE FIVE HYBRID BUSES TO REPLACE FIVE OF THE EXISTING 1996 DIESEL BUSES

Director of Transportation & Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the North Carolina Department of Transportation (NCDOT) in the amount of $262,500 as State match to purchase five hybrid buses to replace five of the existing 1996 diesel buses.

City staff is in the process of acquiring five new hybrid buses for the transit fleet. Part of the effort was to pursue 10% State match for the capital expenditure. Staff applied with the NCDOT and the funds were granted.

The new hybrid buses will replace five of the 1996 diesel buses that have already reached their useful life. This is part of the City staff's effort to replace sixteen 1996 buses. The aging fleet is still operative; however the 1996 buses have begun presenting the problems attributable to age, engine repairs and other parts increasing the maintenance costs.

The City will use an existing contract to purchase the buses, preferable from the State of North Carolina. The estimated delivery date is 18 months from the moment the order is placed.

The estimated cost of this project is $2,625,000. The City is funding this project using section 5309 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or $2,100,000. The City will provide 10% or $262,500 and with this Interlocal Agreement the State will contribute the additional 10%.

The acquisition of hybrid buses is in alignment with the Strategic Plan to reduce carbon emissions by 2% per year and in the acquisition of new technology that will support the area of environmental sustainability.

Pro:

- Entering into an Interlocal Agreement with the NCDOT reduces the City's contribution to 10% of the cost of the project.

Con:

- None at this time.

The project cost will be $2,625,000, with 80% of this total to be paid by federal funds - FTA section 5309; 10% or $262,500 by the City and 10% or $262,500 by the State.

City staff recommends City Council authorizing the City Manager to enter into an Interlocal Agreement with the NCDOT in the amount of $262,500 as State match to purchase five new hybrid buses to replace five 1996 diesel buses.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-138. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 109

B. RESOLUTION NO. 09-139 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. FOR TEMPORARY WORKERS

Assistant Human Resources Director Robin Nix said that this is the consideration of a resolution authorizing the City Manager to sign a Temporary Services Agreement between the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. F.I.R.S.T. is a local organization operating from 32 Knox Rd. in Ridgecrest, NC. The City of Asheville has utilized F.I.R.S.T staff for the past six years with excellent results.

Although the City has contracted with F.I.R.S.T. in the past, a Request for Proposals for temporary workers was released for bid in April 2009. Nine companies' submitted proposals and seven of the nine were considered responsive bidders. Of the seven responsive bidders, F.I.R.S.T. was the only agency with local offices currently in the Asheville area; however, several vendors offered to open local offices if awarded a contract. A bid analysis was performed by the City's Minority Business office and a spreadsheet used as a screening tool for proposals requested and received. Based on analysis of the proposals, F.I.R.S.T, Inc. was chosen as the successful bidder.

Benefits to contracting with F.I.R.S.T., Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all F.I.R.S.T. personnel requested enabling operations to be fully productive at all times.

This action complies with the City Council Strategic Operating Plan in that City infrastructure can be maintained and improved in a timely, consistent manner without the need of additional full-time staff.

Pros:

- Reduced costs in recruiting, hiring and benefits for full-time workers
- Management savings
- Utilizing personnel only on days when you need them and in various departments; therefore, eliminating the duplication of work crews

Con:

- None

The fiscal impact would be the contract amount for Streets, Sanitation and Civic Center - $228,000

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower moved for the adoption of Resolution No. 09-139. This motion was seconded by Councilman Russell.

Councilman Mumpower asked for a friendly amendment to the contract that within the ability of the law that F.I.R.S.T provide any City workers be legally able to work.

In response to Mayor Bellamy, City Attorney Oast said that Forsyth Initiative For Residential Self-Help Treatment Inc. is located in Ridgecrest, North Carolina, and has nothing to do with Forsyth County.

In response to Mayor Bellamy, Human Resources Director Lisa Roth said that the City of Asheville does not pay these workers directly in that they are not our employees. She explained it's a community service type program.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-139. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 110

C. RESOLUTION NO. 09-140 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT MARKET CONNECTIONS/KELLY FOR COUNCIL ON THE GRASS LAWN IN THE PACK SQUARE AREA OF PACK SQUARE PARK ON JUNE 30, 2009

Councilman Miller asked to be excused from this action due to a conflict of interest. Therefore, Councilman Russell moved to excuse Councilman Miller from participation in this action due to a conflict of interest. This motion was seconded by Vice-Mayor Davis and carried unanimously.

Summary: This is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Market Connections/Kelly for Council on the grass lawn in the Pack Square Area of Pack Square Park on June 30, 2009, from 6:00 p.m. – 8:00 p.m.

Market Connections/Kelly for Council has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the grass area of the Pack Square area in Pack Square Park. The malt beverages and unfortified wine will be served in glass containers and bottles.

Market Connections/Kelly for Council has applied for a one-time use permit with the North Carolina Alcoholic Beverage Control Commission (ABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the receipt of the ABC permit and approved Outdoor Special Event application. This action does not comply with the City Council Strategic Operating Plan. This action does not comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None

Cons:

- Potential for public safety issues;
- The event is not open to the public.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine on grass lawn in the Pack Square area of Pack Square Park on June 30, 2009, for Market Connections/Kelly for Council.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower moved to recues himself from participating in this action since he is City Council candidate running against Councilman Miller for a seat on City Council. City Attorney Oast said that this is not a disqualifying conflict of interest and that Councilman Mumpower should vote as a Council Member and not as a candidate. Said motion died for a lack of a second.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-140. This motion was seconded by Councilman Russell and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 111

VII. OTHER BUSINESS:

Vice-Mayor Davis said that due to the vacancy left on the Personnel Committee by former Councilwoman Holly Jones, it was the consensus of Council to appoint Councilman Newman to the Personnel Committee.

Mayor Bellamy briefly updated Council on her recent meeting at the N.C. League of Municipalities. She spoke with the Mr. Freeman, Secretary of the N.C. Dept. of Environment and Natural Resources, about CTS Facility issue and said they are trying to get the Environmental Protection Agency to do a re-assessment of the site to see if it triggers another level of investment as well as what is happening in the General Assembly where they are working to increase the threshold from $3 Million to $5 Million. Mr. Freeman did tour the site and he has been in contact with people in the area on that issue. He did thank City Council for installing water lines in that area. She also spoke with Mr. Carroll, Deputy Secretary of the Dept. of Commerce. The state energy office will be coming under his department and he will look to see if there are opportunities for Asheville to receive any additional funding from the Dept. of Energy. He stressed the importance of Asheville working with A-B Tech's program for workforce development. He was also in our area to talk to a local business about working with another employer in North Carolina to get more emphasis on our economy and making sure that there is economic development occurring in North Carolina. She then updated Council on some legislation from the N.C. League of Municipalities. The annexation legislation does impact the City of Asheville and there are 3 different bills being proposed, with a couple of compromises

being developed. She highlighted that in most situations outlined, Asheville is already doing what they are calling compromises. She noted there was no discussion of Powell Bill funds or sales tax funds being withheld. She lastly highlighted the Intermodal Bill which allows governments to vote on if they want to levy a sales tax for transit related programs.

Vice-Mayor Davis and Councilman Newman spoke about the French Broad Metropolitan Planning Organization and how Asheville has been successful in getting 13 projects on the list for funding for transportation projects.

Councilman Mumpower introduced his summer intern and encouraged students from Asheville High School who have a conservative lean who might be interested in an intern position with him to contact him.

The following claims were received by the City of Asheville during the period of May 22 – June 18, 2009: R&W Inc. (Streets), Caroline Foreman (Streets), Tim Bradley (Water), Gloria Leader (Streets), Ann Morgan (Water), Robbie Clark (Parks & Recreation), Neil A. Dubois (Fire), Benny Lake (Water) and Kerri Smith (Civic Center). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Dwight Buckner, representing the Asheville Downtown Association, read a resolution from the Asheville Downtown Association supporting the establishment of a special nuisance court in conjunction with the local justice system. They believe the establishment of such a court will have a positive impact on our whole community. They believe that enforcing regulations which lead to mutual respect throughout the community can only have a positive affect on our City, County, State and Nation. They believe this is tax money well spent.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:04 p.m.

Magdalen Bowleson
CITY CLERK

MAYOR

Tuesday – July 14, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller (left meeting excused at 5:57 p.m.); Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

ADDITION TO AGENDA

Mayor Bellamy said that a resolution authorizing the City Manager to make provisions for the possession of malt beverages and/or unfortified wine at the RiverLink event on August 1, 2009, will be added under New Business.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 2009 AS "SKYVIEW GOLF ASSOCIATION MONTH"

Mayor Bellamy read the proclamation proclaiming July, 2009, as "Skyview Golf Association Month" in the City of Asheville. She presented the proclamation to Mr. Lee Shepherd, President of Skyview Golf Association, who briefed City Council on some activities taking place during the month. Vice-Mayor Davis also wanted to recognize the late Mr. Chillie Young for his efforts during the 50 years of the Skyview Golf Association.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "D", "E", "H", "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 23, 2009

B. RESOLUTION NO. 09-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH INTEGRATED TECHNOLOGY SYSTEMS FOR THE PURCHASE OF IN-CAR VIDEO CAMERAS AND INFRASTRUCTURE TO UPLOAD THE EVIDENCE WIRELESSLY INTO A SECURE STORAGE DEVICE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Integrated Technology Systems for $82,950.64 for the purchase of ten (10) in-car video cameras and infrastructure and retrofit equipment in six (6) existing police cars that currently have in-car video capability, for a total of 16 in-car video installations

Each year the Finance Department, through its Risk Management Division, budgets money specifically for liability claims management and settlements. This year, staff proposes to use a portion of the risk management/liability claims fund for a one-time risk avoidance investment. The City of Asheville Risk Management staff, in coordination with Asheville Claims Corporation and Police Department, has identified as a high priority the purchase of in-car video cameras to place into police patrol cars for the purpose of recording the activities of the officer operating the patrol car. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens.

The cameras to be purchased are digital in nature and provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure storage device and wireless upload capabilities of the system creates a user friendly video storage system that is extremely secure and versatile.

This action conforms to the City Council's Strategic Plan under Safe to make Asheville the safest city in America based on approved metrics for similarly sized cities and by strengthening the enforcement of existing laws and regulations as opposed to adding new ordinances.

This action was reviewed by the Public Safety Committee at its May 19, 2009, which recommended approval.

Pros:

- More video/audio recorded evidence is available to review when critical incidents occur.
- The City has one-time funding available through Risk Management to purchase this equipment.
- The Police Department will receive 10 new in-car video units, be able to upgrade the six existing units for wireless upload capabilities, and will receive a wireless infrastructure and Evidence and Video storage network dedicated solely to evidentiary video storage.

Cons:

- The Asheville Police Department will need to bear the cost for future maintenance of this equipment as necessary.

There will be an expense of $82,950.64 posted to the Risk Management Budget. The Asheville Police Department will be responsible for the on-going maintenance of the equipment purchased, any expenses are anticipated to be absorbed through current operating budget allocations.

City staff requests City Council to adopt a resolution authorizing the City Manager to enter into an agreement with Integrated Technology Systems for the purchase of in-car video cameras and infrastructure to upload the evidence wirelessly into a secure storage device.

RESOLUTION BOOK NO. 32 – PAGE 117

C. RESOLUTION NO. 09-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2009, through July 31, 2010, has increased by approximately three percent. Funding for this contract was appropriated in the FY10 budget process.

The renewal agreement reflects an annual charge of $130,086.24 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment. The agreement also covers infrastructure that has come out of the installer's warranty during the past year.

This action ties into the City Council Strategic Operating Plan regarding partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2009, through July 31, 2010.

RESOLUTION BOOK NO. 32 – PAGE 118

D. RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS INC. FOR THE RENOVATION OF FIRE STATION 6

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. MOTION APPROVING THE EXTENDED TERMS FOR SALE OF THE PROPERTY ON BROTHERTON AVENUE TO ASHEVILLE AREA HABITAT FOR HUMANITY

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 09-146 - RESOLUTION APPROVING THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE ISSUED MAY 19, 2009

Summary: The consideration of a resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued May 19, 2009.

N.C. Gen. Stat. sec. 121-5 mandates that records defined under Chapter 132 may be disposed of only in accordance with an official records retention schedule. The N.C. Dept. of Cultural Resources, Division of Archives and History, has updated the 1997 Municipal Records Retention and Disposition Schedule.

This updated Schedule provides that records listed may be destroyed after the specified retention periods without further approval from the City or the N.C. Dept. of Cultural Resources provided, the governing body has authorized the records listed for destruction to be destroyed through its blanket approval of the Retention and Disposition Schedule.

Pros:

- Will allow records listed to be destroyed after specified retention period
- Will free up storage space

Con:

- None noted.

City staff recommends City Council adopt the resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued May 19, 2009.

RESOLUTION BOOK NO. 32 – PAGE 120

G. MOTION AUTHORIZING THE ASHEVILLE FIRE & RESCUE DEPARTMENT TO PARTICIPATE IN THE MANNA FOOD BANK'S FESTIVAL NEIGHBORHOOD DRIVE JULY 11-28, 2009

Summary: The consideration of a motion authorizing Asheville Fire and Rescue to participate in MANNA Food Bank's Festival Neighborhood Drive between July 11th and July 28, 2009.

Asheville Fire and Rescue has been approached by MANNA Food bank to become a partner in the MANNA Food Bank Festival Neighborhood Drive. All of the fire stations within Buncombe County have been asked to participate as drop off locations for the community to bring food items in coordination with the drive. MANNA will provide the food receptacles and will pick the items up during the food drive. Community fire stations serve as good collection points for this drive due to their neighborhood locations.

This action supports City Council's Strategic Operating Plan to offer a standard of living that is affordable and attainable for people of all income levels, life stages, and abilities.

Pro:

- By partnering with MANNA Food Bank, the City of Asheville supports a strong effort to assist citizens with basic food needs.

Con:

- None

City staff recommends City Council approves a motion authorizing Asheville Fire and Rescue to participate in MANNA Food Bank's Festival neighborhood Drive.

H. RESOLUTION NO. 09-147 - RESOLUTION TO AFFIRM REQUIRED ASSURANCES AND AGREEMENTS AND DESIGNATE AN AUTHORIZED REPRESENTATIVE TO FILE THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES , TO MAKE NECESSARY

CERTIFICATIONS, AND EXECUTE SUCH AFFIDAVITS AS ARE REQUIRED BY THE RULES AND REGULATIONS FOR THE VIEWMONT ACRES AND REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION NO. 09-148 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 28, 2009, FORMAL MEETING

This item was removed from the Consent Agenda for discussion and/or an individual vote.

RESOLUTION BOOK NO. 32 – PAGE 124

J. RESOLUTION NO. 09-158 – RESOLUTION APPROVING NAMING OF NATIONAL GUARD FACILITY IN HONOR OF LT. COLONEL WILLIAM GARWOOD

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Miller moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 09-145 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS INC. FOR THE RENOVATION OF FIRE STATION 6

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with H & M Constructors, Inc. for the renovation of Fire Station 6.

The need for the renovation of Fire Station 6 on Haywood Road was identified as a capital improvement project and Council allocated funds for this project in Fiscal Year 2008/09. Architectural and Engineering plans were completed for this project in early 2009 and an informal request for bids was properly advertised. A preliminary meeting was held with interested contractors in reference to the renovation of Fire Station 6. The request for bids was specific for the renovation with the potential for two alternates. Written bids were received by City staff and were evaluated for compliance with City of Asheville contract guidelines. A team of staff from Fire and Rescue, Finance, and the Minority Business Office reviewed all of the submittals. One contractor was clearly selected as the recommended vendor to complete the renovation. The committee selected H & M Constructors, Inc., 187 Deaverview Rd., Asheville, NC 28806, as the recommended contractor for this project. H & M Constructors, Inc. was the lowest responsive bidder for the project. The base bid amount is for $256,400. The two alternates will not be pursued at this time as they exceed the project's budget.

This action complies with the City Council Strategic Operating Plan in that this project provides leadership in buying local products and services. H & M Constructors, Inc. is an Asheville based contractor. This action also complies with the City Council Strategic Operating Plan by achieving short term and long term energy goals. This renovation includes important energy efficiency upgrades. This action also complies with the City Council Strategic Operating Plan by addressing the City's aging infrastructure including facilities. Fire Station 6 was built in 1958.

Pro:

- Energy efficiency improvements and station renovations are provided for with this contract

Con:

- None identified

City Council has previously allocated $256,400 for this project.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with H & M Constructors, Inc. for the renovation of Fire Station 6.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects. He questioned if we are in a position to address the use of a verified legal labor pool for this project. City Attorney Oast responded that we still do not have any more authority under state law and we are still awaiting for some resolution under federal law to allow more involvement in that kind of activity than we currently have. He continues to keep track of these bills.

Councilman Mumpower moved for the adoption of Resolution No. 09-145. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 119

E. MOTION APPROVING THE EXTENDED TERMS FOR SALE OF THE PROPERTY ON BROTHERTON AVENUE TO ASHEVILLE AREA HABITAT FOR HUMANITY

Summary: At their regular meeting of June 18, 2009, the Housing and Community Development (H&CD) Committee approved a change in the terms of the City's financial assistance to Asheville Area Habitat for Humanity for their purchase of the City-owned real property located at Brotherton and Virginia Avenues.

In 1999, the City acquired 7.19 acres at Brotherton Avenue, for the purpose of creating affordable housing. The City invested a total of $527,000 in Community Development Block Grant (CDBG) funds to acquire and improve the site. The City, through RFP processes, twice selected developers to create that affordable housing. In each case, the developer withdrew for financial reasons before constructing any housing.

In November of 2007, Council passed a resolution to sell this property to the Asheville Area Habitat for Humanity to develop 22 single family homes on this site, all to be sold to low-income families. The purchase price of $467,500 was established via an appraisal dated June 10, 2007. Habitat proposed to pay a $5,000 deposit and the balance of $462,500 in one lump sum ten (10) years from the closing date, at zero percent interest.

As Habitat's vision for the project matured, and more information about project costs were developed, Habitat became concerned that the financing terms offered by the City could affect Habitat's fulfillment of the project mission. Much of the earlier constructed infrastructure,

paid for with CDBG funds, has no value for the proposed Habitat development and would need to be removed at significant costs. In ten years Habitat would need to pass the balloon repayment onto its purchasers thus reducing by as much as 60% the pool of Habitat clients who could afford the house.

Habitat presented the above information to the H&CD Committee at the Committee's June 18, 2009, meeting. Habitat asked for assistance in revising the terms of its original proposal to enable it to meet its mission and develop the property as affordable housing, meeting both Habitat's and the City's goals. Habitat proposed the removal of the 10-year balloon provision, substituting instead a provision to pass the purchase price on a pro-rata basis to individual buyers as an assumable loan, carrying zero percent interest, in a secured third mortgage held by the City. Each loan would be due and payable only upon sale or transfer of the house to a household earning more than 80% of median income. The loan would be assumable at 0% interest for any transfer to a household with income of 80% of median income or less.

Through this mechanism, Habitat would create a development that was 100% affordable to low-income families; provide for the sustainability of that affordability for subsequent families; and enable recapture of the appraised value of the land and reuse of the funds by the City upon sale to non-lower-income households.

Pros:

- Development of 22 affordable homes for purchase by low-income families supports the City's Strategic Plan goals for addressing housing needs.
- The provision of third mortgage financing helps ensure the sustainability of the affordable housing created through this project while not prohibiting free-market sales of the homes;
- In-fill development matching established density for the area supports Smart-Growth land policies.
- Habitat has an excellent track record of building high quality, Energy Star homes, and creating and supporting well-functioning neighborhoods;
- Habitat offers 0% interest mortgages, making its homes the most affordable new homes available;
- Agency has sufficient financial and volunteer resources to complete the project;
- Returns the property to the tax rolls with tax base Increase of at least $3,500,000.

Cons:

- The CDBG Program Income the City will receive for selling the property to Habitat will be received over an extended period of time.

Approval of the extended terms for sale of the property on Brotherton Avenue to Asheville Area Habitat for Humanity.

Councilman Mumpower could not support the motion and explained why he felt the City should have stayed out of this venture.

Councilman Newman and Councilwoman Cape spoke in strong support for Habitat for Humanity as they are a good partner and have an excellent record on their projects. What Habitat is proposing is very much supported by the neighborhood and is a good proposal.

Mayor Bellamy explained the financing, and said that even though the property was purchased by the 1999 this Council needs to address any concerns associated with the property.

When Mayor Bellamy called the question, Councilman Mumpower raised a point of order. City Attorney Oast said that the Mayor has some control to control the debate and in her role as presiding officer, if the debate is not proceeding, it is within her power to move the meeting along.

Councilwoman Cape moved for the adoption of a motion approving the extended terms for sale of the property on Brotherton Avenue to Asheville Area Habitat for Humanity. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

H. RESOLUTION NO. 09-147 - RESOLUTION TO AFFIRM REQUIRED ASSURANCES AND AGREEMENTS AND DESIGNATE AN AUTHORIZED REPRESENTATIVE TO FILE THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES , TO MAKE NECESSARY CERTIFICATIONS, AND EXECUTE SUCH AFFIDAVITS AS ARE REQUIRED BY THE RULES AND REGULATIONS FOR THE VIEWMONT ACRES AND REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to be named an Authorized Official with approval to accept grants from the North Carolina Department of Environment & Natural Resources (NCDENR) for the Viewmont Acres and Reynolds Mobile Home Park water system improvement projects at an estimated cost of $1,084,421, along with authorizing the City Manager to execute contracts for engineering services, construction contracts, and other incidental work related to the projects so long as the projects' budget is not exceeded.

For the past couple of years, NCDENR has been in discussion with the City of Asheville Water Resources Department regarding the status of two (2) failing private water systems in Buncombe County. These systems serve the Viewmont Acres Subdivision, located off Cedar Hill Road, and the Reynolds Mobile Home Park, located off Charlotte Highway. These private water systems, serving a combined sixty (60) residences, are failing and have been assigned emergency operators by the North Carolina Utility Commission.

Through its "Disadvantaged Community Program", NCDENR has offered the City of Asheville Water Resources Department grants for these projects at an estimated cost of $1,084,421, in accordance with Section II.S.3 of the NC DWSRF, to design, construct, own and maintain replacement water systems for Viewmont Acres and Reynolds Mobile Home Park.

The accompanying resolution authorizes the City Manager to execute forms of acceptance for this grant offer and authorizes the City Manager to execute multiple contracts for consulting engineering services and multiple construction contracts, all secured in accordance with City and State bidding requirements, and other miscellaneous contracts required by the projects so long as said contracts do not exceed budgeted grant funds.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Sixty (60) homes in Buncombe County are being served by failing public water systems and without this intervention by the NCDENR and the City of Asheville, some of these homes may have to be vacated.
- The provision of safe, reliable water supply can be provided to these sixty (60) homes without any initial capital contribution from the City of Asheville.

Con:

- The terrain in Viewmont Acres will make future maintenance operations more difficult than our typical work. This can be mitigated to a great extent by special design requirements in the waterline replacement project design.

Since this is a "Disadvantaged Community Program" project, these funds can be provided in advance so the City will not have to front the project expenses.

City staff recommends City Council adopt a resolution authorizing the City Manager to be named an Authorized Official with approval to accept grants from the North Carolina Department of Environment & Natural Resources (NCDENR) for the Viewmont Acres and Reynolds Mobile Home Park water system improvement projects at an estimated cost of $1,084,421, also with authorizing the City Manager to execute contracts for engineering services, construction contracts, and other incidental work related to the projects so long as the projects' budget is not exceeded.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects. He questioned if we are in a position to address the use of a verified legal labor pool for this project. City Attorney Oast responded that we still do not have any more authority under state law and we are still awaiting for some resolution under federal law to allow more involvement in that kind of activity than we currently have. He continues to keep track of these bills.

Councilman Mumpower moved for the adoption of Resolution No. 09-147. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 12

I. RESOLUTION NO. 09-148 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 28, 2009, FORMAL MEETING

Councilman Mumpower felt that one meeting a month does not allow ample opportunity to effectively address the volume of issues before City Council.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-148. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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J. RESOLUTION NO. 09-158 – RESOLUTION APPROVING NAMING OF NATIONAL GUARD FACILITY IN HONOR OF LT. COLONEL WILLIAM GARWOOD

Summary: The consideration of a resolution approving the naming of the National Guard Facility at Richmond Hill.

The North Carolina National Guard recently completed its new training facility on Richmond Hill. This was done in conjunction with the City's development of a park facility adjacent to the new training facility.

The Guard wishes to name the facility after Lt. Colonel William Garwood, now deceased, who had a long career of service with the Guard, including serving in the Gulf War and commanding the National Guard in Western North Carolina. When naming its facilities, the Guard requests the approval of the local government with jurisdiction over the site of the facility.

Accordingly, this request has come to the Asheville City Council. A synopsis of Lt. Colonel Garwood's career will be attached to the resolution.

If Council approves of the resolution, adoption of it is recommended.

Mayor Bellamy was pleased to support this resolution and that this is the first step in the process of getting the facility named.

Councilman Mumpower moved for the adoption of Resolution No. 09-158. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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III. PRESENTATIONS & REPORTS:

A. ASHEVILLE AREA ARTS COUNCIL

Ms. Angela Martinez, Executive Director of the Asheville Arts Council, said that the Asheville Area Arts Council has a long history as one of the oldest arts councils in the country. It was formed from a working committee of the Junior League, the Civic Arts Council (CAC) was incorporated in 1952.

The mission of the Asheville Area Arts Council is: (1) Enrich our community by educating all people in the Asheville area about the arts; (2) Advocate integration of the arts in all aspects of community life; and (3) Support artists and arts organizations.

Major programs include (1) Arts-in-Education (a) Teachers Grants; (b) WORD – Poetry Slams; and (c) Professional Development; (2) Artist Support Services (a) Regional Artists Program Grants; and (b) Gallery Space; (3) Organizational Support Services (a) Grassroots Arts Program Grants; and (4) Community Services (a) KidsTix; and (b) Urban Trail.

She explained Arts-in-Education program as (1) Teacher Grants provide funding for Artists' workshops and residencies that bring arts integration programs into area schools; (2) The Arts Council runs a county- wide WORD Poetry Slam for middle and high school aged students; (3) The Council, in partnership with Asheville City Schools & Buncombe County Schools, was chosen as one of 12 teams, nationwide, to participate in the Kennedy Center Partners & Education program; and (4) Every two years, the Kennedy Center for the Performing Arts selects arts organizations throughout the nation who partner with their local school systems to develop arts-in-education Professional Development opportunities.

She explained the Artist Support program as (1) The arts council has also received state funds for disbursement through the Regional Artists Project program; (2) Since 1997, close to One Hundred Thousand Dollars ($92,320) has been sub-granted to individual artists in support of their professional development, promotion, and to facilitate the production of new works; and (3) Gallery space to showcase the work of emerging or non-commercial artists. It is the mission of the AAAC gallery is to promote our local emerging artists.

She then explained the Organizational Support as (1) AAAC's service to the community is defined by its role as the Designated County Partner (DCP) for administering state-allocated grants throughout Buncombe County and surrounding areas; (2) Since 1983 the AAAC has participated in the Grassroots Arts program providing funding to help support organizational arts projects and cultural events within Western North Carolina; and (3) The AAAC has sub-granted over a half million dollars ($565,933) in this program alone.

Regarding Community Services (1) KidsTix program provides tickets to cultural events for underserved students with mentors; and (2) The City of Asheville and the Arts Council are

partners in the Urban Trail, which has become the unique signature piece of Asheville's history. The Arts Council is responsible for marketing, tour scheduling, and guide training.

New initiatives include (1) The Arts Council hopes to help support the needs of Asheville's creative community by developing a Resource Center for the Arts (RCA) in partnership with other arts and community organizations; and (2) The Arts Council will be creating and maintaining an online Arts and Culture Calendar to promote regional events to residents and visitors.

She said the Arts Council looks forward to many more decades of service to Asheville's creative community and arts audiences, residents and visitors.

She said that Asheville has been featured in the O Magazine as an arts destination. She felt as we look at our own natural resources we need to pay attention to and allocate funding to the arts in this area which might be endangered of going away to other communities who will support them.

On behalf of the City Council, Mayor Bellamy thanked Ms. Martinez for the hard work they have done on behalf of the City of Asheville, in particular their assistance with the Urban Trail.

B. MAYOR'S COMMITTEE ON VETERANS AFFAIRS

Mr. Josh O'Conner, Chair of the Mayor's Committee on Veterans Affairs, explained the mission of the Committee, which is to recognize the role played by veterans in the defense of this country, and to promote equal and inclusive opportunities for veterans and their families in all aspects of society, including employment, transportation, housing, health and education, and to identify and support all individuals and organizations that contribute to this mission.

2009 annual goals include (1) Increase collaboration with other local Veterans (and family) organizations; (2) Host/co-host patriotic events to honor veterans and increase awareness of veterans resource organizations; (3) Review/update Mission Statement and By-Laws; and (4) Implement a recognition program for service to veterans (with a city-wide focus on awareness).

Regarding the membership and meetings, they have 14 members, a diverse membership, they hold monthly meetings, they work to connect with other organizations, and that meetings are open to input from the public.

The following are events and activities that the Committee has participated in: Memorial Day, Bele Chere, Veterans Day, and Committee members have collectively and individually supported various veterans-related events.

The Honor and Remember request is to create, establish and promote a nationally recognized flag that would fly continuously as a visible reminder to all Americans of the lives lost in defense of our national freedoms. All Military lives lost not only in action but also in service, from our nation's inception. In our over 200 year history there has never been an official national symbol that recognizes in gratitude and respect the ultimate sacrifice made by members of the United States military in service to our nation. The Honor and Remember Flag was created for that purpose.

He then explained the symbols (1) The Red Field represents the blood spilled by brave men and women in America's military throughout our history, who willingly gave their lives so that we all would remain free; (2) The Blue Star represents active service in military conflict. This symbol originated with World War I, but on this flag it signifies service in all wars from the American Revolution to present day; (3) The White Border surrounding the gold star recognizes the purity of sacrifice. There is no greater price an American can pay than to give his or her life in

service to our country; (4) The Gold Star signifies the ultimate sacrifice of a warrior in active service who will not return home. Gold reflects the value of the life that was given; (5) The Folded Flag signifies the final tribute to an individual life that a family sacrificed and gave to the nation; and (6) The Flame is an eternal reminder of the spirit that has departed this life yet burns on in the memory of all who knew and loved the fallen hero.

The Committee has adopted the Honor and Remember resolution as well as other localities. To be able to fly alongside the American Flag, this would require an amendment to Title 36 of US Code.

In summary, he showed what the flag will look like and (1) urged Council to support the Honor and Remember Campaign by adopting the resolution; (2) requested City Staff support; (3) "Sounding Board" for veteran's issues; and (4) asked the Committee be allowed to serve veterans in a more comprehensive manner.

Mayor Bellamy thanked Mr. O'Conner for his leadership on this committee. She commended him for the Committee's work on the Memorial Day ceremony, noting that attendance has continued to grow as well as the diversity of the crowd. She thanked him for doing a good job of reaching out to our community.

Councilman Mumpower supported adopting a resolution in support of the "Honor and Remembrance" Flag as the official symbol to recognize and honor members of the armed forces who have died in the line of duty and urged the United States Congress to adopt this flag as a national symbol. He said that Memorial Stadium has donated three flagpoles and suggested one of the flagpoles be used to fly this flag, possibly along with the POW Flag.

Councilman Mumpower moved to adopt a resolution in support of the "Honor and Remembrance" Flag as the official symbol to recognize and honor members of the armed forces who have died in the line of duty and urged the United States Congress to adopt this flag as a national symbol, with appropriate modifications to the form of the resolution. This motion was seconded by Vice-Mayor Davis.

Mr. Walt Plaue spoke in support of the Mayor's Committee for Veterans Affairs and thanked City staff for their assistance to that Committee. The Committee has moved tremendous mountains to solidify the relationship of veterans and the community and help mutual understanding the needs of veterans and what the veterans can accomplish within the community.

Councilman Newman was supportive of the resolution, however, he felt it might be more appropriate to place this item on the August 11, 2009, meeting consent agenda to see if there are any other perspectives due to the powerful symbolic issue.

In response to Councilwoman Cape, Mr. O'Conner said that typically the flag would be flown next to the US flag, similar to the POW flag. City Attorney Oast said that the resolution is urging Congress to adopt the flag as a national symbol and it does not require any particular manner of display.

Councilman Mumpower amended his original motion to place this resolution (with appropriate form modifications) on the August 11, 2009, agenda, along with deliberation of utilizing this flag, effective at that time, at the Memorial Stadium facility. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

C. ECONOMIC STIMULUS PACKAGE UPDATE

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the American Recovery & Reinvestment Act (ARRA) funding announcements and opportunities.

Homeless Prevention Funds - The City of Asheville will receive $509,460 in funding from the Department of Housing and Urban Development (HUD). A press release and notification to participating agencies was sent out the week of June 29th regarding the beginning of the pre-application period was opened on July 6, 2009. A public meeting was held to on July 8th to discuss the pre-application process with pre-application due no later than July 17, 2009.

Energy Efficiency & Conservation Block Grant ($804,700) - The City of Asheville will receive $804,700 in funding from the Department of Energy and has successfully submitted our application for this funding on June 25th. We received confirmation of receipt through FedConnect the following day. We should expect a response in 120 days or on or about October 2009. Staff is currently working on a timeline for award in mid-August.

Department of Transportation:

Enhancement Projects - Staff is still awaiting notice of funding decisions from N.C. Dept. of Transportation (NCDOT) Division 13.

MPO Urbanized Area Funding - The Metropolitan Planning Organization (MPO) announced awards of MPO Surface Transportation Program – Directly Attributable funding. The city received funding for Fairview Road Pedestrian Enhancements, Coxe Avenue Bike Lanes (including resurfacing), Downtown and Gateway Streetscapes, and South Slope Bike Network. The remaining projects for sidewalks and resurfacing Kimberly Avenue were selected for funding if money becomes available. Since all projects that will be funded must be ready to put to bid by September 1, staff is moving forward with these projects as though they will be funded.

After reviewing the sidewalk gap projects in light of the other awards and meeting with NCDOT representatives who expressed concern from Raleigh at the large number of individual projects, City staff has requested the MPO allow revision of the list pedestrian facilities funded under the three sidewalk projects. The revision removed several very small projects, added Piney Mountain Road to the Chunns Cove project, and added a greenway connection along Choctaw that will serve as a link between McDowell Avenue and the Riverway. The total value of the projects requested is $1,779,500, just under the $1,784,750 the MPO originally allotted for these projects. Since this project was selected based on funding availability, it, like the Kimberly Avenue resurfacing project, will only be constructed if and to the extent that the MPO has funds available. Here is the revised proposal:

Street		Approximate linear feet	Cost Estimate
Chunns Cove Road/ Piney Mountain Road		2,560	$512,000
Depot Street		600	$90,000
Hilliard Street		1,200	$360,000
Short Michigan Avenue		1,350	$270,000
Choctaw		1,400	$350,000
Linden Street		1,100	$165,000
Evelyn Place		130	$32,500
	Total	8,340	$1,779,500

To ease management of the project, staff asked to consolidate the projects into one list and one municipal agreement for gaps 1, gaps 2, and Hilliard Avenue sidewalk.

Transit Capital Projects - The City of Asheville received $2,004,598 transit capital funding from the Department of Transportation for five (5) buses and ten (10) shelters. Announcement of the award was issued June 10, 2009 through the Governor's Office.

Regarding transparency and accountability, Ms. Mills attended a meeting in Raleigh, North Carolina, sponsored by the School of Government on July 7, 2009, along with representatives from the North Carolina Economic Recovery Office, North Carolina Treasurer's Office, the League of Municipalities, State Office of Purchase and Contracts, and others to discuss ARRA requirements for purchasing and contracting. The meeting will result in procedures that will be shared across the state to support in these efforts.

With regard to community stakeholders, staff met with the Asheville Regional Airport on linking with their website to post information on their contracting efforts through there ARRA funding.

Contact has been made with Asheville City Schools, Community Action Opportunities and Buncombe County to provide more information to the public on what ARRA opportunities will be available in our region.

Director of Transportation and Engineering Cathy Ball explained the process used of selecting the sidewalk for this proposal (by September 1) – in-fill projects, with the City's rights-of-way, owning the property, not having any significant environmental issues, and accessing the Pedestrian Thoroughfare Plan. She said that this allocation went through the Transportation Advisory Committee (TAC) process. Once they approved it, staff went back and asked for a revision. Staff is asking for Council to endorse the changes made in order to move ahead on these projects.

Councilman Newman, member of the Metropolitan Planning Organization (MPO) explained that there was a block of funding for transportation improvements for our MPO area (including Haywood County, Henderson County, Transylvania County and Buncombe County) and it was a very healthy discussion about different projects. Ultimately the MPO reached consensus on all of the funding goals throughout the area.

Mayor Bellamy voiced concern on the Chunns Cove Road/Piney Mountain Road sidewalk. She felt that project was not necessary as (1) bus services is now being provided for people to the Social Security Office; and (2) Council approved a conditional use permit for construction of a church (which property is now for sale) and Council waived them constructing a sidewalk for their project in that area – now we are using tax dollars. She did not support spending money on the Chunns Cove Road/Piney Mountain Road sidewalk as she sees other areas that have a higher need. She did, however, support funding for Patton Avenue sidewalks since we know that is a high pedestrian traffic area.

Ms. Ball said that staff is moving ahead with the Patton Avenue sidewalks, agreeing that there is a high pedestrian need on Patton Avenue rather than on Chunns Cove Road. Ms. Ball explained how staff got to the point of recommending the Chunns Cove Road/Piney Mountain Road sidewalk. Their goal was to create opportunities where we already had right-of-way, the sidewalk was fairly constructible and not a lot of environmental impact.

In response to Mayor Bellamy, Ms. Ball said that we cannot use City forces to spend this money – it has to be contracted out, which means we have to be able to put together construction and bid documents by August 15 because we have to have State approval by September 1. Some of the challenges were our ability to be able to develop the engineering documents and the permitting requirements and getting all of the easements to be able to meet that deadline. We focused on areas where we felt confident we could get engineering drawings as well as all the permitting we needed.

When Mayor Bellamy asked about Haw Creek sidewalks, Ms. Ball said that the biggest problem with Haw Creek sidewalks is we don't have any easements and couldn't obtain them prior to meeting this deadline.

Councilman Mumpower spoke strongly against our participation in the economy recovery stimulus package. The potential for waste is phenomenal due to the rushing. We should be putting sidewalks on roads where we already see pedestrian paths.

In response to Councilman Newman about projects moving forward, Ms. Ball explained that the Patton Avenue project from Regent Park Boulevard to Leicester Highway is funded and we are moving forward with that project. We cannot use economic stimulus money for portion as we previously received an allocation from the State. We also have quite a bit of funding for the sidewalk project Louisiana Avenue which will make a connection to the Emma community. Additionally, we have received funding for Clingman Avenue sidewalks.

In response to Councilman Newman, Ms. Ball said that staff has recently looked at possibly spending the Chunns Cove Road/Piney Mountain Road funds for a sidewalk project on Hendersonville Road or Tunnel Road, not necessarily making one connection to another. Unfortunately the MPO put this before the N.C. Dept. of Transportation (NCDOT) Board last week but she could call and ask how they can make changes at this point. She feels the NCDOT wants to be flexible in working with the City. The message they got is they like the concept of doing in-fill gap projects opposed to a Hendersonville Road project where a lot of development still needed to occur. She felt there is an expressed desire to fill in the places that don't have sidewalks that are closer into the City.

In response to Councilwoman Cape, Ms. Ball gave a brief overview how staff got to the point of making the recommendation of the Choctaw sidewalks.

Mr. Alan Rosenthal supported sidewalks on Patton Avenue.

Mr. Fred English felt Council should be using the economic stimulus money to fund education and construction of sidewalks.

Mr. Mack Cox supported sidewalks and shelters in South Asheville on Hendersonville Road.

Mr. Marc Hunt, Chair of the Greenway Commission, hoped that as staff fine tunes the project on Choctaw that the route remains open for this important section of greenway along the stream, while still being able to implement some of the modifications to Choctaw which are critical to the community.

Mayor Bellamy explained that these funds are designated for these uses only. She stressed that City Council would not choose to install sidewalks over hiring teachers.

It was the consensus of Council to re-appropriate the funds for the Chunns Cove Road/Piney Mountain Road sidewalk project to an adequate place on Hendersonville Road where staff feels it is constructible and we have right-of-way, with the priority of starting downtown and trying to find gaps. Ms. Ball said that she will take that directive back to the MPO, with concurrence from the Chair of the TAC, and then work with the people in NCDOT for approval.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CORRECTING ERRORS, CODIFYING PRACTICES AND PROCEDURES, AND CLARIFYING THE ORDINANCE

ORDINANCE NO. 3757 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CORRECTING ERRORS, CODIFYING PRACTICES AND PROCEDURES, AND CLARIFYING THE ORDINANCE

Mayor Bellamy opened the public hearing at 5:24 p.m.

City Manager Jackson said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) for the purpose of correcting errors, codifying practices and procedures, and clarifying the ordinance. This public hearing was advertised on July 3 and 10, 2009.

Working with the Unified Development Ordinance (UDO) on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains errors, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use without altering the intent of the standard. This set of proposed amendments addresses eleven of those discovered issues.

He provided Council with a list of amendments in detail as follows:

a. This amendment is a correction of a reference (from "chapter" to "article").

b. & k. These amendments add clarifying language concerning the ability of City Council to modify requirements as part of the conditional use approval process and that these are not seen as use variances.

c. & e. These amendments add a clarifying reference to the North Carolina General Statutes concerning appeals from the Board of Adjustment to Superior Court.

d. This amendment brings the ordinance in line with recently adopted Board of Adjustment procedures extending the time for appeal of an administrative decision from 30 days to 60 days. The new wording refers individuals to the rules and procedures to avoid similar problems in the future.

f. This amendment deletes a reference to a buffer standard ('C') that no longer exists in the ordinance.

g. This amendment deletes incorrect procedures for granting alternative compliance for landscaping from the Neighborhood Commercial District standards.

h. This amendment codifies an interpretation/practice that temporary uses need not be on a parcel on which there is another use or structure. The current wording implies that the use must be accessory to a principal use or structure.

i. This amendment clarifies the interpretation that a home occupation must be run by an occupant of the dwelling. The current wording lacks clarity.

j. This amendment corrects a listing error in the conditional use section of the ordinance. Group homes are not showing in the initial listing of conditional uses but are conditional uses in three districts.

This action complies with the Strategic Operating Plan in that it supports the Council goal of completing UDO amendments to improve clarity and address community goals.

The Planning & Zoning Commission, at their June 3, 2009, meeting, approved the amendments unanimously.

Pros:

- Codifies interpretations, procedures and practices.
- Corrects incomplete or improper listings and citations.
- Adds or amends language for greater clarity.

Con:

- None Noted.

The Planning and Development Commission and the Planning & Development Department staff recommend approval of these wording amendments.

Mayor Bellamy closed the public hearing at 5:24 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3757. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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B. PUBLIC HEARING TO SOLICIT COMMENTS ON A SUBSTANTIAL AMENDMENT TO THE CITY'S 2009-10 CONSOLIDATED ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE $1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND $1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

RESOLUTION NO. 09-149 - RESOLUTION AMENDING THE CITY'S 2009-10 CONSOLIDATED ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE $1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND $1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

Mayor Bellamy opened the public hearing at 5:25 p.m.

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution amending the City's 2009-10 Consolidated Action Plan detailing the City's plan to distribute $1,503,557 of Community Development Block Grant funds and $1,542,387 of HOME Investment Partnership Act fund allocated to the City of Asheville. This public hearing was advertised on July 3 and 10, 2009.

The City submitted its Consolidated Action Plan for 2009-2010 to the U.S. Dept. of Housing & Urban Development (HUD) on May 15, 2009. Since that time, the City has received an allocation of and submitted required documentation for CDBG-R funding, freeing up 2009-2010 regular HUD funding. The City also learned after the submittal that its 2009-2010 allocation of HUD and HOME funding had increased. The Housing and Community Development Committee, and the Asheville Regional Housing Consortium both met and recommended the distribution of these additional funds. Both recommending bodies decided to fund applications that either had not been chosen for funding in the original round, or to enhance funding for applications that had been funded for less than their original request. He then reviewed the summary of the total revised funding recommendations.

HUD requires that communities follow their Citizen Participation Plans when adjustments in the Action Plan are necessary. The adjustments recommended by the HCD and Consortium Board require a Substantial Amendment, which necessitates a 30 day public comment period, and a public hearing and City Council approval. A notice of public hearing was published in the Asheville Times-Citizen on June 12, 2009.

This action complies with the City Council Strategic Operating Plan in that the draft Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, supports the city-owned land redevelopment process, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pro:

- The public hearing process gives citizens the opportunity to comment and affect public decision-making regarding the use of public funds.

Con:

- None noted.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be over $3.9 million for 2009-2010.

Staff recommends that Council adopt a resolution authorizing a Substantial Amendment to the Consolidated Action Plan for Fiscal Year (FY) 2009-10, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

Mayor Bellamy closed the public hearing at 5:28 p.m.

Councilman Newman noted that the distribution of these funds were unanimously recommended by the Asheville Regional Housing Consortium.

Councilman Mumpower could not support the action in that (1) they are borrowed dollars, (2) he didn't believe you can spend your way out of an economic crisis, and (3) these dollars are indulgences to special interests, some of which are non-profits which already enjoy tax-free status.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-149. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 125

V. UNFINISHED BUSINESS:

A. NEGOTIATIONS WITH HENDERSON COUNTY ON REGIONAL WATER SUPPLY AND WATER SERVICE AGREEMENT

City Attorney Oast said that this update will summarize recent negotiations between officials of Henderson County and the City of Asheville on various issues regarding water lines, water supply, the Mills River Treatment Plant, and the 1995 Agreement that covers these issues.

Beginning in late 2008, elected officials and staff for the City of Asheville and Henderson County held meetings to discuss the Regional Water Supply and Water Service Agreement between Henderson County and the Asheville Buncombe Water Authority (and its participating members) to supply water to parts of Henderson County (herein "1995 Agreement"). This 1995 Agreement is not the same agreement as the Water Agreement between Asheville and Buncombe County that established the Water Authority; it should also not be confused with the Sullivan Acts. Rather, this 1995 Agreement was part of the series of transactions that resulted in the construction of the Mills River Water Treatment Plant in Henderson County (although it was clearly influenced by both the Water Agreement and the Sullivan Act).

Pursuant to the 1995 Agreement, Asheville agreed to supply Henderson County with water, and to build water lines in Henderson County. As with all agreements of this nature, there are detailed requirements and arrangements regarding the construction and manner of financing of those lines that cannot adequately be covered in this update. The practical application of some of those details has been the source of considerable disagreement between the City and Henderson County.

Also included in the 1995 Agreement was a provision for the City to transfer to Henderson County a piece of property approximately 137 acres in size. The property is located near Brevard Road on the west side of the French Broad River, across from the entrance to the Arboretum. This transfer was to enable Henderson County to negotiate with the Metropolitan Sewerage District (MSD) for sewer services, and required Henderson County to (1) transfer the property to MSD to build a wastewater treatment plant within 10 years, or (2) convey the property to a regional water and sewer authority that includes Asheville and Henderson County as members. If neither of these things occurs within 10 years, Henderson County is to deed the property back to Asheville.

After several unsuccessful attempts to negotiate the language of a deed for this transfer, Henderson County sued the City, and the matter was settled by a consent judgment, which required that the language in the 1995 agreement be incorporated into the deed. This was done, and the property was conveyed to Henderson County and the deed was recorded on July 15, 2002. Unless the conditions in the deed can be satisfied, the terms of the deed and the consent judgment require that the property be returned to Asheville within the times specified therein.

Regarding renegotiation efforts, several years ago, not long after the Brevard Road site was transferred, there was some interest expressed in renegotiating the agreement. There was some preliminary discussion among elected officials at the time, but no significant progress was made. Late in 2008, interest was revived and the two elected bodies met together with the objective of establishing a framework for renegotiating the agreement. At this initial meeting, Henderson County expressed dissatisfaction with several aspects of the 1995 Agreement, and made a proposal to renegotiate it. The City also has identified some issues with respect to which clarification is needed, and places where operations could be improved, and agreed to pursue renegotiation. A joint committee, consisting of some Henderson County Commissioners and some City Council members, was established for this purpose, and met on two more occasions. At these meetings, the issues with the 1995 Agreement were further identified and clarified.

Not surprisingly, a major issue is the Brevard Road site. Henderson County has proposed to sell its interest in the property back to Asheville for monetary consideration. Alternatively, Henderson County would agree to convey the property back to Asheville for marketing and sale, with the proceeds from the sale to be divided, with Henderson County being guaranteed a minimum.

Regarding renegotiation issues, after the meetings of this joint committee, the matter was referred to the respective staffs to address as many issues as possible. He reviewed the following list he complied of some of the issues of importance to the City: (1) define service area – Should be the same as under current agreement, which is the Cane Creek Water & Sewer

District. Additions are possible by amendment, but Asheville should be able to approve; (2) no sales or quantity transfers outside of the service area or to wholesale customers such as local governments, water districts, or private utilities without City consent (not unreasonably withheld); (3) recognize applicability of Sullivan Acts, and that Henderson County customers cannot be treated differently; (4) recognize that "without regard to quantity" refers only to water from facilities in Henderson County (MRTP). This is actually in the current agreement, but is somewhat obliquely worded; (5) Henderson County should (and under Sullivan Acts is required to) be subject to same policies regarding use as in Buncombe County/Asheville; (6) Henderson County should develop a water facilities Master Plan, to become part of the system-wide plan, to be used in capital facilities and land use planning; (7) Henderson County lines should receive same priority as Buncombe/Asheville lines as to installation and water allocation (Sullivan Act may require this); Henderson County should not go to the front of the line, without justification. If Henderson is willing to pay for installation, this may be waived; and (8) if Asheville installs lines at its expense, must be clear demonstration of need, and of payback in defined time (currently 9 years, consistent with MSD). Other issues were identified by Henderson County, and there was considerable overlap. He met several times with our water resources staff and with the Henderson County attorney. Those meetings and discussions resulted in agreement as to most of the identified issues, at least conceptually.

The one major issue on which we were not able to agree was the Brevard Road site. As noted above, the City's position is that the property will come back to the City, pursuant to the terms of the conveyance and consent judgment. We are not aware of any interest by MSD in using the property (recently confirmed), and there is no qualifying regional water and sewer authority to which it could be transferred. With respect to this issue, several possibilities were discussed:

(a) Consideration initially centered on whether the City wished to acquire Henderson County's interest, or whether Henderson County should share in the proceeds of its sale as proposed. Henderson County's interest in the property is extremely limited, however, and we remain fairly far apart on the amount of consideration.

(b) Another possibility that was discussed was that the City would retain the property for some public purpose. A recent water system engineering study has identified the potential need for another water source by about 2025 – 16 years from now – so the City is reconsidering whether to dispose of the property at all. With this in mind various alternatives were proposed regarding continued public use of the property and Henderson County's participation in such use. Such uses include a regional public park, or a future water treatment facility, both of which would benefit Henderson County. Henderson County has made no substantive response to these proposals.

There may be other possibilities for dealing with the Brevard Road property, but these have not been discussed. He felt that that, if the disposition of the Brevard Road site could be resolved to the satisfaction of the City and Henderson County, agreement on the other issues regarding the agreement could be fairly reached fairly easily.

Although there are some lingering uncertainties regarding the implementation of the 1995 Agreement, City staff confirms that we are not in default as to any of its terms, and can continue to implement it as we currently do. At this time, Asheville serves over 500 customers in Henderson County pursuant to the 1995 Agreement.

The next steps include continuing discussions with Henderson County regarding the Brevard Road site. The possibility of holding the property for governmental use was a fairly new factor in our consideration. This may present opportunities for cooperation that have not been considered, and that both parties may find acceptable.

Councilman Newman was pleased with the positive clarifications made to the agreement. He said that Mayor Bellamy, Vice-Mayor Davis and he have further discussed the Brevard property looking for a possible resolution of that issue. Henderson County would like to receive some compensation for returning the property to Asheville now rather than later. In these budget times, we don't have a lot of money to pay and don't necessarily feel like there is a lot of significant residual financial value to Henderson County. Furthermore, as we look at the Brevard Road property, several years ago there was an idea that if we could get the property back in Asheville's jurisdiction sooner that there would be a lot of value there. We could sell it and plug the money into a lot of priorities in the City. But, we now realize that there are a lot of important public values with the property, including greenways along the River. In terms of putting a proposal to Henderson County, Mayor Bellamy, Vice-Mayor Davis and he recommend (1) Council accept the clarifications to the agreement that the attorneys have worked out; and (2) if Henderson County is willing to return the property to Asheville now, that while we cannot commit to any particular use of the property now (because we need to go through a thoughtful process about what might be the future needs on the property) if the City does decide in the future that all or part of the property is not needed for public purposes and is simply sold to capture the economic value of the property, that the revenues from that sale of the land would be 80% to the City of Asheville and 20% to Henderson County. This idea has not been broached yet with Henderson County.

Mayor Bellamy pointed out that the Water Fund would have to be reimbursed prior to any spit of the proceeds. She also mentioned that a letter has been received from MSD saying that they do not want to use the land for a water treatment facility.

Councilman Mumpower moved (1) for City Council accept the clarifications to the agreement that the attorneys have worked out; and (2) if Henderson County is willing to return the property to Asheville now, that while we cannot commit to any particular use of the property now (because we need to go through a thoughtful process about what might be the future needs on the property) if the City does decide in the future that all or part of the property is not needed for public purposes and is simply sold to capture the economic value of the property, that the revenues from that sale of the land would be 80% to the City of Asheville and 20% to Henderson County. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-150 - RESOLUTION FOR CONSENT TO BANKRUPTCY RESTRUCTURING OF CHARTER COMMUNICATIONS

City Attorney Oast said that this is the consideration of a resolution for consenting to proposed bankruptcy restructuring by Charter Communications Inc.

In April we received a notice from Charter Communications, the owner/operator of our cable television service, that Charter has voluntarily entered into a corporate reorganization under Chapter 11 of the U.S. Bankruptcy laws. As Council was advised at that time, this is part of a restructuring intended to reduce some of Charter's debt, and provide it with new capital. Charter will continue to operate its franchise in this area, and there should be no termination or interruption in service. This bankruptcy proceeding involves a number of agreements with the "key bondholders" regarding continuance of operations. He provided details of the proposed reorganization.

The notice states that it is not clear under the bankruptcy law that the City's consent is legally required for this transaction, but they are nevertheless providing us with the opportunity to consent. As explained below, it does not appear that our consent is required pursuant to the terms of the franchise, either. If we take no action, it is assumed that we have consented to the

transaction. Charter is requesting that we take action (adopt a resolution), or provide some affirmative indication that we do not intend to take action on or before July 20.

On review, it appears that this bankruptcy/reorganization proceeding affects Charter's (and its stockholders') financial situation more than its operations. The Chapter 11 proceeding is designed so that a corporation may continue operations (and generate income) while its debt is restructured. As part of the assurances provided by Charter in its agreements, Charter's CEO and its current local management and employees will remain in place. Further, all cable franchises held by Charter will continue to be operated by the local subsidiary. For Asheville, this local subsidiary is Robin Media Group (herein "RMG"). Also as part of the agreement, Charter (and its subsidiaries) will continue to pay franchise fees. This commitment to continue servicing the franchise and pay franchise fees is confirmed by other industry sources who are familiar with the Charter bankruptcy, and does not appear to be cause for concern.

Under our Cable Services Ordinance (which governs our franchise with RMG), we have the ability to terminate our franchise if the franchisee declares bankruptcy "and thereby becomes unable to pay its debts as they mature." As noted, however, the franchisee is RMG, and the information provided by Charter, which includes an order authorizing certain payments, specifically authorizes Charter and subsidiaries to pay franchise fees and other operational obligations as they become due. Our ordinance also provides that our consent is required whenever there is a change in control of the franchise. A corporate restructuring of the parent company does not appear to trigger this requirement, and the local franchisee will continue to be RMG. However, any transfer or disposition of assets (franchise) coming out of the bankruptcy certainly could trigger this requirement, so it is important for the City to continue to monitor the process. In any event, our current franchise with Charter has slightly over a year left to run; it expires on July 31, 2010. After that date (assuming no prior termination), the State of North Carolina becomes the franchising authority, pursuant to G.S. 66-350 et seq., adopted in 2006, which establishes a State franchise for Cable Television Service.

Back in April, we had a limited opportunity to object to Charter's bankruptcy if, in our opinion, they had failed to make "adequate assurance" for payment of utility costs (i.e., water). Our internal review indicated no reason at that time to make such an objection and we did not. The issue now under consideration is whether there is any reason to object to the proposed confirmation of the restructuring plan. Reasons for objecting would include chiefly that Charter/RMG is in default as to any provisions of its franchise with us, whether financial or performance based. I have checked with appropriate City offices, and Charter is not in default. If default does occur, Charter has agreed that the "cure bar date" (the deadline for asserting claims of default) does not apply to franchises with a State or local government.

One issue that has been identified is the City's "I-Net," or the system of fiber optic connections between City facilities that enables secure digital communications. Pursuant to our franchise, Charter is responsible for installing and maintaining this system. This is part of Charter's obligation under the franchise and continues during any extension of the franchise, subject to certain terms and conditions regarding maintenance being renegotiated. Since the franchise will soon be ending, we are using this bankruptcy as an opportunity to begin discussions with Charter about the I-Net. They have expressed a desire to continue working with us on this and issues related to their non-video services (internet, telephone).

As drafted by Charter, the form resolution provided to the City is deemed to have the force of an agreement, and committed Council not to amend the resolution without Charter's consent. He was reluctant to commit Council's legislative discretion in this way. Moreover, although it appears to be unlikely, the conditions supporting the City's consent could change such that a commitment of this nature would be inadvisable, so this language was removed from the supplied draft.

City Attorney Oast asked that the proposed resolution before Council be amended to revise (5) to read as follows: "This resolution is conditioned upon Robin Media Group performing its obligations under the Franchise until the closing of the Transaction. The City does not waive any rights it may have to require Robin Media Group to comply with the Franchise after the closing of the Transaction."

Pros:

- Continues current level of service
- Provides a basis for opening discussions with Charter on future of other services

Cons:

- None noted

There is no fiscal impact, except for maintenance of current cable and related services. This resolution is essentially neutral.

Unless Council has objections to the proposed financial restructuring of Charter, adoption of the resolution is recommended.

Upon inquiry of Mayor Bellamy, City Attorney Oast information received is that Charter has pledged to maintain all their current franchise obligations and our PEG fees is one of their franchise obligations, thus they will not be affected.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-150, with the revised language read by City Attorney Oast. This motion was seconded by Councilwoman Cape and carried unanimously (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 129

B. RESOLUTION NO. 09-151 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE UNIVERSITY OF NORTH CAROLINA – ASHEVILLE

Assistant to the City Manager Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to sign a Memorandum of Agreement with UNC-Asheville that establishes a framework by which UNC-Asheville and the City of Asheville will work to exchange information, conduct cooperative research, and jointly explore projects for the sustainability of the Asheville community.

Through its annual strategic planning process, the city council identified *Sustainability* as one of five key focus areas for the current fiscal year. One action item specific to Sustainability is "expand partnerships with UNC-Asheville, AB-Tech and other institutions to achieve common goals, including health and wellness, workforce development, and sustainable economic development." Staffs from both organizations met this past January and have been meeting bi-monthly since in an effort identify areas of opportunity for collaboration and partnership. From those initial meetings, five (5) collaboration areas were identified to include:

1. Economic Development and Technology
2. Health and Wellness
3. Cultural and Recreation
4. Environmental Sustainability

5. Public Safety

Many of these focus areas overlap with a number of areas identified in City Council's Strategic Plan, to include public safety, economic development, and health and wellness. City staff will briefly provide operational updates on progress made in each focus area.

The Memorandum of Understanding encourages both organizations to (1) engage in dialogue about activities in the five collaborative areas; (2) identify and undertake collaborative activity and joint research; (3) organize joint activities, such as courses, conferences, seminars and similar events, in the five collaboration areas; (4) exchange relevant materials and information; and (5) identify new areas for collaboration.

Pros:

- Formalizes a partnership between the City of Asheville and UNCA to work collaboratively on initiatives that benefit the community.
- Recognizes the historic relationship the two organizations have had since 1927.

Con:

- None noted.

Staff recommends City Council authorize the Mayor to sign a Memorandum of Understanding with UNC-Asheville for further collaborative efforts in the focus areas identified above.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-151. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 130

C. ORDINANCE NO. 3758 - BUDGET AMENDMENT FOR A SERIES OF DONATIONS AND DRAW DOWN FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT RECREATION PROGRAMS

Superintendent of Recreation Danny Hopkins said that this is the consideration of the following budget amendments to increase the budgets for contributions to support programming and special projects: (1) Park Maintenance by $1,800; (2) the W.C. Reid Center by $1,475; (3) Senior Programs by $2,494; (4) the Burton Street Center by $81; (5) the Stephens-Lee Center by $100; (6) the Murphy-Oakley Center by $210; and (7) Special Projects budget by $13,790.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description of each is listed below.

- $1,800 from the Asheville Parks and Greenways Foundation to increase the operational budget in the Parks Maintenance Division to support the Hanging Baskets program.

- $13,790 from the Asheville Parks and Greenways Foundation to increase the special projects budget to support arts programming at the W.C. Reid Center for Creative Arts.

- $1,475 from fundraising activities to increase the operating budget to support programming at the W.C. Reid Center.

- $2,494 from fundraising activities and a sponsorship by Humana to increase the operating budget to support programming and operation of athletics and arts programs for senior citizens in the Recreation Division.

- $391 from community donations to increase the operating budget to support youth recreation programming at area community centers in the Recreation Division.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

The fiscal impact would be to increase the City's Fiscal Year 2009/10 operational budget by $6,160, and special projects budget by $13,790.

Staff recommends City Council to adopt budget amendments authorizing the City Manager to increase the budgets for 1) Park Maintenance by $1,800, 2) the W.C. Reid Center by $1,475, 3) Senior Programs by $2,494, 4) the Burton Street Center by $81, 5) the Stephens-Lee Center by $100, 6) the Murphy-Oakley Center by $210, and 7) Special Projects budget by $13,790.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3758. This motion was seconded by Councilman Mumpower and carried unanimously (Councilman Miller excused).

ORDINANCE BOOK NO. 25 – PAGE 346

D. RESOLUTION NO. 09-152 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES, DIVISION OF POLLUTION PREVENTION AND ENVIRONMENTAL ASSISTANCE, TO ACCEPT A GRANT FOR A RESIDENTIAL BACKYARD COMPOSTING PROGRAM

ORDINANCE NO. 3759 - BUDGET AMENDMENT TO ACCEPT A GRANT AWARD FOR A RESIDENTIAL BACKYARD COMPOSTING PROGRAM

Public Works Director Mark Combs said that this is the consideration of (1) a resolution authorizing the City Manager to accept a grant award from the N.C. Dept. of Environment and Natural Resources (NC DENR), Division of Pollution Prevention and Environmental Assistance, for a residential backyard composting program; and (2) the accompanying budget amendment, in the amount of $6,000.

The City has been awarded a grant of $5,000 from the NC DENR to purchase compost bins with a cash match from the City of $1,000 to be spent on outreach and promotional materials

to encourage residential backyard composting. The grant award from NC DENR will be used to sell compost bins at a subsidized rate for purchase by City residents. Compost bins on average retail from $90.00 to $200.00. It is expected that the City will be able to sell compost bins for approximately $35.00 to $40.00 which is a substantial value for residents.

Backyard composting will enhance the City's waste reduction and recycling program efforts. By placing backyard composting bins in the homes of residents, the City will be able to target the diversion of kitchen and garden organics from the landfill.

This action promotes the City's strategic priorities to be green and environmentally sustainable by reducing waste and encouraging recycling.

Pros:

- Promotes waste diversion from the landfill, decreasing tipping fees
- $5,000 grant to City
- Increases residential awareness of a sustainable environmental practice

Con:

- $1,000 cost to City

The total cost of this project will be $6,000. The NC DENR will grant the City $5,000, and the City will be required to provide a $1,000 cash match. The City's $1,000 cash match will come from the Public Works Department's approved Fiscal Year 2009-10 budget (solid waste disposal tax).

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant award from NC DENR, for a residential backyard composting program; and (2) a budget amendment to accept the residential backyard composting grant from the NC DPPEA.

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower could not support this action in that we need the state to fix the underfunded court system. He felt that if the City needs a compost program, we should take that on as a City function.

There was a brief discussion, initiated by Councilwoman Cape, about a for-profit business trying to get started which is looking at food waste as an organic composting provider (residential and commercial). She felt the City needs to look at composting on a larger scale and encouraged City staff be open to conversations with them and any other provider that is known for that service. Mr. Combs explained this is a small grassroots program which far more efficient from a carbon and efficiency standpoint. It uses zero staff, equipment and fuel.

Mayor Bellamy said that this program is a portion of the solution, not the complete solution to reduce solid waste.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-152. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 131

Councilwoman Cape moved for the adoption of Ordinance No. 3759. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 348

E. RESOLUTION NO. 09-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH OWENS ROOFING INC. TO REPLACE THE ROOF AT THE CIVIC CENTER ARENA AND CONCOURSE

ORDINANCE NO. 3760 - BUDGET AMENDMENT FOR ADDITIONAL COSTS RELATED TO REPLACEMENT OF THE ROOF AT THE CIVIC CENTER ARENA AND CONCOURSE

Director of Transportation and Engineering Cathy Ball said that this is the consideration of (1) a resolution authorizing the City Manager to execute a contract with Owens Roofing Inc. in the amount of $1,497,982 plus a contingency of $10% ($150,000) to replace the roof at the Civic Center arena and concourse; and (2) a budget amendment, in the amount of $300,000 for additional costs that exceed the original budget amount of $1,500,000.

Three years ago, City Council adopted a budget of $1,500,000 to replace the roof at the Civic Center concourse and arena. Cort Architectural Group was hired to provide a feasibility analysis and then later to complete the construction documents for the project. On July 1, 2009, the City received seven bids for the roof replacement.

The low bidder was Owens Roofing Inc., located in Raleigh, North Carolina, with a base bid of $1,350,159 and a bid of $147,823 for alternate number 1. Owens Roofing's total bid was $1,497,982. The next bidder was H&M Construction with a total bid of $1,673,200.

The total cost of the project will be approximately $1,800,000 which includes $18,000 for the feasibility analysis, $132,000 for design and construction documents and a maximum of $1,650,000 for construction. As stated earlier, the original budget for the project was $1,500,000. The additional cost of $300,000 is attributed to the several factors which include the following:

- The estimate was completed three years ago. We had hoped that this would be offset by the current economic conditions but the bids did not reflect this.
- The designer did not anticipate the need to seal all the concrete (alternate number 1) following the repair work. The concrete needs to be sealed to extend the life of the project and potential for water infiltration and to prevent the exterior of the building from looking like patch work.

The Civic Center Commission members have been polled and overwhelming agree with staff recommendations.

This recommendation complies with City Council's 2008-09 Strategic Plan by providing a green alternative roof option and sustainability of addressing capital needs of the Civic Center.

Staff is requesting a budget amendment in the amount of $300,000 to supplement the $1,500,000 previously budgeted for the project. $240,000 of this amount will come from the reprogramming of capital funding that was previously approved for other Civic Center capital projects. A list of the projects in which funding will be diverted from is included below:

Project	Amount Diverted	Notes
Marquee	$20,000	Left $5k for replacement of stationary

		side
TW Fire Exits	25,000	Left $90k, which should complete project
Cooling Tower	13,573	Closes old project
Minor Cap Equip.	12,045	Left small balance for future purchases
CC Capital Reserve	5,000	Use all CC reserve
Arena Seating	150,000	Left $25k for emergency replacements
Air Handler Repair	2,756	Closes old project
General Improvements	11,626	Left small balance for future improvements
Total	$240,000	

In addition, staff recommends appropriating $60,000 from the General Fund capital reserves. As staff reported to Council in June, the balance in the General Fund capital reserve was down to $20,000. Since that time, staff has identified approximately $85,000 in savings to transfer into the reserves from the Haw Creek/Avon Road sidewalk project. As a result, as of July 6, 2009, there was approximately $105,000 available in the General Fund capital reserves. Appropriating $60,000 for the arena roof replacement will leave $45,000 available for future use. It should also be noted that once the City receives the final reimbursement from the State for the Haw Creek/Avon Road project, there will likely be additional funding available in that project that can be transferred to the capital reserve. Staff will report on that to Council during the Fiscal Year 2009-10 first quarter Financial Report.

Pro:

- This project will replace the roof on the Civic Center arena and concourse which is in desperate need of replacement.

Con:

- The project will cost an additional $300,000.

Staff recommends City Council authorize the City Manager to execute a contract with Owens Roofing Inc. in the amount of $1,497,982 plus a contingency of $10% ($150,000) to replace the roof at the Civic Center arena and concourse, and adopt the associated budget amendment.

When Mayor Bellamy asked for public comments, none were received.

Mr. John Cort, Cort Architectural Group, responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: are there any concerns about the close low bids; why has it taken three years to get to this point; how much money did the exploration to see if the roof could handle a living roof with additional load carrying capacity cost; how long did that exploring take; did time delays result in additional costs; and what is the additional cost to seal all the concrete following the repair work.

In response to Councilwoman Cape, Mr. Cort described the roof as a white PVC roof that has reflectants of .78 and will quality for LEED standards. He felt sealing the concrete was a good thing to discover before the project started.

Councilwoman Cape encouraged anyone who is interested in a green roof look at what the weight specifications need to be.

Mayor Bellamy publicly recognized Civic Center Director Sherman Bass who will be leaving his position to accept another in his hometown in Texas. Vice-Mayor Davis said that his tenure was short, but significant as he has made significant positive changes during his time as Civic Center Director. The building continues to be active and thanked him for his service.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-153. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 132

Councilwoman Cape moved for the adoption of Ordinance No. 3760. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 350

F. RESOLUTION NO. 09-154 - RESOLUTION ACCEPTING ELLA STREET AS A CITY-MAINTAINED STREET

ORDINANCE NO. 3761 - BUDGET AMENDMENT FROM ASHEVILLE CITY SCHOOLS FOR THE COST OF MATERIALS TO REPAIR A FAILED STORM DRAINAGE PIPE ON ELLA STREET

City Manager Jackson said that this is the consideration of a resolution to accept Ella Street for public maintenance, and the associated budget amendment, in the amount not to exceed $5,000, for the cost of materials to repair a failed storm drainage pipe on the street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. Ella Street is located within a public right-of-way.

This street is a primary route for school buses to service Asheville Middle School. The road currently has a failing storm drain pipe. Asheville City Schools has requested that the City partner with them to repair the storm drainage pipe and take over maintenance of the street. Aside from the failing storm drainage pipe, the street is in good condition. The City has proposed that the Asheville City School System pay the cost of materials and the City will provide the labor and equipment.

Ella Street has an average width of 18 feet, a length of 0.05 mile, and a right-of-way width of 40 feet. The typical two-year warranty period for major failures will be waived because the City of Asheville will be repairing the storm drainage pipe.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access to Asheville Middle School particularly for school buses.

Cons:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.
- The City will provide labor and equipment to make repairs to the storm drainage system.

The financial impact to the City will be in the cost of the labor and equipment which is paid from the Stormwater Enterprise Fund. The Asheville City School System will cover the cost of the materials which is not expected to exceed $5,000.

The responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to $6,326 per mile compared to the City's maintenance cost of $18,189 per mile.

Staff recommends that City Council accept Ella Street as a city-maintained street and adopt the budget amendment to cover the cost of the materials to repair the storm drainage pipe.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-154. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 133

Councilman Mumpower moved for the adoption of Ordinance No. 3761. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 353

G. RESOLUTION NO. 09-155 - RESOLUTION AUTHORIZING THE CONVEYANCE OF AIR SPACE FOR THE PURPOSE OF CONSTRUCTING PERMANENT ARCHITECTURAL FEATURES AT 51 BILTMORE AVENUE TO MCKIBBON HOTEL GROUP INC.

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the conveyance of air space for the purpose of constructing permanent architectural features at 51 Biltmore Avenue to McKibbon Hotel Group, Inc.

On June 1, 2009, a qualifying bid was received from McKibbon Hotel Group, Inc. in the amount of $889 for the purchase of 187 square feet of air space for the purpose of constructing permanent architectural features to a proposed building at 51 Biltmore Avenue. Pursuant to N. C. General Statute sec. 160-269, the City Council of the City of Asheville adopted Resolution No. 09-113 directing the City Clerk to advertise for upset bids in regard to airspace at 51 Biltmore Avenue. The notice ran in the Asheville Citizen Times on June 12, 2009. No qualifying upset bids were received in response to said advertisement.

This air rights request is specific to the proposed hotel, the Aloft by Starwood, via McKibbon Hotel Group, Inc. According to the plans, the hotel building will be sited at the corner of Biltmore Avenue and Aston Street. At 90' above the sidewalk level on the Aston Street side, a decorative seam metal roof element, known as a "swoof", is designed that will extend 5'6" over the right-of-way boundary (sidewalk), with a corresponding length of 34'. The total area of this architectural feature that encroaches into the public right-of-way equals 187 square feet.

Approval of the resolution will authorize the sale of the property to McKibbon Hotel Group, Inc. for the amount of $889.00.

This action complies with the City Council Strategic Operating Plan in that this development proposal supports the strategic goal of sustainability by providing infill growth where infrastructure currently exists and encourages economic development in the downtown.

This action conforms to current policy regarding air rights disposition. The City Council Planning and Economic Development Committee is scheduled to review the air rights disposition policy in the August meeting.

Pros:

- The sale will be at fair market value.
- The architectural details will provide a more visually interesting façade on the building.

Con:

- There is no negative impact.

Additional revenue in the amount of $889.00 that will be directed to the City's bottom line.

Economic Development staff recommends adoption of the resolution.

When Mayor Bellamy asked for public comments, none were received.

In response to Councilman Mumpower, Ms. Reid said that the City Council Planning and Economic Development Committee is scheduled to review the air rights disposition policy in their August meeting.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-155. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 134

At 5:57 p.m., Councilman Mumpower moved to excuse Councilman Miller from the meeting due to an unexpected family emergency. This motion was seconded by Councilwoman Cape and carried unanimously.

H. RESOLUTION NO. 09-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS ON JULY 16 AND 17, 2009

RESOLUTION NO. 09-157- RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR A PRIVATE EVENT AT WINDOWS ON THE PARK EVENT ON AUGUST 1, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at 1) City of Asheville Open Tennis Championships on July 16 and July 17, 2009, and 2) private event at Windows on the Park on August 1, 2009, from 4:30 p.m. to 8:30 p.m.

City of Asheville Open Tennis Championships

The Western North Carolina Tennis Association has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the City of Asheville Open Tennis Championships coordinated by the City of Asheville and allow for consumption at this event.

The City of Asheville Open Tennis Championships will be held on Thursday, July 16, 2009 from 5:00 p.m. to 10:00 p.m. and Friday, July 17, 2009 from 5:00 p.m. to 10:00 p.m. within the boundaries of the Aston Park Tennis Complex and will be free and open to the public.

Windows on the Park Private Event

Those Girl, LLC has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the grass area of the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building (Area A). The malt beverages and unfortified wine will be served in glass containers and bottles.

Those Girls, LLC have requested a temporary extension of their ABC permit (premise 0016753AJ) from the North Carolina Alcoholic Beverage Control Commission (ABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pros:

- City of Asheville Open Tennis Championships: Allows fundraising opportunity for the Western North Carolina Tennis Association
- Windows on the Park Private Event: None

Cons:

- City of Asheville Open Tennis Championships: Potential for public safety issues
- Windows on the Park Private Event: Potential for public safety issues, the event is not open to the public

The fiscal impact for these events are as follows: (1) City of Asheville Open Tennis Championships: Overtime pay for Asheville Police officers; (2) Windows on the Park Private Event: None.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at 1) City of Asheville Open Tennis Championships on July 16 & July 17, 2009 at the Aston Park Tennis Complex, and 2) Those Girls, LLC for a Windows on the Park private event on August 1, 2009, on grass area in the Pack Square area of Pack Square Park.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-156. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused).

Councilwoman Cape moved for the adoption of Resolution No. 09-157. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused)

RESOLUTION BOOK NO. 32 – PAGE 138

I. RESOLUTION NO. 09-159- RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ROCKIN' RIVERFEST ON AUGUST 1, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine Rockin' RiverFest on August 1, 2009.

RiverLink has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at Rockin' RiverFest and allow for consumption at this event.

Rockin' RiverFest will be held on Saturday, August 1, 2009 from 11:00 a.m. to 5:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- Allows fundraising opportunity for the Asheville Downtown Association

Con:

- Potential for public safety issues

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at Rockin' RiverFest on August 1, 2009.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-159. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 143

J. BOARDS & COMMISSIONS

Recreation Board

It was the consensus of Council to re-advertise for vacancies on the Recreation Board.

URTV Inc. Board of Directors

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that the Committee met with the Executive Director and some members of the URTV Inc. Board to discuss some concerns that have been brought to the attention of City Council. Even though City

Council has limited authority over the URTV (2 appointments and City allocation of funding from PEG fees collected by Charter cable subscribers), public dollars are being spent and they need to be good stewards of those dollars. At that meeting, Ms. Lauren Bradley, Assistant to the City Manager, offered some options to City Council, those being (1) conducting an independent performance review of URTV at an estimated cost of $5-15,000 which the City would be responsible for; or (2) delay agreement renewal for a period of six months to provide an opportunity for the URTV board to resolve community concerns and demonstrate board, operational and financial stability to the City Council; move forward with making its appointment to the Board and task Councilman Russell (liaison to the URTV Inc. Board of Directors) to provide updates to the Boards & Commissions Committee; and delay further funding allocations during the six month period until the agreement can be renegotiated. The Committee felt there was an absence of effective problem-solving at some level. As the Committee discussed specifically some concerns, they felt it was appropriate that they consult with the City Attorney and if we are operating within reasonable parameters, that we provide the URTV Board with an informal list of those concerns to be further fleshed out and allow them 60 days to come back with an action plan addressing those concerns in a way that their Board and staff feels best. They were receptive to this. Therefore, was the recommendation of the Boards & Commissions Committee that a letter be sent from the Boards & Commissions Committee to the URTV Inc. Board of Directors outlining concerns expressed and that those concerns be addressed and provided to City Council by the end of September, 2009 in the form of an action plan to mediate or problem-solve those concerns. Some concerns included, but are not limited to, the dissention amongst board members; dissention amongst the board members and the public; and consideration of changing the membership from 13 back to 11 as the original agreement was written (which they expressed a willingness to do). He noted that Council will continue moving forward with making their appointment on the URTV Inc. Board.

He said that Councilman Russell is liaison to the URTV Inc. Board and unfortunately due to illness he was unable to attend the meeting. He said that we did invite URTV Inc. Board members to this meeting so they would have the opportunity to be heard.

Councilman Mumpower, member of the Boards & Commissions Committee) said that since the City of Asheville's management agreement with URTV, Inc. is set to expire November 23, 2009, he felt that after the action plan is received there would be a reasonable period of time for contract negotiation.

Councilman Mumpower encouraged City Council to note any specific concerns they have and that those concerns would be included in the informal letter to the URTV Board. It is not Council's intent to oversee the Board, but just want to raise our concerns and collaborate with them in a partner-like fashion. One specific item is that we would like for them to engage further with the vocal minority that have expressed a number of concerns in some direct fashion, with an effort on problem-solving that conflict.

Throughout discussion, the following concerns were raised by Council: concern about a concealed gun and the safety of children; need to clearly state their concealed weapons policy; was to communicate with the community about the type of programming being aired at certain times of the day (not suitable for children, etc.); clarity and transparency of roles of producers, staff, board and volunteers; if there is a disagreement with someone, there is a decorum and way to carry out those concerns; some mechanism for Board development to arrive at some core values for URTV Inc.; and clarification of the relationship role of the City Council liaison; adherence to the Open Meetings Law.

The following individuals raised concerns over URTV. These individuals were invited to e-mail City Council with their concerns and those would be given fair consideration. Some concerns raised include: interested people be included in future meetings with URTV Inc. Board and staff; problems are criminal (temporary restraining orders, assault charges, stalkers, larceny, sexual assault on children); there is harassment; allegations of brandishing a weapon; people

with criminal records on URTV; vital members of the community summarily kicked off the station for no reason; and failings of the current Executive Director; and need for reinstatement of the show "Citizen Speak"; and some people get suspended for violations and some people do not.

Mr. Alan J. Rosenthal (presented Council with a document titled "Public's Authority To Make Demands)
Mr. Fred English
Mr. Harry Maroni (presented Council with a letter on his suspension dated 7-8-09)

The following individuals spoke in support of URTV. These individuals were also invited to e-mail City Council with their concerns and those would also be given fair consideration. Some concerns raised include: defamation of character; problem that management is not being heard; group of people who want to run URTV for their own personal use; safety of children when someone has a gun on the property; need for City Council to come down to the station; the vocal minority are not producers and URTV is for producers; the vocal minority has broken several basic rules; the vocal minority are thieves and liars and they should not be invited to URTV, but investigated and prosecuted; and there is a group of vocal people who do not like the Executive Director because she does her job.

Ms. Dale Joyner
Mr. John Robinson
Rev. Christopher Chiaronmonte

It was the consensus of Council to accept the Boards & Commissions Committee recommendation regarding a letter being sent to the URTV Inc. Board.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 19-July 9, 2009: Latisha Twitty (Parks & Recreation), Jill Prescott (Police), Thrifty Muffler (Water), Anthony Cerrato (Water), Larry Nix (Water), James Mease (Police), Sheila Jones (Police), Linda Simpson (Streets), Edward Burden (Transit), Samuel C. Wright (Police) and Louise Reed (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City of Asheville filed a complain on June 26, 2009, on the following: (1) City vs. DVL Pennco, Inc., d/b/a 1-800-GOT-JUNK – This lawsuit involves collection of civil penalties for violation of the City's sign ordinance; and (2) City vs. Capel Enterprises, LLC, All Junk LLC, Joseph G. Capel Jr., and Robin M. Capel, d/b/a 77-Junk – This lawsuit involves collection of civil penalties for violation of the City's sign ordinance. Both lawsuits will be handled in-house.

The City received a Complaint in Federal Court on July 8, 2009, in the matter of Darrell Gaines v. L. Tomasetti, David Nash, J. Clinard and John Doe. This lawsuit involves false arrest and abuse. This matter will be handed in-house.

The City received a Complaint on July 8, 2009, in the matter of Robert Allen Sartori v. Buncombe County, et al.; City of Asheville, et al.; Genesis Insurance Co./Jonathan Nelson Insurance, et al.; Genesis Insurance Co./Rodney Lynch Insurance Co., et al. This lawsuit involves lack of jurisdiction for imprisonment. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 8:17 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; County of Henderson; Cane Creek Water and Sewer District; Asheville-Buncombe-Henderson Water Authority; Buncombe County; Spicewood Development, LLC; Villas at Cedar Hill, LLC; and Raintree Realty and Construction, Inc., Substitute Trustee. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(6); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The property is Villas at Cedar Hill. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 8:38 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:38 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 11, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Stephanie Monson, Scott Burnette, Stacy Merten, Sandy Ryland, Brad Davis, Ken Putnam, Jonathan Feldman, Marlene Frisbee, Richard Grant, Sarah Benson, Seth Hendler, and Dave Michelson for their work on the City of Asheville receiving the G. Herb Stout Award for Visionary Use of Geographic Information Systems by local government (mapAsheville); (2) Officer Michelle Spinda, Officer Ryan Justus, Officer Darrell, McCurry, Officer Alan Presnell, Officer Sean Brooks, Sgt. Chuck Sams, and Detective Mike Downing for their involvement in capturing an escapee from the Georgia Department of Corrections; (3) Mark Case for leading the term for the Building Safety ISO rating of Class 2 for both commercial and residential inspections; (4) Brenda Mills for being recognized in the NC Magazine's Exceptional Women Leaders; (5) - Eric Weigel, Lifeguard, Laurel Manion, Lifeguard, Elliot Wells, Lifeguard, Capt. Shane Valliere, Sr. – Engine 7 Crew, Firefighter Mike Stageman, Sr. – Engine 7 Crew, Firefighter Chad Brooks – Engine 7 Crew, Firefighter Mike Riley – Engine 7 Crew, Paramedic Robbie Stanton – Buncombe County Emergency Medical Services, and Intermediate Jason Hamlin – Buncombe County Emergency Medical Services for their quick action in saving a little girl's from drowning; (6) Captain Joy Ponder for her professional designation of "Chief Fire Officer"; (7) Mr. Monte Clampett for his designation of the 2008 American Public Works Association Certified Public Infrastructure Inspector; and (8) Officer Josh Burleson and Officer Jordan Abrams for their service in recovering a stolen vehicle.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

B. PROCLAMATION PROCLAIMING AUGUST 2009 AS "MDA FIREFIGHTER APPRECIATION MONTH"

Mayor Bellamy read the proclamation proclaiming August 2009, as "MDA Firefighter Appreciation Month" in the City of Asheville. She presented the proclamation to Fire Captain Shane Valliere Sr. who thanked the City Council for providing them the support they need to help those who need help.

ADDITION TO THE CONSENT AGENDA

Mayor Bellamy has been asked by the local Association of Postmasters for consideration of a resolution requesting that the Oteen post office remain open. She asked that the resolution be added to the Consent Agenda. She noted that the Oteen post office serves citizens on Tunnel Road to the very east and is located across from the Veterans Administration Hospital.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "I", "P" and "Q" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "R" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 14, 2009

B. RESOLUTION NO. 09-160 - RESOLUTION ACCEPTING MCCAULEY DRIVE, FLORENCE STREET AND VERONICA LANE AS CITY-MAINTAINED STREETS

Summary: The consideration of a resolution to accept McCauley Drive, Florence Street, and Veronica Lane as city-maintained streets.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer's representative submitted a written request on April 30, 2009 asking the City to accept the three subject streets as city-maintained streets.

McCauley Drive from Reservoir Road to its dead-end is a developer-constructed street that has an average width of 18 feet with 18-inch curb and gutter, a length of 0.15 mile, and a right-of-way width of 50 to 150 feet. The typical two-year warranty period for major failures will be waived because the City of Asheville through a private contractor recently installed a new 24-inch water line along the center of McCauley Drive. The City of Asheville Water Department is responsible to mill and resurface the entire length of McCauley Drive as a part of the water line project. Prior to the water line construction, McCauley Drive had been completed including the final surface course during August 2007.

Florence Street from the end of existing city maintenance to White Fawn Drive is a developer-constructed street that has an average width of 23 feet with 18-inch curb and gutter, a length of 0.15 mile, and a right-of-way width of 28 to 56 feet.

Veronica Lane from Florence Street to a point 0.13 mile south of Florence Street is a developer-constructed street that has an average width of 19 feet 18-inch curb and gutter, a length of 0.13 mile, and a right-of-way width of 30 feet.

Transportation and Engineering Department staff and Public Works Department staff inspected these streets and determined that they were constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. The developer has completed repairing a punch list of items that were identified by Public Works Staff.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access and connectivity in a residential community and a professional business park.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to $6,326 per mile compared to the City's maintenance cost of $18,189 per mile.

Staff recommends that City Council accept the subject streets as city-maintained streets.

RESOLUTION BOOK NO. 32 – PAGE 146

C. RESOLUTION SUPPORTING THE "HONOR AND REMEMBER" FLAG AS AN OFFICIAL SYMBOL TO RECOGNIZE AND HONOR MEMBERS OF THE ARMED FORCES WHO HAVE DIED IN THE LINE OF DUTY, AND URGING THE UNITED STATES CONGRESS TO ADOPT THIS FLAG AS A NATIONAL SYMBOL

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 09-162 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO LEASE GROUND AND TOWER SPACE AT THE UPPER TOWER TO NORTH CAROLINA RSA #4 (D/B/A US CELLULAR) AT 166 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute a Lease Agreement with North Carolina RSA #4, Inc. (d/b/a US Cellular) for ground and tower space at 166 Reservoir Road.

The property at 166 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

North Carolina RSA #4, Inc. (d/b/a US Cellular) is an existing tenant at 166 Reservoir Road and operates a main telephone switching office at the eastern tower, currently housed in a 2476 square foot brick building, with several antenna and dishes on the tower. The proposal to enter into a new lease accompanies the request to expand the current ground lease footprint to accommodate a proposed building expansion to a total size of 4,953 square feet, with no additional telecom equipment to be added to the tower. In order to compensate the City for the increased ground lease area, the payment schedule is based on $34,200 per annum with 4% annual escalations and the following in-kind services: a turn-key climate controlled telco room built to the City's specifications (240 square feet) to house the City's public safety equipment, a back up generator for the telco room, and North Carolina RSA #4, Inc. to pay the associated

electric costs and generator maintenance costs. The proposed term for this lease is for a period of ten years.

The payment schedule was determined by gathering and comparing telecom rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were presented to the Planning and Economic Development Commission on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for a basic type of telecommunications installation. North Carolina RSA #4, Inc. will be paying a higher rate plus additional in-kind due to the size and scope of their proposed use.

Please note that City staff invited North Carolina RSA #4, Inc. to perform outreach to the neighboring property owners regarding the building expansion. To date, outreach has been completed and North Carolina RSA #4, Inc. has adequately addressed feedback. Along with the expansion, other site improvements include burying overhead electric transmission lines, relocation of power generators to reduce noise, and additional plantings in landscaped buffer area.

The Notice of Intent to enter into a Lease Agreement with North Carolina RSA #4, Inc. was published on July 31, 2009, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

Regarding the City Council Strategic Operating Plan, strategic tower asset management, through proper management of tenant agreements, presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable, while promoting fiscal responsibility.

Several new tenant leases were executed in Fiscal Year 2009. A portion of this additional revenue has been planned to underwrite a cost savings plan for the City's own telecommunication operations. Specifically, the City is planning on utilizing an estimated $80,000 of these new revenue enhancements to re-locate equipment from the Spivey Mountain site (where the City pays $29,000 per year with a 7% escalation each year) to the White Fawn site (owned by the City). This re-engineering was proposed in the FY09 budget, and once implemented, will promote significant cost savings to the City over time. This proposal from North Carolina RSA #4, Inc. includes an additional component essential to this effort: the telco room. This telco room will house the public safety equipment that will be relocated from Spivey.

This item has been reviewed by the Council's Planning and Economic Development Committee on July 15, 2009, and has received the Committee's endorsement.

Pros:

- Enhanced revenue through the lease income
- Telco room for the City's needs is built turn-key; with no additional capital outlay required from the City
- Underwrites long term cost savings plan for telecommunications

Con:

- None

The fiscal impact is as follows: (1) Fiscal Year 2010: $34,200 revenue; (2) Beyond Fiscal Year 2010: Additional revenue stream based on initial rate of $34,200 per year with 4% escalation per year; and (3) Beyond Fiscal Year 2010: Resulting savings of initial rate of $29,000 per year with 7% rent escalations.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with North Carolina RSA #4, Inc. on behalf of the City of Asheville.

RESOLUTION BOOK NO. 32 – PAGE 149

E. RESOLUTION NO. 09-163 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE EASEMENT CALLING FOR THE INSTALLATION AND UPGRADE OF ELECTRIC POWER UTILITY LINES ACROSS PROPERTY AT THE AIRPORT

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for the installation and upgrade of electric power utility lines across property at the Airport.

The land on which the Asheville Regional Airport is located is owned by the City of Asheville. It is leased to the Airport Authority. The facilities on the north side of the airport – primarily general aviation – are being upgraded, and new facilities are being constructed. This activity requires the upgrading of electric utility service, including the installation of some new facilities.

According to the "Project Layout and Safety Plan," the lines and facilities will be installed primarily along Wright Brothers Way and Aviation Drive, and to facilities that use these roads for access. The installation is substantially underground, with a few junction cabinets and pad-mounted transformers above ground. The plan has been approved by the Authority's project manager and general manager.

This action complies with the City's Strategic Operating Plan in that it contributes to the development of a multimodal transportation program, supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center.

The requested action is consistent with the Airport's Master Plan.

Pros:
- Facilitates development of Airport
- Lines will be mostly underground

Con:
- None noted

The fiscal impact is indirect; increases potential for revenue at Airport.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 32 – PAGE 150

F. RESOLUTION NO. 09-164 - RESOLUTION AUTHORIZING THE EXECUTION OF AN EASEMENT ON FAIRWAY DRIVE TO PERMIT CONSTRUCTION OF SEWER LINE IMPROVEMENTS BY METROPOLITAN SEWERAGE DISTRICT

Summary: The consideration of a resolution authorizing the execution of an easement to permit construction of sewer line improvements by Metropolitan Sewerage District (MSD).

MSD is proposing to replace a sewer line in the Beverly Hills area; specifically along Fairway Drive and Gladstone Road. In addition to constructing / replacing the line in the travelled portion of Fairway Drive, some of the work will occur on City property (golf course) adjacent to the right-of-way, and this is the area for which the easement is sought. The requested easement is actually for two separate areas, and involves permanent easements 20 feet wide centered on the

sewer line, together with construction easements of 20 feet (easement #1) and 15 feet (easement #2) on either side of the permanent easement.

As noted, sewer lines and manholes already exist in these areas, installed many years ago, but as is frequently the case, there are no recorded easements for them. The requested easements would be recorded.

Construction of this project is scheduled for 2012, and MSD has indicated that it will work with the City to minimize disruption to City operations at the golf course during the process.

This action complies with the "Sustainable" element of the City's Strategic Plan in that it addresses the City's aging infrastructure.

Pro:
- Will improve sewer service in the area, including a City facility

Con:
- Potential minimal disruption of golf course activity

The fiscal impact would be neutral.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 32 – PAGE 152

G. RESOLUTION NO. 09-165 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT AMENDMENT WITH CARL WALKER PARKING INC. FOR CIVIC CENTER PARKING GARAGE RESTORATION

Summary: The consideration of a resolution authorizing the City Manager to sign a contract amendment with Carl Walker Parking Inc. in the amount of $4,537.57 to cover additional costs for engineering services for Civic Center Parking Garage restorations.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center deck was built in 1976 and the others in 1988. Like any structure, these parking decks deteriorate over time and require restorative maintenance. This normally consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs but a detailed assessment is required to be sure. The City of Asheville commenced a multi-year program to accomplish restoration of the garages in 2007.

During fall of 2006 Parking Services sent out a Request for Proposal to interested firms to provide engineering services for the restoration of Civic Center Parking Garage. The scope of work included a detailed assessment of the condition of the facility, preparation of working drawings, preparation of bid package for general contractors, and supervision of the restoration work. Carl Walker Parking, Inc., of Detroit, Michigan, was selected as the most qualified and responsive of the firms responding. On April 24, 2007, Council authorized the City Manager to sign a contract with Carl Walker Parking, Inc., for $75,000.00, for engineering services and associated expenses with the project. A contract was signed between the parties in May 2007.

The project was completed in November 2008. However, the increase in air fares plus additional trips to Asheville from the Midwest resulted in increased cost in the amount of $4,537.57 in engineering fees and expenses. The extra trips were caused primarily from additional inspections as a result in delays in completing the project.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

Pro:

- This action will complete the project of restoration of the Civic Center parking garage.

Con:

- None noted.

Funds are available in the Parking Fund to pay for this amendment.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract amendment with Carl Walker Parking, Inc in the amount of $4,537.57 for engineering services to complete Civic Center Parking Garage restoration.

RESOLUTION BOOK NO. 32 – PAGE 154

H. ORDINANCE NO. 3762 - BUDGET AMENDMENT TO REPROGRAM EXISTING CAPITAL FUNDING TO COVER COSTS OF A NEW TRANSFORMER AND REPAIRS TO THE BASKETBALL FLOOR

Summary: This is the consideration of a budget amendment, in the amount of $45,000, to cover costs of a new transformer and repairs to the basketball floor.

The transformer has already been budgeted in the CIP. Additional research on the size and scope of the project warrants an additional $20,000 to complete. Additionally, the basketball floor is in need of repairs and refinishing at an estimated cost of $25,000. This was not realized until the 2009-10 Capital Improvement Plan (CIP) had been approved. All funds for these two projects will be pulled from other current Civic Center CIP projects. This is a request for reprogramming of capital funding that was previously approved for other Civic Center capital projects and not a request for new funds.

This action complies with the City Council Strategic Operating Plan in that it addresses the city's aging infrastructure and improves the customer experience at the Civic Center.

The Civic Center Commission met August 4, 2009, and overwhelmingly supports staff's recommendation.

Pros:

- Improvement in infrastructure
- Improvement of customer experience at the Civic Center

Con:

- None noted

This is a request for reprogramming of existing capital funding, not a request for new funds.

City staff recommends City Council adopt a budget amendment in the amount of $45,000, to cover costs of a new transformer and repairs to the basketball floor.

ORDINANCE BOOK NO. 25 – PAGE 355

I. BUDGET AMENDMENT FROM BUNCOMBE COUNTY TO SUPPORT THE CAPACITY FOR THE HOMELESS INITIATIVE PROJECT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. ORDINANCE NO. 3764 - BUDGET AMENDMENT TO ACCEPT DONATED FUNDS FOR PROCUREMENT OF SUPPLIES FOR FIREFIGHTER RECOGNITION

Summary: This is the consideration of a budget amendment, in the amount of $3,000, to receive donated money from citizens for procurement of supplies for the purpose of firefighter recognition.

The Asheville Fire and Rescue Department has received donations from private citizens for the purpose of firefighter recognition. These donations have been received throughout Fiscal Year 2008-09. The department would like to use these funds to purchase supplies for the annual September 11th recognition program as well as to purchase holiday meals for on-duty firefighters during the months of November and December.

This action complies with the City Council Strategic Operating Plan in that it helps to attract and retain quality employees and to ensure operational effectiveness by paying sound wages and benefits.

Pros:

- This action allows for recognition of firefighters without utilizing city tax funds.
- This action also provides for utilization of these funds as the donating citizens intended.

Con:

- None identified

These funds have been obtained through donations from private citizens.

City staff recommends City Council approve the budget amendment to receive donated money from citizens.

ORDINANCE BOOK NO. 25 – PAGE 359

K. ORDINANCE NO. 3765 - BUDGET AMENDMENT TO ACCEPT CONTRIBUTION FROM BUNCOMBE COUNTY FOR THE OPERATION OF THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: This is the consideration of a budget amendment, in the amount of $5,000, to accept a contribution from Buncombe County for the operation of the Historic Resources Commission.

The Historic Resources Commission operates both within the corporate limits of the City of Asheville and the unincorporated areas of Buncombe County with responsibility to protect the historic resources of both jurisdictions. The funding from Buncombe County will help to support the work of the Commission in carrying out its mission.

This action complies with the City Council 2009-2010 Strategic Operating Plan Fiscal Responsibility Focus Area in that the City and County share in the services provided by the HRC and with the Sustainable Focus Area in that the funding will help support implementation of the Downtown Master Plan.

Pro:

- Will provide funding to match a grant application to update the downtown National Register District and augment funding for training and educational programs.

Con:

- None noted.

This action will allow the Buncombe County to participate in the fiscal responsibility of operating the joint City/County Commission.

City staff recommends that City Council approve a budget amendment, in the amount of $5,000, to accept the contribution from Buncombe County to support the work of the Historic Resources Commission.

ORDINANCE BOOK NO. 25 – PAGE 361

L. ORDINANCE NO. 3766 - BUDGET AMENDMENT TO USE FEDERAL DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: This is the consideration of a budget amendment, in the amount of $152,167, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department.

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. The City of Asheville Police Department has received $152,167 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for critical improvements, training, and equipment purchases for the Asheville Police Department.

Among the items slated for purchase with this funding include: 1) Central Records unit security upgrades ; 2) Purchase of Radar and Lidar Units for patrol units; 3) Training and travel for law enforcement training related to OCEAN video enhancement, 4) Upgrades to the Briefing Room to allow for a fixed audio/video system, 5) ERT/EOD transport vehicle; 6) covert camera system for undercover operations; 7) TASERs to enhance officer safety; 8) computers for Forensic Unit; 9) other training equipment not covered by the APD operating budget.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using drug seizure monies to enhance the APD's equipment and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows our employees to be more professional and more effective in proactively enforcing and preventing criminal activity.

Pro:

- Federal seizure revenues to cover the cost of equipment and training related to street level drug enforcement and community policing activities

Con:

- None noted

The fiscal impact is the increase of $152,167 for training and equipment. Accepting

these funds is a significant financial benefit to the APD allowing us to better train and equip our employees. There is no impact to the General Fund budget.

City staff recommends City Council adopt the budget amendment in the amount of $152,167, to authorize the use of Federal Drug Seizure Funds to purchase equipment and training for the Asheville Police Department.

ORDINANCE BOOK NO. 25 – PAGE 363

M. ORDINANCE NO. 3767 - BUDGET AMENDMENT TO USE NORTH CAROLINA STATE DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: This is the consideration of a budget amendment, in the amount of $128,121, to authorize the use of North Carolina State Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department.

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

The City of Asheville Police Department has received $128,121 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to purchase drug enforcement equipment, training, and improvements not covered by the APD operating budget. Items to purchase include: 1) MCT upgrades; 2) Police Bicycles; 3) Policy Management Software; 4) Handgun Upgrades; and 5) Training related to Crowd Control and Crash Data Retrieval or other training for employees.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using drug seizure monies to enhance the APD's equipment and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows our employees to be more professional and more effective in proactively enforcing and preventing criminal activity.

Pro:

- North Carolina State drug seizure revenue used to fund drug enforcement equipment, training, and improvements at no cost to city taxpayers.

Con:

- None noted

The fiscal impact is the increase of $128,121 for training and equipment. Accepting these funds is a significant financial benefit to the APD allowing us to better train and equip our employees. There is no impact to the General Fund budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to adopt a budget amendment, in the amount of $128,121, authorizing the use of North Carolina State Drug Seizure Funds to fund drug enforcement equipment, training and other improvements for the Asheville Police Department.

ORDINANCE BOOK NO. 25 – PAGE 365

N. RESOLUTION NO. 09-166 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MICHAEL BAKER ENGINEERING INC. FOR THE REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS PROJECT

Summary: This is the consideration of a resolution authorizing the City Manager to sign a contract with Michael Baker Engineering, Inc. for engineering services in the amount of $72,184.00 for the Reynolds Mobile Home Park Water System Improvements Project.

Grant Funds from the North Carolina Department of Environment and Natural Resources (NCDENR) North Carolina Water Infrastructure Act of 2005 (N.C.G.S. 150G) are available for this project and were approved by City Council on July 14, 2009, by Resolution No. 09-147.

The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Reynolds Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The Water Resources Department (WRD) issued a Request for Qualifications (RFQ) for Engineering Services related to the design and contract administration of the Reynolds Mobile Home Park Water System Improvements Project. In response to that RFQ, the WRD received thirteen (13) proposals.

Companies responding were:

1. Land Design, Asheville, NC
2. TGS Engineers, Morganton, NC
3. Gavel & Dorn Engineering, Denver, NC
4. William G. Lapsley & Associates, Asheville, NC
5. Brooks Engineering Associates, Asheville, NC
6. Civil Design Concepts, Asheville, NC
7. Davis Civil Solutions, Asheville, NC
8. Crain Atlantis Engineering, Charlotte, NC
9. Vaughn & Melton Consulting Engineers, Asheville, NC
10. Ocmulgee Site & Environmental Services, Perry, Georgia
11. R. Joe Harris & Associates, Fort Mill, SC
12. McGill Associates, Asheville, NC
13. Michael Baker Engineering, Asheville, NC

A review team, comprised of staff from multiple City Departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these proposals and selected the firm of Michael Baker Engineering, Inc. Subsequent to this selection, Water Resources staff have met with Michael Baker Engineering representatives and have negotiated an Engineering Services Contract in the amount of $72,184.00. This amount is fully reimbursable by the committed grant money.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Michael Baker Engineering's proposal impressed the review staff with their experience, technical expertise and knowledge about the Reynolds Mobile Home Park situation.
- The project engineer for Michael Baker has worked with the City of Asheville on multiple water system improvements and is familiar with the City of Asheville Design Standards. This experience and familiarity will minimize staff support and input during the design process.
- Expenditure of this grant-reimbursable expense is necessary in the preparation of Contract Documents for the Reynolds Mobile Home Park Water System Improvements Project.
- This project will provide 37 existing homes with a safe reliable drinking water source and much improved fire protection.

Con:

- Failure to award an engineering services contract would lead to forfeiture of the NCDENR grant and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the Engineering costs until reimbursement is received from the State. Funds for these upfront costs are allocated in this fiscal year's Capital Improvement Projects budget.

City staff recommends City Council approval of the City Manager signing a contract agreement with Michael Baker Engineering, Inc. for the Reynolds Mobile Home Park Acres Water System Improvements Project.

RESOLUTION BOOK NO. 32 – PAGE 155

O. RESOLUTION NO. 09-167- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MCGILL ASSOCIATES PA, FOR THE VIEWMONT ACRES SUBDIVISION WATER SYSTEM IMPROVEMENTS PROJECT

Summary: This is the consideration of a resolution authorizing the City Manager to sign a contract with McGill Associates, PA for engineering services in the amount of $68,450.00 for the Viewmont Acres Water System Improvements Project.

Grant Funds from the North Carolina Department of Environment and Natural Resources (NCDENR) North Carolina Water Infrastructure Act of 2005 (N.C.G.S. 150G) are available for this project and were approved by City Council on July 14, 2009, by Resolution No. 09-147.

The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Viewmont Acres Subdivision. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The Water Resources Department (WRD) issued a Request for Qualifications (RFQ) for Engineering Services related to the design and contract administration of the Viewmont Acres Water System Improvements Project. In response to that RFQ, the WRD received thirteen (13) proposals.

Companies responding were:

1. Land Design, Asheville, NC
2. TGS Engineers, Morganton, NC
3. Gavel & Dorn Engineering, Denver, NC
4. William G. Lapsley & Associates, Asheville, NC
5. Brooks Engineering Associates, Asheville, NC
6. Civil Design Concepts, Asheville, NC
7. Davis Civil Solutions, Asheville, NC
8. Crain Atlantis Engineering, Charlotte, NC
9. Vaughn & Melton Consulting Engineers, Asheville, NC
10. Ocmulgee Site & Environmental Services, Perry, Georgia
11. R. Joe Harris & Associates, Fort Mill, SC
12. McGill Associates, Asheville, NC
13. Michael Baker Engineering, Asheville, NC

A review team, comprised of staff from multiple City Departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these proposals and selected the firm of McGill Associates, PA. Subsequent to this selection, Water Resources staff have met with McGill Associates and have negotiated an Engineering Services Contract in the amount of $68,450.00. This amount is fully reimbursable by the committed grant money.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:
- McGill Associates has provided Engineering Services on numerous water system improvement projects for the City of Asheville.
- McGill's experience and knowledge of our water system will minimize staff support and input during the design process.
- Expenditure of this grant-reimbursable expense is necessary in the preparation of Contract Documents for the Viewmont Acres Water System Improvements Project.
- This project will provide 23 existing homes with a safe reliable drinking water source and much improved fire protection.

Con:
- Failure to award an engineering services contract would lead to forfeiture of the NCDENR grant and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the Engineering costs until reimbursement is received from the State. Funds for these upfront costs are allocated in this fiscal year's Capital Improvement Projects budget.

City staff recommends City Council approval of the City Manager signing contract agreement with McGill Associates, PA for the Viewmont Acres Water System Improvements Project.

RESOLUTION BOOK NO. 32 – PAGE 156

P. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO ACCEPT SUB-GRANTEE FUNDS FROM THE N.C. GOVERNOR'S CRIME COMMISSION FOR A JOINT GANG VIOLENCE PREVENTION PROJECT

BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION FOR THE GANG VIOLENCE PREVENTION PROJECT

These items were removed from the Consent Agenda for discussion and/or individual votes.

Q. RESOLUTION APPROVING THE PRIORITY OF UNFUNDED IMPROVEMENTS AT MEMORIAL STADIUM AND UNFUNDED ENHANCEMENTS AT THE VETERANS MEMORIAL

This item was removed from the Consent Agenda for discussion and/or an individual vote.

R. RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ORGANICFEST

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT BLUE RIDGE PRIDE

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT JUST BECAUSE YOU'RE ASHEVILLE

These items were removed from the Consent Agenda for individual votes.

S. RESOLUTION NO. 09-180 – RESOLUTION REQUESTING THAT THE OTEEN POST OFFICE REMAIN OPEN

RESOLUTION BOOK NO. 32 – PAGE 186

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 09-161 - RESOLUTION SUPPORTING THE "HONOR AND REMEMBER" FLAG AS AN OFFICIAL SYMBOL TO RECOGNIZE AND HONOR MEMBERS OF THE ARMED FORCES WHO HAVE DIED IN THE LINE OF DUTY, AND URGING THE UNITED STATES CONGRESS TO ADOPT THIS FLAG AS A NATIONAL SYMBOL

Summary: Asheville City Council is considering a resolution supporting the "Honor and Remember" flag as an official symbol to recognize and honor members of the armed forces who have died in the line of duty, and urging the United States Congress to adopt this flag as a national symbol. The purpose of this memorandum is to provide information on appropriate flag protocol according to the United States Code Title 1 Chapter 4, and Honor and Remember, Inc.

- When flying multiple flags from one staff:
  - the flag of the United States of America should be flown at the highest point,
  - the state flag of North Carolina should be flown next
  - local or honor flags should be flown third
- When flying multiple flags from two staffs:

- the flag of the United States of America should be flown at the highest point
- the state flag of North Carolina should be flown to the US flag's left (viewers right)
- local or honor flags should be flown under the NC flag

- When flying multiple flags from three staffs:
  - the flag of the United States of America should be flown at the highest point and in the front, center staff
  - the state flag of North Carolina should be flown to the US flag's left (viewers right)
  - local or honor flags should be flown to the US flag's right (viewer's left)
- The "Honor and Remember" flag should be smaller than the flag of the Unites States of America with which it flies.

Mr. Josh O'Conner thanked City Council for their support of this resolution.

Councilman Mumpower suggested that this flag fly at Memorial Stadium.

Councilman Newman moved for the adoption of Resolution No. 09-161 and directed City staff to fly the flag at Memorial Stadium. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 148

I. ORDINANCE NO. 3763 - BUDGET AMENDMENT FROM BUNCOMBE COUNTY TO SUPPORT THE CAPACITY FOR THE HOMELESS INITIATIVE PROJECT

Summary: This is the consideration of a budget amendment, in the amount of $12,000, authorizing the Community Development Division of the Planning Department to accept additional funds from Buncombe County to support the capacity of Homeless Initiative project.

In order to accommodate for the growing needs of the Homeless Initiative, Buncombe County has offered the project $12,000 to pay for AmeriCorps*VISTA and Work-study positions. The positions would be dedicated to increasing the capacity of the Homeless Initiative and strengthening projects of the Homeless Coalition and Homeless Initiative Advisory Group.

The following outcomes would need to be met if funding is accepted:

Retain 2 AmeriCorps workers (or other workers) for up to 1,200 hours to support the Asheville-Buncombe Homeless Initiative, providing services for projects such as the SOAR disability project, Homeless Coalition, etc.

This action complies with the Strategic Operating Plan in that it meets the affordability goal objective to support initiatives to end homelessness. Accepting this funding will help the Homeless Initiative support the 10-Year Plan to End Homelessness process and collect data that can be used by the City Council when evaluating initiatives designed to end homelessness.

Pro:

- In tight budget times, funds to further the work of the Homeless Initiative can enhance the services it offers to the community.

Con:

- No apparent cons.

This will add $12,000 to the Homeless Initiative budget. These additional funds will fully support the costs of the AmeriCorps or work-study personnel.

City staff recommends City Council adopt a budget amendment accepting the $12,000 awarded to the Homeless Initiative by Buncombe County for capacity building.

Councilman Mumpower was concerned that we are using research to chase policy and could not support this investment.

Councilwoman Cape moved for the adoption of Ordinance No. 3763. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

ORDINANCE BOOK NO. 25 – PAGE 357

P. RESOLUTION NO. 09-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO ACCEPT SUB-GRANTEE FUNDS FROM THE N.C. GOVERNOR'S CRIME COMMISSION FOR A JOINT GANG VIOLENCE PREVENTION PROJECT

ORDINANCE NO. 3768 - BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S CRIME COMMISSION FOR THE GANG VIOLENCE PREVENTION PROJECT

Summary: This is the consideration of (1) a resolution authorizing the City Manager to enter into an agreement with Buncombe County to accept sub-grantee funds from the NC Governor's Crime Commission for a joint Gang Violence Prevention Project; and (2) a budget amendment, in the amount of $57,300, accepting the funds.

The Asheville Police Department (APD) has entered into an agreement with Buncombe County Gang Violence Prevention Project (BCGVPP) to receive funds for overtime and equipment to address gangs within Buncombe County. The BCGVPP consists of the Buncombe County Sherriff's Department, The Mediation Center, YWCA-Support Our Students, YWCA-Future Vision Program, Up Front Sports Agency, Partners Unlimited – New Day Program, Asheville Green Opportunity Corps (GO), Western Carolinian's for Criminal Justice – Men's Program, River of Life Church – Impact Tutoring, Asheville High School – ASPIRE program, and Horse Sense of the Carolinas.

This grant will be administered by Buncombe County.

The APD plans to purchase 2 video cameras, 2 digital cameras, 2 window tint meters, 2 alco-sensors, 2 X-26 Tasers, 20 Taser Cartridges, In-car digital video camera, a cellular equipment, and rental for a copier/scanner/Fax for 24 months. The equipment costs are a total of $20,900.

The APD will also provide 2 gang Detectives and 3 Officers to work overtime toward this project over a 104 week period for a total cost of $36,400.

The total grant funds total $57,300.

This is an 25% matching grant (cumulative of all partners) that will enable the APD to greatly improve the mentoring, education and enforcement efforts related to gang activities in partnership with multiple agencies focused improve our community and children's lives. Due to other partners contributing more, APD is only matching at about 18.3% ($14,325).

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Partnerships formed with multiple agencies aimed to mentor youth and improve our communities.
- Providing alternative to judicial system / incarceration for youth.
- Enhanced community supervision for at risk youth.
- Reduce gun crime / violent crime associated with gang activity.

Con:

- Matching funds of $14,325; however, funds can be absorbed in the overtime budget.

There is a fiscal impact of $14,325 for matching funds. These funds can be absorbed in the overtime budget which will ultimately be increased as a result of these partnership funds.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter an agreement with Buncombe County for NC Governor's Crime Commission funds; and (2) adopt the budget amendment in the amount of $57,300.

Councilman Mumpower was troubled with the dysfunctional court system and felt that the state should use those funds for that purpose and let the City use it's own funds on the gang violence prevention project.

Councilwoman Cape explained that there must be a multi-prong approach in solving these issues and supported the actions.

Councilman Newman moved for the adoption of Resolution No. 09-168. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 157

Councilwoman Cape moved for the adoption of Ordinance No. 3768. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 367

Q. RESOLUTION NO. 09-169 - RESOLUTION APPROVING THE PRIORITY OF UNFUNDED IMPROVEMENTS AT MEMORIAL STADIUM AND UNFUNDED ENHANCEMENTS AT THE VETERANS MEMORIAL

Summary: This report provides a summary of project-to-date expenditures related to the Memorial Stadium and Veterans Memorial capital improvement plan, and includes a resolution asking Council to establish funding priorities for future project expenditures related to this plan.

Improvements to Memorial Stadium and the Veterans Memorial (located at the stadium) have been made in phases as funding has become available.

Memorial Stadium

Specific improvements that have been completed to date include installation of synthetic turf and field lights on the sports field and construction of a playground. A total of $493,980 has been spent on these improvements, with funding coming primarily from donations and general fund.

Additional improvements and renovations planned for Memorial Stadium are currently

unfunded. They include concrete bleachers, press box, practice field, basketball court, fitness trail, picnic pavilion, ticket booth, entrance wall and sign, entrance columns and fencing, gates and fencing, sidewalks, landscaping and parking lots. These improvements are shown in priority order in the table below and are based on the following criteria: 1) health, safety and welfare of customers when using the park, 2) highest and best function of park features for majority of park customers, and 3) enhances the customers experience when using the park. The cost for Memorial Stadium improvements is based on the cost estimate produced by Aiken Cost Consultants in September 2007.

Memorial Stadium Improvements Complete: Synthetic turf on sports field, field lights, playground

Priority of Memorial Stadium Unfunded Improvements:

Priority 1	
Concrete Bleachers Restoration	$ 185,700
Press Box	251,000
South Parking Lot	95,600
North Parking Lot	120,300
Sidewalks	22,100
Gates and Fencing	51,200
Priority 2	
Basketball Court	8,500
Fitness Trail	42,900
Picnic Pavilion	28,300
Landscaping	50,000
Priority 3	
Practice Field	18,100
Ticket Booth	108,000
Entrance Wall and Sign	17,800
Entrance Columns and Fencing	94,400
TOTAL	**$ 1,093,900**

Cost based on the cost estimate produced by Aiken Cost Consultants in September 2007

Veterans Memorial

The improvements completed to date at the Veterans Memorial include brick arch restoration, court yard, seating area, World War I and II wall, brick columns and scatter garden, flag poles, fencing and landscaping. Enhancements in the Veterans Memorial design that remain unfunded include scatter garden bronze plaques, war bronze plaques, brick walls, western North Carolina counties bronze plaques, benches, electric conduit, lights and irrigation. A total of $247,500 has been spent on these improvements, with funding coming from a U.S. Department of Housing and Urban Development special projects grant.

The Veterans Memorial table below represents the unfunded enhancements. No priority order has been established for designated to these enhancements; as such, they can occur in any order as full funding becomes available. Staff estimates for the cost for the Veterans Memorial enhancements were completed in June 2009.

Veterans Memorial Features Complete: Brick arch restoration, court yard, seating area, World War I and II wall, brick columns and scatter garden, flag poles, fencing and landscaping

Veterans Memorial Unfunded Enhancements:

2 War Bronze Plaques	$ 5,500
17 Western NC County Bronze Plaques	29,000
5 War Bronze Plaques and Brick Walls	22,500
Garden Irrigation	2,500
3 Scatter Garden Bronze Plaques	8,250
Electric Conduit and Lights	2,500
2 Benches	4,000
TOTAL	**$ 74,250**

Cost based on general cost observation by City staff in June 2009

The estimated cost for both Memorial Stadium and the Veterans Memorial does not include general contractor overhead. Cost is subject to change due to the actual final design of certain features, contingency, inflation and the economy at the time the work actually occurs.

At its regular meeting on July 13, 2009, the Recreation Board reviewed the priority of unfunded improvements at Memorial Stadium, and the unfunded enhancements at the Veterans Memorial and unanimously approved establishment of this list as a guide for future capital expenditures. The following motions were approved by the Recreation Board: (1) To support to the prioritization of the Memorial Stadium unfunded feature; and (2) To support the unfunded non-prioritized Veterans Memorial enhancements given that the monies are raised outside of city funds and that Councilman Mumpower continue his fundraising leadership.

Staff seeks City Council endorsement of the resolution establishing the list of unfunded priorities.

Pros:

- Provides a prioritized list of improvements for Memorial Stadium, and enhancements for the Veterans Memorial as full funding becomes available
- Serve as a guide and reference list for future funding and fundraising activities

Cons:

- None

No funding is currently allocated in the Parks, Recreation & Cultural Arts FY 2009-2010 capital improvement budget to fund improvements as outlined in staff report.

Staff recommends City Council to adopt a resolution authorizing the City Manager to approve 1) priority of unfunded improvements at Memorial Stadium, and 2) the unfunded enhancements at the Veterans Memorial.

Mayor Bellamy, member of the Finance Committee, noted that in the past we have had committees say they would raise money but that did not happen. She felt that if we are going to partner with any entity to raise money for this or any other park, that we should have a formalized agreement/process.

Councilman Mumpower noted that the improvements at the Veterans Memorial were not built primarily with a federal grant, but with private dollars. He said that he met with the Recreation Board and discussed a willingness to continue trying to raise private dollars. He has met with someone earlier this week who is willing to fund the scatter garden. He felt it was extremely important to move forward on these improvements and asked for Council's endorsement of support for his personal efforts to (1) raise money for improvements at the memorial part of Memorial Stadium; and (2) get the stories from every county in western North Carolina to be portrayed there.

Mayor Bellamy had no concern of Councilman Mumpower raising funds, but it should be through a partnership similar to other committees.

Councilman Mumpower said that 90% of the money raised for Memorial Stadium either directly or indirectly came from the specific actions of the Memorial Stadium Restoration Committee under his leadership. They honored their promise not to use City tax dollars. He would be happy to meet with the Boards & Commissions Committee to discuss a framework for a small committee. He would be happy to chair that small committee and move it forward.

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that referring this to the Boards & Commissions Committee is not consistent with what that Committee does. He felt this would be more of a Task Force, through the Parks & Recreation Department, whose service would be concluded fairly quickly.

Mayor Bellamy said that the Parks & Recreation Director is in the process of developing a partnership agreement with different entities. The Finance Committee received a report on co-sponsorships and we are asking our departments to be in line with the process that is clear and transparent. She felt that Councilman Mumpower's commitment to raise funds should fall under this formalized process so all expectations are clear and that staff is aware of the parameters which the relationship is developed.

Councilman Mumpower noted that he did receive unanimous endorsement from the Recreation Board to continue his fundraising. He suggested a committee of four people, most of those being former members of the Memorial Stadium Restoration Committee, meet with City staff and discuss some parameters of working with the Parks & Recreation Department. After meeting, City staff can then report back to Council. Mayor Bellamy asked that City Manager Jackson or his designee be a part of that meeting.

Councilman Russell moved for the adoption of Resolution No. 09-169 approving the priority of unfunded improvements at Memorial Stadium and unfunded enhancements at the Veterans Memorial. This motion was seconded by Councilman Newman.

City Manager Jackson felt this is a two-step process - (1) approval of the priority of unfunded improvements; and (2) Mayor's desire to get clarity on the Task Force for their role and responsibilities, work plan, etc. He or his designee was asked to work with Councilman Mumpower and that Task Force to review the work plan. Once that is accomplished, it will be brought back to either the Boards & Commissions Committee or to the full Council at a later date.

Councilman Mumpower felt that we create that intentional process for fundraising and would not act on that fundraising until he has Council's support.

Vice-Mayor Davis asked for a friendly amendment to endorse Councilman Mumpower's fundraising effort with him developing and leading a Task Force which efforts will be reported to the Boards & Commissions Committee on a timely basis.

Councilman Russell and Councilman Newman both accepted the friendly amendment.

Councilman Newman asked for a breakdown the $493,980 of private and public monies for Memorial Stadium. City Manager Jackson did not have that information, but would provide Council a detailed report, including the identification of funding sources.

When Mayor Bellamy asked for a vote on the amended motion, it carried unanimously.

R. **RESOLUTION NO. 09-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL**

RESOLUTION NO. 09-171 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

RESOLUTION NO. 09-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ORGANICFEST

RESOLUTION NO. 09-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL

RESOLUTION NO. 09-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION NO. 09-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST

RESOLUTION NO. 09-176 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT BLUE RIDGE PRIDE

RESOLUTION NO. 09-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT JUST BECAUSE YOU'RE ASHEVILLE

Summary: This is the consideration of resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the 1) Goombay Festival on August 28-29, 2009, 2) Lexington Avenue Arts & Fun Festival on September 6, 2009, 3) OrganicFest on Sunday, September 13, 2009, 4) Brewgrass Festival on September 19, 2009, 5) Asheville Greek Festival on September 25-27, 2009, 6) Oktoberfest on October 10, 2009, 7) Blue Ridge Pride on October 10, 2009, and 8) Just Because You're Asheville on October 24, 2009.

Goombay Festival

The YMI Cultural Center has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Goombay Festival and allow for consumption at this event.

The Goombay Festival will be held on Friday, August 28, 2009, from 10:00 a.m. to 10:00 p.m., and Saturday, August 29, 2009 from 10:00 a.m. to 10:00 p.m. within the boundaries of

Eagle Street, South Market Street and Wilson Alley, as per the event area limits referenced on the accompanying site map and will be free and open to the public.

Pro:
- Allows fundraising opportunity for the YMI Cultural Center

Con:
- Potential for public safety issues

The fiscal impact will be overtime pay for police officers

Lexington Avenue Arts & Fun Festival (LAAFF)

Arts2People has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

The Lexington Avenue Arts & Fun Festival will be held on Sunday, September 6, 2009, from 11:00 a.m.– 9:00 p.m. within the boundaries of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for Arts2People

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

OrganicFest

Wild South in conjunction with Imagine Center, Inc. has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at OrganicFest and allow for consumption at this event.

OrganicFest will be held on Sunday, September 13, 2009, from 10:00 a.m.– 6:00 p.m. within the boundaries of Battery Park Avenue and Otis Streets, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for charity

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

Brewgrass Festival

Big Brothers Big Sisters has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Brewgrass Festival and allow for consumption at this event.

The Brewgrass Festival will be held on Saturday, September 19, 2009, from 12:00 p.m. – 7:00 p.m. within the boundaries of Martin Luther King Jr. Park, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for charity

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

Asheville Greek Festival

The Holy Trinity Greek Church has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Greek Festival and allow for consumption at this event.

The Asheville Greek Festival will be held on Friday and Saturday, September 25 and 26, 2009, from 11:00 a.m.– 9:00 p.m.; and Sunday, September 27, 2009, from 11:00 a.m.– 4:00 p.m. within the boundaries of Martin Luther King Jr. Park, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for charity

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

Oktoberfest

The Asheville Downtown Association has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at Oktoberfest and allow for consumption at this event.

Oktoberfest will be held on Saturday, October 10, 2009, from 1:00 p.m. to 5:00 p.m. within the boundaries of Wall Street, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunity for the Asheville Downtown Association

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

Blue Ridge Pride

Parents, Families, and Friends of Lesbians and Gays (PFLAG) – Asheville in conjunction with Blue Ridge Pride has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

Blue Ridge Pride will be held on Saturday, October 10, 2009, from 12:00 p.m.– 8:00 p.m. within the boundaries of Martin Luther King Jr. Park, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for charity

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

Just Because You're Asheville

Lake Eden Arts Festival (LEAF) in Schools and Streets in conjunction with Mountain Roots Management has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at Just Because You're Asheville and allow for consumption at this event.

Just Because You're Asheville will be held on Saturday, October 24, 2009, from 1:00 p.m.– 9:00 p.m. within the boundaries of the 100 block of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:
- Allows fundraising opportunities for charity

Con:
- Potential for public safety issues

There is no fiscal impact to the City.

City staff recommends City Council consider resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the 1) Goombay Festival on August 28-29, 2009, 2) Lexington Avenue Arts & Fun Festival on September 6, 2009, 3) OrganicFest on September 13, 2009, 4) Brewgrass Festival on September 19, 2009, 5) Asheville Greek Festival on September 25-27, 2009, 6) Oktoberfest on October 10, 2009, 7) Blue Ridge Pride on October 10, 2009, and 8) Just Because You're Asheville on October 24, 2009.

Councilwoman Cape moved for the adoption of Resolution No. 09-170. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 159

Councilwoman Cape moved for the adoption of Resolution No. 09-171. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 162

Councilwoman Cape moved for the adoption of Resolution No. 09-172. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 165

Councilwoman Cape moved for the adoption of Resolution No. 09-173. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 168

Councilwoman Cape moved for the adoption of Resolution No. 09-174. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 171

Councilwoman Cape moved for the adoption of Resolution No. 09-175. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 174

Councilwoman Cape moved for the adoption of Resolution No. 09-176. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 177

Councilwoman Cape moved for the adoption of Resolution No. 09-177. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"."

RESOLUTION BOOK NO. 32 – PAGE 180

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

ORDINANCE NO. 3769 - BUDGET AMENDMENT FOR THE BYRNE JUSTICE ASSISTANCE GRANT PROGRAM

RESOLUTION NO. 09-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE IMPLEMENTATION OF FOUR TRANSPORTATION PROJECTS – COXE AVENUE BICYCLE IMPROVEMENTS; DOWNTOWN AND GATEWAY STREETSCAPES;

FAIRVIEW ROAD PEDESTRIAN ENHANCEMENTS; AND SOUTH SLOPE BICYCLE LANES

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of two items for approval: (1) staff is seeking City Council approval of a budget amendment, in the amount of $372,630, authorizing the City to accept funds for the ARRA - 2009 Byrne Justice Assistance Grant – Local Solicitation; and (2) a resolution to approve a municipal agreement to contract between the City of Asheville and the North Carolina Department of Transportation (NCDOT) for four Metropolitan Planning Organization (MPO)-selected projects. In addition, staff is providing information on funding announcements and approvals for the N.C. Dept. of Environment and Natural Resources (NCDENR) and the Homeless Prevention and Rapid Re-Housing Program (HPRP) Substantial Amendment.

Budget Amendment - Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation

The Asheville Police Department (APD) has been awarded ARRA Byrne JAG – Local Solicitation Award. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. Asheville Police and Buncombe County Sheriff's Department have been allocated $372,630 with Asheville receiving $265,466 and Buncombe receiving $107,164. Distribution of funds has been approved through a signed Memorandum of Understanding (MOU).

The APD plans to purchase security enhancement equipment for the Municipal Building which will replace funding that was eliminated from the 2009-2010 Budget. The improvements will update the video security system within the Municipal Building, update and add key card access to doors as needed, and integrate an alarm system that makes internal notification of unauthorized entries to secure areas. It is estimated that this will cost approximated $225,956.

Additionally APD plans to purchase a SPEX AFIS system that will enable APD to scan and enter fingerprints and palm prints into a local system that will analyze the prints and compare with previous sets. This will be a great improvement to the current system as it will use the increasing data compiled local for comparison. It will also be able to use palm prints which we currently do not process.

At its May 5, 2009, meeting, the City Council Finance Committee reviewed the proposed projects and authorized staff to submit the application and Memorandum of Understanding (MOU) for approval by City Council which is a requirement for funding. Resolution 09-89 authorizing APD to apply and enter into an MOU was approved May 12, 2009.

Municipal Building Security:	
Upgrade to camera system (32 cameras), key card access to critical office areas (50) and integrated alarm system to include associated computer hardware	$225,956
SPEX AFIS/APIS:	
Computer, monitor, modem, scanner, etc.	$30,500
Interface with SPEX central server	$995
Yearly software support	$1,895
Interface with CCID (Buncombe Detention)	$995
Shipping, packing and handling	$625
INDENTIX service contract *	$4,500
Total to City:	$265,466

Total to Buncombe County: $107,164

Total Funds Awarded: $372,630

This is a 100% non-matching grant that will enable the APD to greatly improve the Municipal Building Security and improve the processing of fingerprints and palm prints to compare to those compiled locally.

There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

Pros:

- Security enhancement equipment for the Municipal Building which will replace funding that was eliminated from the 2009-2010 Budget.
- Update to the video security system, add key card access to doors as needed, and integrate an alarm system that makes internal notification of unauthorized entries to secure areas.
- Added technology to scan and enter fingerprints and palm prints into a local system which is great improvement to the current system.

Con:

- None

Staff recommends approval of a budget amendment to accept funds in the amount of $372,630 for the ARRA - 2009 Byrne Justice Assistance Grant – Local Solicitation for the City of Asheville and Buncombe County.

Department of Transportation: Division 13 Enhancement Project Update

NCDOT Division 13 notified the city that they will be constructing the ARRA funded enhancement projects rather than passing the funding through to individual local governments. Projects in Asheville are completing the Beaverdam Road sidewalk from Merrimon Avenue to Kimberly, installing a bio-retention basin near exit 6 of I-240 to treat runoff entering Ross Creek, refurbishing plantings at the intersection of I-240 exit 7 and Tunnel Road, constructing sidewalks along Pinchot Drive from Overlook Road to Estes Elementary School, and installing pedestrian signals at Pinchot Drive and Overlook Road. City-requested pedestrian signal and crosswalk to cross Patton Avenue at Louisiana Avenue will be funded with other than ARRA funds, and should be installed as the city's Patton Avenue sidewalk project is complete.

MPO-selected Transportation Projects

The resolution authorizes the City Manager to execute the municipal agreements for three MPO surface transportation programs - directly attributable (STP-DA) projects. This is the next step in the process. We expect the projects will be put out to bid in September or October.

The projects are Fairview Road pedestrian enhancements, Coxe Avenue bike lanes (including full-width resurfacing of Coxe Avenue), Downtown and Gateway streetscapes, and the South Slope bike lane network (Ashland Avenue, Hilliard Avenue, and Martin Luther King, Jr., Boulevard).

These grants provide 100% of the construction costs up to the grant amount; no local match is required.

TIP No.	*Description*	*Grant Amount*
U-5173	*Coxe Avenue Bicycle Improvements*	*$ 309,760*
U-5174	*Downtown and Gateway Streetscapes*	*$ 121,000*

U-5175	*Fairview Road Pedestrian Enhancements*	*$ 105,600*
U-5177	*South Slope Bicycle Lanes*	*$ 235,950*
	Total Potential Funding	*$ 772,310*

Pros:

- Improves Asheville's transportation facilities
- Implements projects in the City's adopted pedestrian and bicycle plans
- Provides up to $770,000 dollars in long term investment in the City's infrastructure

Con:

- The City will be responsible for future maintenance of the projects

Staff recommends approval of the resolution authorizing the City Manager to execute municipal agreements between the NCDOT and the City of Asheville for projects identified in the Transportation Improvement Program.

NCDENR ARRA Funding Announcements

The City of Asheville will receive $964,500 from the North Carolina Department of Environment and Natural Resources (NCDENR) for water and storm water infrastructure projects. The funding comes from various NCDENR sources including economic stimulus funds allocated through the Drinking Water and Clean Water State Revolving Funds.

Awards include:

- $510,000 in stimulus funds from the North Carolina Drinking Water State Revolving Fund will be used to replace pumps and valves at the North Folk and Mills River Water Treatment Plants. Replacement pumps will increase production efficiency, save energy and improve water service for fire coverage.

- $454,500 in stimulus funds from the North Carolina Clean Water State Revolving Fund will pay for storm water improvements to the Dingle Creek watershed. The project is expected to reduce storm water pollution from eroding stream banks and address flood risks.

The City expects to begin bidding these projects this fall.

Homeless Prevention and Rapid Re-Housing Program (HPRP)

The City of Asheville will receive $509,460 in funding from the Department of Housing and Urban Development (HUD) and, as a part of that funding; we submitted a substantial amendment to our Consolidated Plan 2008 Action Plan. The plan has been approved by notification of the U.S. Department of Housing and Urban Development.

Currently, applications for funding are due to the City Community Development Department by 5 p.m. on August 13, 2009.

When Mayor Bellamy asked for public comments, none were received.

In response to Mayor Bellamy, Ms. Mills explained how the City is using its tools (website, City channel, etc.) to make sure that local vendors understand the process.

When Councilman Mumpower expressed concern over spending almost $310,000 on bicycle improvements on Coxe Avenue, Councilman Newman explained that this is basically resurfacing Coxe Avenue and bicycle improvements is only a part of the project.

Councilman Miller said that the Coxe Avenue bicycle improvements project aligns with the Downtown Master Plan and Bike Plan which were adopted by City Council. He felt that once the infrastructure is built, other development will follow.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and ordinance and they would not be read.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3769. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 369

Councilman Miller moved for the adoption of Resolution No. 09-178. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 183

Vice-President Biden's Conference Call with Mayors

Mayor Bellamy updated Council on a conference call that she participated in with Vice-President Biden and other mayors on July 17, 2009, regarding the American Recovery and Reinvestment Act (ARRA) feedback. They talked about what's going well and where we need improvement. They then discussed various areas (including transportation and infrastructure; community development; and Housing Authority of the City of Asheville), focusing on the Recovery Act monies. They also discussed what is working well and what needs to be improved in the following areas: the Supplemental Revolving Loan Fund Cleanup Grant, State Energy Program and Energy Efficiency, Renewable Energy & Alternative Fuels; Broadband funding; Transportation; and Housing/Infrastructure. She noted there will be a follow-up conversation on August 20.

Mayor Bellamy responded to various Council questions, some being, but were not limited to: what was the sense from Vice-President Biden on the narrow focus of some of the stimulus funding dollars and will there be more local flexibility on those dollars; are all ARRA funds going through cities and counties specifically; and what kind of relationship do we have with businesses.

Mayor Bellamy explained how the City of Asheville is supporting a grant with MAIN, Land-of-Sky Regional Council and our school systems. She stressed how this ARRA funding is a community collaboration.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED PLANS AND TO REQUEST A ONE-YEAR EXTENSION OF THE CONDITIONAL ZONING APPROVAL FOR THE PROJECT IDENTIFIED AS EAGLES LANDING, LOCATED AT 179 JOHNSTON BOULEVARD

ORDINANCE NO. 3770 - ORDINANCE AMENDMENT THE APPROVED PLANS AND TO REQUEST A ONE-YEAR EXTENSION OF THE CONDITIONAL ZONING APPROVAL FOR THE PROJECT IDENTIFIED AS EAGLES LANDING, LOCATED AT 179 JOHNSTON BOULEVARD

Mayor Bellamy opened the public hearing at 6:12 p.m.

Urban Planner Nathan. Pennington said that this is the consideration of an ordinance amending the approved plans and to request a one-year extension for the project identified as Eagles Landing, located at 179 Johnston Boulevard. This public hearing was advertised on July 31 and August 7, 2009.

On April 10, 2007, City Council approved a conditional zoning request, for property located at 179 Johnston Boulevard, from RM-6 to RS-8 as part of a master plan for the subdivision of two parcels into 25 individual parcels to create a cottage-style development. Five of the units were to be sold at prices meeting the City's definition of affordability. As part of the development proposal, the applicant requested modifications to allow for smaller lots, reduced side setbacks and open space. These modifications were subsequently approved by City Council. Since the time of the zoning change and conceptual site plan approval, the owner has been in negotiations to sell the property to Habitat for Humanity. Habitat for Humanity is requesting to develop the property utilizing the existing approved site plan with some small modifications:

- A request to extend the permit validity for one additional year to October 11, 2010. The original City Council approval expired on April 11, 2009. However, the applicant requested and was approved for a six-month extension by the Planning Director which will expire on October 11, 2009.

  City Attorney Oast explained that the extension request is moot due to recent adoption of the Development Approval Extension Act. He said that law was adopted to essentially suspend the running of expiration period for land use approvals from January 1, 2008 – January 1, 2010.

- A reduction to the right-of-way for the proposed internal road width from 50 feet to 45 feet. This request has been approved by the Assistant Engineering Director and was noted on the original site plan.

- The original development approval included a mix of one and two story smaller cottage-style homes. The applicant is requesting to build a mix of one story larger, more contemporary arts and crafts style homes.

The changes noted above are not expected to have a negative impact on the seven conditional use standards that were presented with the original application. Staff's greatest concern was the ability for the larger footprint homes to be effectively placed within the reduced buildable area; however, the applicant has demonstrated that, with careful planning and the utilization of a number of smaller prototypes, the new home models will fit within the allotted area. Staff therefore, recommends approval of the proposed modifications pursuant to the site plans and supporting documentation.

Mr. Dennis Rathbone, adjacent property owner, felt there were too many homes proposed to be built on Daystar Lane. His street, Larue Street, is a street the same size and it only has 11 houses on it. He felt the proposed development should fit in with the neighborhood.

At 6:18 p.m., Mayor Bellamy closed the public hearing.

Councilman Mumpower was concerned that the cottages shown at the original time of approval are smaller that what is proposed now by Habitat.

Mr. Keith Levi, representing Habitat for Humanity, explained the footprints of the homes, noting that Habitat traditionally builds houses from 700 to 1400 square feet. He was confident they can meet the requirements of the City in the existing setback. He felt that the original drawings of the homes are somewhat deceptive. He felt part of the reason they were able to get smaller footprints, particularly on the 4-bedrooms, is because they didn't meet some of the City's

standards for ADA compatibility. Habitat has embarked on a project to make sure that all of their homes are accessible for people with disabilities.

Councilman Russell was also concerned about the density, however, he felt this plan was already approved and their request is now for only a reduction to the right-of-way and a mix of homes.

Mr. Pennington responded to Councilman Mumpower regarding the originally requested conditional zoning designation.

Vice-Mayor Davis was supportive of Habitat for Humanity, but expressed concern with the density in the subdivision, along with the limited amount of open space.

Councilman Russell moved for the adoption of Ordinance No. 3770. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES LOCATED AT 14 MOUNT CLARE AVENUE FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO NCD NEIGHBORHOOD COMMERCIAL DISTRICT

ORDINANCE NO. 3771 - ORDINANCE TO REZONE PROPERTIES LOCATED AT 14 MOUNT CLARE AVENUE FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO NCD NEIGHBORHOOD COMMERCIAL DISTRICT

Mayor Bellamy opened the public hearing at 6:33 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance rezoning properties located at 14 Mount Clare Avenue from RS-8 Residential Single Family High Density District to NCD Neighborhood Commercial District. This public hearing was advertised on July 31 and August 7, 2009.

The applicant, Marketplace Developments, LLC, is requesting the rezoning of a narrow portion of a parcel from RS-8 to Neighborhood Corridor District (NCD). This rezoning petition is prompted by several actions, which will be described below, but the most recent driver of the request is the subdivision and recombination of two properties both owned by the applicant, resulting in a shifted property line. The relocation of the property line means that the zoning district is no longer aligned with the property boundary. A rezoning of this sliver (roughly 500 square feet in area) would eliminate a situation where the parcel is split-zoned.

The strip proposed to be rezoned includes a sizeable retaining wall and a significant grade change between the residential property to its north and the parking lot to its south. The proposed rezoning would also more accurately reflect the division between the two different land uses, as that division has evolved since the line was originally drawn.

The owner purchased the properties in 1999, and the commercial (south) portion was rezoned from Community Business II to NCD in 2003. The owner alleges that in 2005 retaining walls to the north and east of the parking lot were failing and in urgent need of repair. Modifications were made in an expeditious fashion with the claim that any delay of the stabilization of the slopes could have resulted in major damage. These swift changes were pursued without going through the standard permitting process. Subsequent to the completion of

the changes, the applicant had discussions with staff about obtaining such permits, but the process was never completed.

The applicant is now seeking a new occupant for the corner building, and wishes to have all the permits in order, as well as to be able to provide enough parking to meet the minimum requirements for a variety of uses. (To provide one example, a 3,650 square foot building used as an office would require a minimum of 10 spaces, but if used for a health and fitness facility, it would require 18.) Taking full advantage of the flat space available for parking would require that parking be located in the area currently zoned RS-8.

This rezoning is one of a series of steps the applicant is undertaking in an effort to bring the property fully into compliance. In addition to the redrawing of the property line mentioned above (already approved and recorded), the applicant has obtained approval for a flexible development standard for the side setback and area of the residential lot to the north. The applicant has also received authorization from the Tree Commission for alternative compliance in providing the landscape buffering required between the commercial zoning and residential zoning. Finally, the improvements will be subject to a Level I staff review.

The RS-8 district was created to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. The Neighborhood Corridor District was established to foster medium density, mixed-use development that is economically viable, pedestrian oriented and contributing to the place making character of the built environment.

Staff has received multiple communications from neighbors seeking more information about the rezoning, but no indications of opposition.

At their July 23, 2009, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Would help the property owner achieve compliance.
- Would remove presence of split zoning.

Con:

- Permission should have been sought at the time of original modifications.

Though the original property modifications prompting this rezoning were completed without proper permits, staff feels that the proposed changes are similar to what would have been required had the project been fully reviewed at the outset. Additionally, the area proposed to be rezoned is small enough in size that effects on the adjacent residential zoning district will be minimal, and the rezoning would result in a net benefit for the area.

Mayor Bellamy closed the public hearing at 6:37 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3771. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 378

C. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3772 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (SETBACK REDUCTION ALLOWANCES FOR RS-2 AND RS-4 LOTS LOCATED IN STEEP SLOPE AREAS)

ORDINANCE NO. 3773 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (A-FRAME SIGN AMENDMENT FOR SPECIFIC DISTRICTS)

ORDINANCE NO. 3774 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (BUSINESS AND CIVIC ASSOCIATION SPECIAL EVENT SIGNAGE)

Mayor Bellamy opened the public hearing at 6:37 p.m.

Mr. Alan Glines, Urban Planner, said that this is the consideration of ordinances amending the Unified Development Ordinance (UDO) to respond to the current economic climate. This public hearing was advertised on July 31 and August 7, 2009.

This is the third set of amendments to the UDO for the purposes of responding to the current economic climate. These amendments are designed to enhance opportunities for economic growth and relax some non-life safety standards that affect businesses and smaller economic endeavors while still addressing public welfare and supporting city adopted goals.

Since the beginning of the year staff have been reviewing the UDO to identify changes that could either simplify normal review processes or encourage economic development opportunities during this economic downturn. Two sets of wording amendments focusing on economic relief have been presented to the Planning and Zoning Commission and City Council this year. City Council has approved these economic relief amendments and encouraged staff to continue the initiative.

The current proposal is based on a review of past requests from the development / business community for specific relief from some development standards. Each issue has been carefully studied to understand the purpose and intent of the ordinance and seek ways to enhance its effectiveness while maintaining life and safety standards. The three amendments come from two different areas of the UDO and are distinct in their directives and are described separately below. Each item will also require a separate vote. Although the economic opportunities are the focus of the proposals, impacts and consequences have also been considered and are identified in a 'pros' and 'cons' section following each item.

The proposed wording amendments are focused on two areas of the UDO:

- Setback reductions in steep slope areas (Article XII)
- Two sign regulation amendments (Article XIII)

Staff continues to meet with neighborhood representatives, property owners, members of the business community and other stakeholders to obtain their thoughts on these and further changes being evaluated.

1. **Issue: In steep slope areas that are zoned RS-2 and RS-4 the required front setbacks (35 feet and 25 feet respectively) can pose a particular challenge for sites that are required to minimize grading and vegetation clearing in accordance with environmental protection standards. This amendment would allow staff to approve reasonable setback reductions to decrease grading and enhance protection of existing vegetation.**

   Current: The steep slope ordinance limits the amount of grading allowed depending on the natural slope and elevation of a parcel. Many steep slope areas are zoned RS-2 and RS-4 which have larger front setbacks that define part of the character of these zoning districts. The steep slope protection standards seek to limit the disturbance of these sensitive areas and large front setbacks may be inconsistent with those goals. Property owners who seek to reduce setbacks to reduce site grading must apply to the Board of Adjustments for a variance.

   Proposal: Allow the Planning and Development Director to approve front setback reductions from 35 feet to 20 feet in RS-2 Zones and from 25' to 15' in RS-4 Zones such that the setback reduction results in reducing site grading and enhances protection of existing trees and other vegetation. As a point of clarification, grading allowances would not be expanded as the result of a setback reduction.

   Relevant Code Sections: 7-12-4(h) Tree and other specified vegetation preservation

   Pros:
   - Proposal is consistent with goals of environmental protection
   - Enhances the protection of existing trees and other vegetation
   - Saves time delays and additional expense for homeowners and builders

   Con:
   - Could result in an irregular pattern of development (varying setbacks) in a neighborhood

2. **Issue: Simplify the requirements for A-frame signs to provide for permit renewal once a year and to allow A-frames signs in the Urban Place District and the Biltmore Village Historic District.**

   Current Procedure: A-frame signs permits are valid for six months with renewals thereafter valid for one year. The code also specifies the zoning districts where A-frame signs are allowed and Urban Place District (UP) is not on the list although the pedestrian focus of A-frame signs fits the purpose of the UP district. Allowing A-frame signs in Biltmore Village will complement the pedestrian character and goals of that special area.

   Proposal: The proposed change would make the A-frame sign permit valid from time of issuance until the annual renewal for these signs occurring on July 1st of each year. The second part of the amendment adds Urban Place District as a zoning district and Biltmore Village Historic District to the list of areas where A-frame signs are allowed.

   Relevant Code Sections: 7-13-4(8)c. and 7-13-4(8.)c.13.

   Pros:
   - Simplifies the permit process for signage useful in pedestrian oriented areas
   - Corrects an oversight by adding Urban Place to the list of zoning districts

- Supports the pedestrian character and goals of the Biltmore Village Historic District
- Merchants in Biltmore Village and members of the Historic Resources Commission are supportive of the proposal

Con:

- Some business areas will still not be able to meet accessibility standards to allow A-frame signs

3. **Issue: Business associations and civic groups need a way to coordinate temporary signage for a special event or sale**

Current Procedure: Although temporary signs are allowed on a business by business basis in the sign ordinance there are few options for business associations or civic groups to come together and coordinate signage for a single event or special sale.

Proposal: The code amendment would allow a temporary sign for individual members of an organized association, to place a single on-premise sign or banner for a specific event with the following requirements:

- The event is limited to three days
- The sign is placed on-premise
- The size of the sign or wind sign is limited to a maximum of twelve (12) square feet per face
- The permit may cover a single event date or a recurring series of events not to exceed 30 days on a yearly basis
- Clearance over right-of-way areas and driveways will be consistent with requirements for wind signs.

Relevant Code Sections: 7-13-4(a.)

Pros:

- Helps to identify a special event
- Creates a process for special signage for organized events

Con:

- Signs have sometimes been an item of controversy in the community

These proposals were shared with the Coalition of Asheville Neighborhoods at their meeting on June 8, 2009, and with other business associations and groups. No specific concerns were noted. The Asheville-Buncombe Historic Resources Commission is supportive of the change to allow A-frame signs in Biltmore Village and is preparing to amend the guidelines for the district.

Collectively, these amendments may encourage some additional or small scale development or re-development without increasing a need for service. Fiscal benefits include those typically associated with new development or re-development but are difficult to predict.

The Planning and Zoning Commission recommended approval of the three UDO amendments as presented by a vote of 6-0 at their June 18, 2009, meeting. City staff also recommends approval of the code amendments.

Mr. Jake Quinn, resident on Sunset Drive, explained why he was against changing the setback reduction in the steep slope areas. He urged Council to oppose this ordinance and continue to safeguard our hillsides.

Mayor Bellamy closed the public hearing at 6:43 p.m.

Councilwoman Cape noted this would allow the Planning & Development Director to approve front setback reductions if it would minimize site grading and enhance and protect vegetation. Looking at our topography challenges, she felt allowing flexibility is reasonable if it fits with all of the other aspects of the steep slope ordinance.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3772 (Setback reduction allowances for RS-2 and RS-4 lots located in steep slope areas). This motion was seconded by Councilman Russell and carried unanimously.

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Councilwoman Cape moved for the adoption of Ordinance No. 3773 (A-Frame signs amendment for specific districts). This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 382

Councilwoman Cape moved for the adoption of Ordinance No. 3774 (Business and civic association special event signage). This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 384

D. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF ENSURING COMPATIBLE DEVELOPMENT AND PUBLIC INPUT FOR THOSE PROPOSALS ADJACENT TO PACK SQUARE PARK

Mayor Bellamy opened the public hearing at 6:46 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance amending the Unified Development Ordinance for the purpose of ensuring compatible development and public input for those proposals adjacent to Pack Square Park. This public hearing was advertised on July 31 and August 7, 2009.

During the March 10, 2009, City Council hearing, Council considered a request to grant a construction easement to allow for the development of a road along the edge of Pack Square Park that would accommodate a specific development proposal. Several members of Council expressed a concern that additional consideration should be required for projects adjacent to this highly visible civic area where adjacent development has a greater potential to negatively impact the user experience and community image. At the conclusion of the discussion, Council directed staff to propose a change to the UDO that would require Council review and opportunity for public consideration of all projects adjacent to Pack Square Park.

Currently, projects adjacent to Pack Square Park require review by Council only if they are larger than 100,000 square feet (either new construction or for additions/expansions) or include over 50 residential units. All other reviews seek to ensure compliance with the minimum technical standards only or, in some cases, offer design recommendations that may be accommodated by the developer on a voluntary basis.

There are potentially several methods to ensure a more comprehensive review with public input; however, in an effort to ensure simplicity, easy administration, and to avoid

unintended consequences, one option presents itself as a clear choice and is detailed below. Staff has also offered an alternative for consideration and will be prepared to discuss other options should the Commission desire more information. Both alternatives proposed would exempt renovations that do not propose changes to the exterior of the structure.

Proposal 1: Require Level 3 review for all projects within 100 linear feet of the Pack Square Renaissance Area boundaries, if the new project is one or more of the following project types:

- New construction
- Additions or expansions to existing structures when the expansion is over 1000 square feet
- Renovations that expand outdoor gathering areas (including rooftop areas) or parking areas

While the Downtown Master Plan does propose various design requirements and a number of restrictions guiding project activity adjacent to the Park, it is difficult to determine how effectively development surrounding the park will be regulated until the UDO changes necessary to implement the plan are adopted. Until this is accomplished, the potential for incompatible development around the park remains a possibility. The proposal above secures the greatest level of security until other controls are put in place.

Alternative Proposal: Require Level 3 review for all projects within 100 linear feet of the Pack Square Renaissance Area boundaries, if the new project is one or more of the following project types:

- New construction over 20,000 square feet or more than two stories
- Additions or expansions to existing structures when the expansion is over 5,000 square feet
- Additions or expansions that increase the height of an existing structure by more than five feet
- Renovations that expand outdoor gathering areas (including rooftop areas) or parking areas by more than 1000 square feet

This second option seeks to eliminate smaller scale projects from undergoing a Level 3 review process since such small projects are not anticipated to create an undue impact on the Pack Square Park, regardless of form.

Pros:

- Assures City Council review of projects in direct proximity to an extremely sensitive public space.
- Assures the opportunity for public review and comment of projects with the greatest potential for impact on the Park.
- Exempts renovations to existing buildings where no expansions or changes to the exterior are proposed.
- Provides an option (alternative) to allow small scale projects to avoid the Level 3 process.
- Can easily be revised (redone) when more specific UDO changes are recommended as part of the implementation of the Downtown Master Plan.

Cons:

- Somewhat contradicts the stated intention in the Downtown Master Plan to eliminate the need for this additional level of review with the adoption of restrictions on height, massing, shadow, etc. that will prescribe appropriate parkside development.
- May discourage smaller scale redevelopment around the Park.
- May only be used temporarily.

The Downtown Commission reviewed this proposal at their meeting on July 10, 2009. The Commissioners expressed concern over several aspects of the ordinance change, primarily regarding discord with the Downtown Master Plan recommendations to eliminate Conditional Use Permits and minimize City Council's review of smaller-scale projects. They were not opposed to the idea of placing greater scrutiny on projects surrounding the park, but did not feel that a Level 3 review was an appropriate method for gaining public input and additional oversight. Commissioners were also concerned about making changes to the review processes while significant ordinance revisions in accordance with the Master Plan recommendations are currently underway. They recommended unanimously (10-0) that the idea of interim control makes sense but they do not support this specific proposal and feel that a better strategy is to pursue the Downtown Master Plan recommendations for UDO changes as a highest priority. Some support was also expressed for the concept of considering this change as a temporary UDO change, with a clear intention for removing this level of scrutiny in conjunction with the adoption of the UDO changes to implement the Downtown Master Plan recommendations.

This proposal was reviewed by the Planning & Zoning Commission on July 23, 2009. The Commission expressed respect for the Downtown Commission and agreed that the implementation of Downtown Master Plan recommendations will likely preclude any negative impacts on the park from development, however, there was concern for the unknown timeframe between present day and the adoption of those wording amendments. Some Commissioners felt that the concept of interim protection would be beneficial. The Commission voted 3-2 for the Council to adopt the stricter proposal (Proposal 1) with the understanding that these provisions will be eliminated upon adoption of the Downtown Master Plan UDO changes. Also, it was recommended that this item be returned to the Commission and to Council for re-evaluation within six months. At that time, the reviewing bodies may decide to continue the protection or to eliminate or revise the restrictions.

This proposal was also discussed with the Pack Square Conservancy on August 5, 2009, and they voted similarly with the Planning & Zoning Commission – in favor of the more restrictive proposal with the sunset clause.

One member of the public spoke in support of this proposal at the Planning & Zoning Commission meeting. Staff has received comments from several of the affected property owners within the 100 linear foot boundary, primarily in opposition of this additional level of review and one additional comment of support. Those in opposition, primarily property owners in the 100 foot linear boundary and Buncombe County's Planning Department, were concerned about the additional burden of cost and review time placed on smaller development proposals in the area.

This action complies with the City Council Strategic Operating Plan in that it continues the focused attention on development in the downtown that was spurred by the Downtown Master Plan and highlights Council's commitment to the protection and enhancement of Pack Square Park.

This action complies with the *City Development Plan 2025* in that it seeks to assure new development is of the highest quality, "complementing and adding to the character of the City of Asheville" by identifying areas for development focus, " identifying and establishing standards for the type of development appropriate for the areas" as indicated in the Land Use Goals (Goal XII, Strategy 5). However, this proposal does <u>not</u> comply with the *Downtown Master Plan,* which was adopted in concept by City Council on May 26, 2009. That document recommends eliminating the Conditional Use Permit as automatically required for Level 3 projects and suggests shadow and massing restrictions to mitigate impacts on the park rather than additional review by Council.

The proposal and alternative would both require a more extensive review process for various projects proposed within the boundary area. A project that may currently be reviewed under a 10-day administrative-level process would be required to undergo four additional public

hearing processes (Technical Review Committee - TRC, Planning & Zoning Commission, City Council, Final TRC). There is additional staff time associated with analysis, research and report writing.

Staff recommends that City Council support one of the proposals described above and seeks input on changes that would improve or clarify the stated intention of the Council.

The following individuals spoke in opposition of this amendment for various reasons, some being, but are not limited to: amendment does not comply with the Downtown Master Plan; pursue the Downtown Master Plan recommendations for UDO changes as a highest priority; and additional burden of cost and review time:

Mr. Albert Sneed
Mr. Jesse Plaster, representing the Asheville Downtown Commission
Mr. Tom Israel, representing S.B. Coleman Construction Company
Mr. Glen W. Wilcox Sr.
Mr. Mike Fryar

The following individuals spoke in support of Proposal 1 (the strictest proposal) for various reasons, some being, but are not limited to: what happens around our town square should be discussed by City Council under a Level 3 review; and this sensitive area requires careful consideration:

Mr. Steve Rasmussen
Lady Passion
Mr. Jake Quinn

Mr. Chuck Pickering, Executive Vice-President of the Biltmore Company, said that they did not receive notice about this matter and requested an additional 30 days within which to review the full implications to their building.

Mayor Bellamy closed the public hearing at 7:14 p.m.

Councilman Newman spoke in support of the Downtown Master Plan, but the standards are not yet in place. Due to the significance of our town square, the public investment, public concern, and Council's responsibility to exercise responsible oversight, he moved to (1) direct City staff to expedite the development of implementing ordinances to enact the Downtown Master Plan; (2) adopt the Alternative Proposal (require Level 3 review for all projects within 100 linear feet of the Pack Square Renaissance Area boundaries) with the only trigger being new construction over 20,000 square fee or more than two stores; and (3) express the clear intent of City Council that this ordinance will be temporary and will sunset upon enactment of the Downtown Master Plan ordinances relative to this part of downtown. This motion was seconded by Councilwoman Cape.

In response to Councilwoman Cape, Planning & Development Director Judy Daniel said that staff has begun drafting some UDO changes associated with the Downtown Master Plan. They will meet with the Downtown Commission oversight implementation committee in September. She felt that the first proposals will come before City Council in November, after the Downtown Commission and Planning & Zoning Commission reviews. The first amendments would be process changes and then more technical changes related to the design.

Vice-Mayor Davis felt Council should listen to the advisory boards and people who have property in the affected area. He felt Council should move expeditiously with UDO changes for implementation of the Downtown Master Plan.

Councilman Miller said that after countless input meetings with the community, the Downtown Master Plan was clear in that they wanted more increased predictability in the project approval process and reduction of projects that come before City Council. He would have to support the Downtown Commission's recommendation, taking into account the discussion of the Planning & Zoning Commission.

In response to Councilman Miller, Ms. Bernstein explained the oversight of the notice to the Biltmore Company.

Councilman Russell could not support the motion in that he felt this issue arose from one project on one parcel.

Councilman Mumpower also felt Council is responding to an isolated incident and could not support the motion.

Councilwoman Cape was not willing to take the risk of an unacceptable project being built adjacent to our town square until the total implementation of the Downtown Master Plan.

Ms. Bernstein responded to Councilman Miller when he asked how much time it takes to get a Level I, Level II or Level III project approved.

When Mayor Bellamy questioned where the 100 linear feet boundary around Pack Square Park came from, Ms. Bernstein said that the original proposal asked staff to include all projects adjacent to the Park. After staff mapped out all the adjacent parcels, they felt there were larger parcels where like development on the opposite side would not have any impact. The development that had the greatest ability to impact the Park was close into that boundary line.

Mayor Bellamy noted that her original intent and support was for properties directly adjacent to Pack Square Park, not across the street or rights-of-way. Assistant Planning & Development Director Shannon Tuch said there are only a few parcels directly adjacent to the Park – Stewart Coleman's property; and the Biltmore Company Building. Mayor Bellamy noted that even is this proposed amendment is adopted by Council at this meeting, Mr. Coleman's project nor the Art Museum project would be reviewed by City Council since they are already undergoing review in their respective processes.

Due to the amount of money that has to be spent up front for Level 3 projects, Mayor Bellamy requested staff investigate to see if there is a way for City Council to review the concept of Level 3 projects first and if Council approves it, then it moves forward for the significant detailed reviews.

Mayor Bellamy asked for the following friendly amendment to the second stipulation of the original motion - adopt the Alternative Proposal requiring Level 3 review for all projects directly adjacent to Pack Square Park with the only trigger being new construction over 20,000 square fee or more than two stores.

Councilman Newman supported the amendment; however, Councilwoman Cape explained why she did not accept the amendment.

Councilman Russell moved to call the question. This motion (to call the question) was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Miller and Councilman Newman voting "no."

The original motion made by Councilman Newman and seconded by Councilwoman Cape failed on a 3-4 vote, with Councilwoman Cape, Councilman Miller and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

Councilman Newman moved to (1) direct City staff to expedite the development of implementing ordinances to enact the Downtown Master Plan; (2) adopt the Alternative Proposal requiring Level 3 review for all projects directly adjacent to Pack Square Park with the only trigger being new construction over 20,000 square fee or more than two stores; and (3) express the clear intent of City Council that this ordinance will be temporary and will sunset upon enactment of the Downtown Master Plan ordinances relative to this part of downtown. This motion was seconded by Mayor Bellamy.

The following individuals spoke against the motion made by Councilman Newman and seconded by Mayor Bellamy:

Mr. Jake Quinn
Mr. Albert Sneed
Mr. Ross Franklin

Mr. Pickering, representing the Biltmore Company, reiterated their request to have time to study how this would impact their building.

Councilman Newman then withdrew his motion.

Councilman Miller then moved to instruct City staff to hold an input session with all property owners within the 100 linear foot area and report back to City Council their findings. This motion was seconded by Councilman Newman. After a short discussion about staff time spent on this input session (which was received during the Downtown Master Plan process) vs. implementing UDO changes to implement the Downtown Master Plan, Councilman Miller withdrew his motion.

E. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES

Assistant Planning & Development Director Shannon Tuch said that staff has been working on some revisions to the standards regulating Family Care Homes and Group Homes. The most significant change involves a proposed separation requirement between new and established homes that is allowed by the State but has not been exercised by Asheville. If this standard were to be adopted, it would require the locations of all existing facilities to be identified. Additionally, while not statutorily required, staff felt that a notification of the change to affected providers would be appropriate. Producing a list of providers has proven challenging and additional time is being requested to complete a more thorough and comprehensive outreach effort.

Therefore, Councilman Mumpower moved to continue this public hearing until August 25, 2009, in order for City staff to notify interested parties. This motion was seconded by Councilman Miller and carried unanimously.

Closed Session

At 8:13 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; DVL Pennco, Inc., d/b/a 1-800-Got-Junk; Holly Oxner, Jr.; Forrest Eugene Weaver; and similarly affected police officers of the City of Asheville. The statutory authorization is N. C. Gen. Stat. 143-318.11(a)(6); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law

that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 8:35 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

V. UNFINISHED BUSINESS:

A. CONTINUATION OF THE WATERLINE INCENTIVE PROGRAM TO ENCOURAGE AFFORDABLE HOUSING AND INFILL DEVELOPMENT AND EXTEND THE REVIEW FOR AN ADDITIONAL 12 MONTHS

RESOLUTION NO. 09-179 - RESOLUTION AUTHORIZING THE CHANGE IN WATER POLICIES TO CLARIFY THE AFFORDABLE HOUSING AND INFILL DEVELOPMENT WATERLINE INCENTIVE PROGRAM

Water Resources Director Steve Shoaf said that this is the consideration of (1) one-year review of the City of Asheville Waterline Incentive Program to encourage Affordable Housing and Infill Development with activity assessment and clarifications; and (2) resolution authorizing changes to the Water Polices to reflect the clarifying language.

On November 27, 2007, the City Council adopted a change in Water Policies to reflect the addition of funding incentives to encourage Affordable Housing and Infill Development throughout the water system service area.

The Water Policies currently read as follows:

Sec. IV.D.12. Affordable Housing and Infill Development Incentives.

a. The water fund will budget $500,000 annually to be allocated to affordable housing and infill development water line upgrade and extensions throughout the water system. Funds will be available annually on a first-come, first served basis upon project participation criteria.

b. Budget line item will be established to transfer funds annually from the water capital improvement program funds with $500,000 to be used on a first-come, first served basis for infill development and affordable housing water line upgrades or water line extensions.

c. Single project incentive amount shall not exceed $100,000 per project with a minimum 20-year return on investment payback. Water projects meeting affordable housing and infill development criteria in Buncombe County and Northern Henderson County are eligible to apply.

d. Funds not expended annually will be rolled over to the next Fiscal Year. Funds will be allocated to ensure $500,000 balance is maintained annually.

e. Approval will be based upon applicant receiving minimum score of 80 points per established criteria form.

f. Developers must provide the City with any necessary right-of-way or easements.

g. Approved projects with four or fewer units that do not require water line extension may use funds to pay for water line taps and meters. These fully funded projects would not be

eligible for any water fee rebates through the City of Asheville affordable housing rebate program."

Since adoption of this amendment to the Water Policies, there have been three inquiries about the procedures to obtain funding. There has only been one reimbursement request in the amount of $44,268 on August 1, 2008, for Crowell Park Apartments.

Staff thinks that the lack of participation in this program may be attributed to the weak economy and its effects on local development. Due to limited participation, there was discussion about adjusting the policy language to require a smaller dollar amount as a set-aside. Considering the state of the economy, it was decided to track this program for an additional year before making a recommendation.

The following policy interpretations by staff are used for implementation but are not expressly stated in the policy.

a. On the application form, it is stated that the funds are available for 50% of the costs of water line infrastructure up to $100,000 whichever is less. This is not written into the policy.

b. Staff has informed applicants that the request for reimbursement must occur in the same fiscal year as the completion of the work. This is to avoid retroactive claims for past work. This is not written into the policy.

Continuation of this program is part of City Council's strategic plans to improve city infrastructure and encourage affordable housing and infill development.

Pros:
- Continuation of the program will allocate funds for affordable housing and infill development.
- This program, in combination with other City of Asheville programs, can substantially offset the burden of developing affordable housing.

Cons:
- The program allocation of $500,000 annually reduces the amount of funds available for other projects such as small water line replacement, automated meters, and the N.C. Dept. of Transportation projects.
- Since there has been a lack of participation in this program, the allocation has not been used to support affordable housing (with one exception).

The annual allocation is maintained at $500,000 per year. These funds are not available for other uses.

City staff recommends (1) continuation of the Affordable Housing and Infill Development Waterline Incentive Program, including the interpretations presented above; (2) adoption of a resolution updating the Water Polices to reflect the clarifying language; and (3) over the next 12 months, Council direct City staff to track participation and return to the Council with further recommendations

When Mayor Bellamy asked for public comments, none were received.

Councilman Mumpower could not support the motion as he felt this was a special deal taking money out of one person's pocket and giving it to another.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-179. This motion was seconded by Vice-Mayor Davis and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

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B. NUISANCE COURT

Assistant to the City Manager Lauren Bradley said that this is the consideration of an implementation plan and budget for creation of a nuisance court.

At its May, 19, 2009, meeting, the City Council endorsed the recommendation to create a nuisance court that holds offenders who commit nuisance crimes (such as panhandling, public intoxication, trespassing, solicitation, etc.) accountable by requiring community service that restores the damage caused by crime as a part of sentencing. In addition to holding offenders accountable, City Council stated its goal to limit the cycle of repeat offenses by reducing the number of instances in which an offender receives "time served" as punishment for the crime. One component emphasized by the City Council for achieving these goals was developing a model that ensures expedient case processing and expedient community service, so that justice and accountability are swift. Based on these goals, City Council directed staff to meet with intergovernmental partners and develop an implementation plan and detailed budget for a nuisance court.

Since the May 19 meeting, staff has researched various models and reached out to numerous intergovernmental and community stakeholders including representatives of the Buncombe County Judicial District 28, the District Attorney's Office, the Public Defender's Office, the Clerk of Court, the Buncombe County Sheriff's Office, Buncombe County government (including the Human Services Support Team, Pre-Trial Services, and the Jail Diversion program), Western North Carolinians for Criminal Justice, the Asheville Downtown Association, the Downtown Asheville Residents Network (DARN), and several community agencies and treatment providers (Western Highlands Network, Pisgah Legal Services, RHA, Parkway Behavioral Health, Our Voice).

At the City Council Public Safety Committee on June 21, 2009, District Attorney Ron Moore presented a framework in which appropriate cases would be directed to the nuisance court. Under this model, if an individual pleads or is found guilty, community service could be presented as an alternative to an active jail sentence for the offense. If the offender opts to complete community service, he or she would be assigned to a City of Asheville project through the Judicial District 28 Probation Office. These community service projects would support City Council's goals for promoting cleanliness, beautification, and maintenance in the downtown area and throughout city properties and facilities. City staff would supervise the completion of community service and submit the necessary documentation to the probation office for court monitoring for compliance.

District Attorney Ron Moore discussed having the same judge and assistant district attorney assigned to this court in order to ensure consistency in case processing. In addition, under this model, the District Attorney's Office has offered to track and report on offenders who come through the court to evaluate performance measurements like repeat offenses. The District Attorney's Office has suggested holding the court once a month during its initial launch to evaluate progress and determine if additional court dates are needed.

This action achieves a goal included in the City Council's annual strategic plan. Under the focus area "safe," the strategic plan states, "Partner to launch a nuisance court to achieve more efficient and effective prosecution of offenses that impact quality of life; continue to encourage adequate funding of the District Court system."

The City Council Public Safety Committee unanimously supported the nuisance court plan as outlined in this staff report. The committee also voted to send a letter to Chief District Court Judge Cash requesting that Judge Calvin Hill be assigned to the nuisance court.

Pros:

- Dedicates resources to processing cases that may not otherwise receive the time and attention they require in an underfunded and overwhelmed State Court system.
- Supports intergovernmental partnerships with the Buncombe County Judicial District 28 and the District Attorney's Office to address quality of life issues.

Cons:

- Launched as a pilot initiative that may require adjustment over time to achieve stated goals.
- This may include a budgetary adjustment to accommodate additional court dates if requested by the District Attorney.

The costs for the nuisance court implementation are outlined below. Court administration costs will be paid to the North Carolina Administrative Office of Courts. Community service supplies will be purchased and managed by City staff.

• Court Administration (Courtroom, Judge, Clerk)	$10,000
• Community Service Supplies (Vests, Tools, Mulch)	$15,000
	$25,000

Staff recommends allocating the $25,000 from the $100,000 included in the Fiscal Year 2009-10 budget for downtown cleanliness and beautification. Because these funds are already included in the budget, a budget amendment is not required. To date, City Council has designated from these funds:

• Spare Change for Real Change	$2,500
• Crimestoppers Graffiti Rewards	$5,000
• Nuisance Court (as proposed)	$25,000
SUBTOTAL	$32,500
• Graffiti Removal (separate item)	$45,500 *(pending approval)*
TOTAL	$78,000

If the nuisance court and graffiti removal program are approved as proposed, a $22,000 balance would remain in these funds.

City staff recommends City Council approve the implementation plan for a nuisance court.

In response to Councilman Russell, Ms. Bradley said that staff is developing a list of community service assignments, e.g., weeding, picking up litter, cleaning under garbage cans, cleaning off graffiti, landscaping, spreading mulch, picking up cigarette butts, etc.

Regarding vests for the violators, Councilwoman Cape suggested staff look for a creative way to let the community know that when you violate our laws, that this community service is your consequence.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Davis moved to direct City staff with the implementation plan and budget for creation of a nuisance court as outlined above. This motion was seconded by Councilman Mumpower and carried unanimously.

C. GRAFFITI REMOVAL

Assistant to the City Manager Lauren Bradley said that this is the consideration of staff recommendations for implementing graffiti removal services on private property.

At the City Council meeting on May 19, 2009, City Council directed staff to explore the potential for contracting or partnering with a non-profit agency or agencies for graffiti removal.

After reviewing research on best practices, legal and liability considerations, and speaking with to local non-profit agencies about potential partnerships for graffiti removal, staff presented options and further policy questions to the City Council Public Safety Committee at its meeting on July 21, 2009. At that meeting, the Public Safety Committee directed staff to:

- Develop for City Council consideration a graffiti removal ordinance that requires property owners to remove graffiti within seven days of notification, and to include a six month grace period on enforcement of the ordinance to allow for adequate public outreach and an opportunity for voluntary compliance, and;

- Develop an option for voluntary graffiti removal services for private property owners that utilizes a partnership with an outside agency so that rates for removal offer a competitive value for property owners and also produce enough revenue to cover public costs associated with the service.

The City Attorney's Office is working on the graffiti removal ordinance and will be prepared to bring it back for City Council consideration this fall.

Based on the City Council's stated goals and Public Safety Committee direction, City staff has determined that the most efficient and cost effective option would be for the City to administer and oversee graffiti removal services utilizing labor under the terms of the organization's existing contract with FIRST at Blue Ridge, Inc.

This action supports a focus area in the City Council's annual strategic plan to make Asheville one of the safest and most secure communities when compared to cities of similar size.

Pros:

- Contract labor can be scaled up or down to meet the demand for the program.
- Contract with FIRST at Blue Ridge, Inc. could be extended immediately, allowing the program to be launched within 30 days.
- Considerations such as workers compensation and liability insurance are addressed under a city-managed program.
- When the crew is not providing graffiti removal services, it can be assigned to other downtown and main corridor cleanliness projects including sidewalk cleaning, litter remediation, landscaping and weed removal, and other similar tasks.
- Crew can be supplemented by community service assignments made through the nuisance court.
- Cost recovery efforts can offset public investment in the program while providing property owners a valuable and consistent service for graffiti removal.

Cons:

- Existing resources will be reallocated to absorb administrative requirements and to assign a labor crew supervisor to launch the program. It is anticipated but not guaranteed that a portion of these costs will be recovered through charges for services.
- Launched as a pilot initiative that may require adjustment over time to achieve stated goals.

Staff recommends extending the existing contract with FIRST at Blue Ridge, Inc. to allow for two additional labor crew personnel at a cost of $36,000 per year. In addition, $9,500 will be needed for materials and supplies, bringing the total for the program to $45,500.

Based on the staff recommendation, graffiti removal services would be billed to the property owner at $80 per hour, which is the full cost recovery rate for supervision, labor, materials and equipment. A crew of one labor crew supervisor (allocated using existing resources) and two laborers would remove graffiti for this rate.

Staff recommends allocating the $45,500 from the $100,000 included in the Fiscal Year 2009-10 budget for downtown cleanliness and beautification. Because these funds are already included in the budget, a budget amendment is not required. To date, City Council has designated from these funds:

• Spare Change for Real Change	$2,500
• Crimestoppers Graffiti Rewards	$5,000
• Nuisance Court	$25,000
SUBTOTAL	$32,500
• Graffiti Removal (as proposed)	$45,500 *(pending approval)*
TOTAL	$78,000

If the nuisance court and graffiti removal program are approved as proposed, a $22,000 balance would remain in these funds.

City staff recommends City Council approve the implementation plan for the graffiti removal program, and to instruct staff to provide Council with quarterly reports on its progress. City staff also recommends that City Council schedule consideration of a graffiti removal ordinance this fall.

Councilman Mumpower felt this action is penalizing the victim by forcing property owners to participate in a system before we have a strong, clear graffiti vandalism intervention effort in place, e.g., the reward program.

Vice-Mayor Davis supported this action in that the ordinance require property owners to remove graffiti within seven days of notification, and to include a six month grace period on enforcement of the ordinance to allow for adequate public outreach and an opportunity for voluntary compliance.

Councilwoman Cape noted that the graffiti removal ordinance will be reviewed by Council in a later date.

When Mayor asked for public comment, no one spoke.

Councilman Miller moved to (1) approve the implementation plan for the graffiti removal program; (2) instruct staff to provide Council with quarterly reports on its progress; and (3) schedule consideration of a graffiti removal ordinance this fall. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

VI. NEW BUSINESS:

A. TOWN OF MILLS RIVER FIRE HYDRANT REQUEST

Mayor Bellamy said that Town of Mills River Mayor Roger Snyder has requested the City of Asheville to install a fire hydrant on the City's waterline, at Mill's River's expense, on Hooper Lane. After investigation by City staff and after consulting with multiple independent engineers, City staff recommended the request for the hydrant by denied, with the alternative option for them to draw domestic waterline service from the City of Asheville instead of the Hendersonville trunk line. Since Mayor Snyder has asked for a formal letter signed by herself, as Mayor, she felt it would be appropriate to notify City Council of the request as it is outside of the normal operating process.

As City Council felt this is a staff operational issue, it was the consensus of Council that an appropriate notice of the decision of the City of Asheville be written to Mayor Snyder.

B. SMOKING ON PUBLIC PROPERTY

City Attorney Oast said that as City Council has probably heard, the N.C. General Assembly has enacted a law giving local governments increased authority to regulate smoking. The ratified law, Session Law 2009-27, makes changes to several provisions of the N. C. General Statutes. It was signed by Governor Perdue on May 19.

Previously, local governments could regulate smoking in government buildings, but this authority did not extend to parks or other public spaces. The new law extends the local government authority to regulate smoking to "grounds," encompassing unenclosed areas owned or leased by the government, and "public places," meaning places to which the public is invited.

For counties, a prerequisite to local government action is that a rule or policy must be adopted by the local board of health after July 1, 2009. Pursuant to this provision, the Buncombe County Board of Health has adopted a resolution recommending that smoking be prohibited in all County facilities and on all County property.

He has been in touch with the County Attorney's office, and we think that consideration should be given to making the ordinance as consistent as possible across political jurisdictions within the County. He has also spoken with the town attorneys for Weaverville and Black Mountain about this, and will speak to the attorneys for the other towns to determine their level of interest.

The new law is not effective until January 2, 2010, but Council should begin consideration of how and where it wishes to apply this regulatory authority.

Issues that Council may wish to consider and provide direction on include:

- Whether to apply a prohibition to all City facilities and grounds
- Whether to apply a prohibition to other public places
- How the regulations will be enforced.

Since many of the facilities to which the regulations might be newly applied are public parks, or are operated by the City's Parks Department, a suggestion has been made to refer the matter to the Recreation Advisory Board for initial recommendations on facilities to be included. A reference to the Public Safety Committee is recommended as to issues of enforcement.

We expect to receive information on this new law in the coming weeks.

Councilman Mumpower supported a smoking ban in public parks; however, personally he encouraged staff to look for opportunities to create outdoor smoking areas for people who want to exercise their right to smoke.

Councilwoman Cape felt it was a good idea for the smoking ordinance to be consistent with across political jurisdictions within the County. She also supported carving out areas in parks that can be smoking areas.

In response to Councilman Newman, City Attorney Oast said that we cannot regulate smoking on streets or sidewalks.

Councilman Newman felt it was important to balance the concerns of municipal employees who are on City property every day with the concerns of the general community.

A recent graduate of Asheville High School felt that people make the choice to smoke, but when they smoke in public areas, their right is compromised. She urged Council to adopt a strict policy that does not allow any smoking areas.

It was the consensus of Council to (1) instruct City Attorney Oast to continue conversations with Buncombe County and other attorneys in Buncombe County to determine their level of interest; and (2) refer this matter to the Public Safety Committee and Recreation Board.

C. BOARDS & COMMISSIONS

It was the consensus of Council to re-advertise for the vacancies on the Americans with Disabilities Act Compliance Committee.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Steve Cochran, Ms. Cheryl McMurry, Ms. Kim MacQueen and Mr. Scott Dedman to each serve an additional three-year term on the HUB Community Economic Development Alliance Board.

It was the consensus of Council to re-advertise for the vacancies on the Planning & Zoning Commission.

It was the consensus of Council to interview David Mosrie, Wayne Wheeler, Mary Ann West and Nelson Sobel for vacancies on the Recreation Board.

It was the consensus of Council to re-advertise for the vacancy on the Tourism Development Authority.

It was the consensus of Council to interview Tom Tomlin, Georgia M. Shannon and Rachel Bliss for a vacancy on the Transit Commission.

It was the consensus of Council to re-advertise for the vacancy on the URTV Inc. Board of Directors. The Board & Commissions Committee suggested an appointment be someone with a financial background. Mayor Bellamy suggested someone who has mediation skills.

Ms. Dale Joyner was concerned that her appointment by City Council to the URTV Inc. Board of Directors was not carried out. She also expressed concern of some type of conspiracy against her by a private citizen and a Council member. Mayor Bellamy suggested Ms. Joyner discuss her concerns with City Attorney Oast and instructed City Clerk Burleson to review the Council minutes regarding Ms. Joyner's understanding of the appointment process.

Councilwoman Cape felt Council should not appoint anyone who has contributed to the turmoil at URTV Inc. Therefore, she made a motion to remove Ms. Joyner and any other people who have been involved in these altercations from the ability to apply for appointment to the URTV Inc. Board of Directions. This motion died due to lack of a second.

The following individuals supported the work of URTV Inc. and its Board of Directors:

Mr. Matt Howard, City Council representative on the URTV Inc. Board of Directors
A URTV producer
Ms. Lisa Landis, URTV producer
Mr. N. Nelson Staley, URTV co-producer
Ms. Connie Nappy, URTV producer

Mr. John Blackwell explained why he did not support the current executive director of URTV.

VII. OTHER BUSINESS:

When Councilman Mumpower asked to raise several issues, Mayor Bellamy said that City Clerk Burleson has already responded to him in writing per her instructions, according to the protocol used for requesting items on the agenda.

When Councilman Mumpower felt he should have the opportunity to bring issues to Council's attention, Mayor Bellamy said that she has responded to the items requested as is protocol.

Councilman Newman suggested Councilman Mumpower contact the Chairs of the appropriate City Council committees to include his items on their agendas, prior to coming to the full Council. Councilman Mumpower preferred to discuss these items with the full Council and then have Council refer them to the appropriate Council committee.

When Councilman Mumpower began raising his issues, Mayor Bellamy announced he was out of order.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:10 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 25, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman (arrived at 5:20 p.m.); Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 30, 2009, AS "PEDIATRIC BRAIN TUMOR FOUNDATION'S RIDE FOR KIDS DAY"

Mayor Bellamy read the proclamation proclaiming August 30, 2009, as "Pediatric Brain Tumor Foundation's Ride for Kids Day" in the City of Asheville. She presented the proclamation to Mr. Mike Burk, who briefed City Council on some activities taking place during the day and thanked City Council for their support.

B. PROCLAMATION PROCLAIMING SEPTEMBER 2009, AS "ADULT LITERACY AWARENESS MONTH"

Vice-Mayor Davis read the proclamation proclaiming September 2009, as "Adult Literacy Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Amanda Edwards, Executive Director of the Literacy Council of Buncombe County, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING SEPTEMBER 1, 2009, AS "ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE DAY"

Mayor Bellamy read the proclamation proclaiming September 1, 2009, as "Asheville-Buncombe Technical Community College Day" in the City of Asheville. She presented the proclamation to Mr. Richard Mauney, Interim President of A-B Technical Community College, who briefed City Council on some activities taking place during the day and the partnership with the City of Asheville.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 11, 2009

B. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 8, 2009, FOR SPECIFIC RECOMMENDATIONS FOR THE DISTRIBUTION OF HOMELESSNESS PREVENTION AND RAPID REHOUSING PROGRAM GRANT FUNDS

Summary: The consideration of a motion setting a public hearing on September 8, 2009, for specific recommendations for the distribution of Homelessness Prevention and Rapid Re-Housing Program (HPRP) grant funds.

The City of Asheville was approved by the US Dept. of HUD to receive $509,460 in Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds. The Action Plan approved by HUD detailed the process by which the City would distribute those funds. The process described below, and the public hearing requested, are included in the approved Action Plan.

On August 13, 2009, the City received applications for the use of those funds. Staff will review the applications, and provide their review to the Homeless Initiative Advisory Committee on August 25, and to the Housing and Community Development Committee on August 26. The HCD will consider the Advisory Committee recommendation and staff review, and make their recommendation to City Council for the specific distribution of those funds for program implementation.

Funds must be committed before September 30, 2009. HPRP guidelines require that all funds be used within a thirty-six month period, or by September 30, 2012.

This action complies with the City Council Strategic Operating Plan in that this hearing is part of the process that will enable funds to be directed to prevention and rapid re-housing, strategies that have been proven nationally to reduce homelessness.

Pros:

- The public hearing is a necessary element of the HPRP plan and program.
- The public hearing contributes to the public transparency of Asheville City government.

Con:

- None noted.

By preventing homelessness and rapidly re-housing households that are in a housing crisis, we limit the probability that individuals will become chronically homeless. The 10-Year Plan estimates that it can cost up to $12,000 annually in public funds to pay for someone who is experiencing chronic homelessness. The project increases the likelihood that households will obtain or maintain housing as well as employment, education, and community relationships.

Staff recommends setting the public hearing for September 8, 2009, for specific recommendations for the distribution of Homelessness Prevention and Rapid Re-Housing Program (HPRP) grant funds.

C. RESOLUTION NO. 09-181 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH C AND C BUSINESS INC. TO PROVIDE CUSTODIAL SERVICES AND SUPPLIES FOR NINE MUNICIPAL BUILDINGS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with C and C Business, Inc. to provide custodial services and supplies for nine municipal buildings.

This service contract with C and C Business, located in Sherrills Ford, North Carolina, is in the second year of a three year renewal period that began in 2008. The service contract is for custodial cleaning and supplies for nine municipal buildings (Public Works, Fleet, Hunt Hill Purchasing and Central Stores, Economic Development, Municipal Building and four Asheville Police Department Resource Centers: West, North, East and Skyland). The total contract amount is $68,805.90 and it is renewable annually with a CPI adjustment.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the public facilities maintenance program to make facility improvements. It is also a green focus area by utilizing green cleaning supplies and equipment which meets Green Seal Standard's and paper products as well as garbage bags that meet the U.S. Environmental Protection Agency's guidelines for post consumer recycled products.

Pros:

- Provide custodial services and cleaning supplies for nine municipal buildings.
- Utilize environmentally friendly cleaning supplies and equipment.

Con:

- None

The fiscal impact is $68,805.90 for contracted custodial services is budgeted in the City's Fiscal Year 2009-10 operating budget for public facilities.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with C and C Business, Inc. to provide custodial services and supplies for nine municipal buildings in the amount of $68,805.90.

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D. RESOLUTION NO. 09-182 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH OTIS ELEVATOR TO PROVIDE ELEVATOR MAINTENANCE AND REPAIR FOR THREE MUNICIPAL BUILDINGS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Otis Elevator to provide elevator maintenance and repair services for three municipal buildings.

The service contract with Otis Elevator, located at 203 Elk Park Drive in Asheville, is in the second year of a five year renewal period that began in 2007. The service contract is a predictive, preventative maintenance system for the elevators at City Hall, Municipal Building and Stephens Lee Recreation Center. The total contract amount is $68,683.56 and it is renewable annually with a CPI adjustment.

This action complies with the City Council Strategic Operating Plan in that it supports and enhances basic city services and is part of the public facilities maintenance program to make facility improvements.

Pros:

- Provide a contract to maintain elevators at City Hall, Municipal Building and Stephens Lee Recreation Center.
- Fulfill commitment to maintain existing infrastructure to prevent failure through preventive maintenance and avoid costly repairs.

Cons:

- Maintenance cost to the elevators in City Hall will continue to increase due to the age of the elevators thereby increase the cost of the annual service contract.
- Some repair costs may still be incurred that are not covered by the service contract.

The fiscal impact is $68,683.56 for contracted elevator services is budgeted in the City's Fiscal Year 2009-10 operating budget for facilities maintenance.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with Otis Elevator to provide elevator maintenance and repair services for three municipal buildings in the amount of $68,683.56.

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E. RESOLUTION NO. 09-183 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NATIONAL TRANSPORTATION COMMUNITY AWARENESS AND EMERGENCY RESPONSE FOR A GRANT FOR A HAZARDOUS MATERIAL COMMODITY FLOW STUDY

ORDINANCE NO. 3775 - BUDGET AMENDMENT TO ACCEPT A NON-MATCHING GRANT FROM THE NATIONAL TRANSPORTATION COMMUNITY AWARENESS AND EMERGENCY RESPONSE FOR A HAZARDOUS MATERIAL COMMODITY FLOW STUDY

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of $500 from the National Transportation Community Awareness and Emergency Response (TRANSCAER) Task Group for a Hazardous Material Commodity Flow Study to be conducted in the Fall of 2009; and the associated budget amendment, in the amount of $500.

The National TRANSCAER has made funds available to help offset operational expenses when conducting flow studies that determine the amount of hazardous materials traveling through a community.

The Asheville Fire Department has an obvious interest in knowing what commodities are being transported to, and through, our area. At the completion of the commodity flow study, we will receive detailed analysis of what these commodities are. This will allow us to plan and prepare for more specific hazard responses through training and education based on known hazards being transported on our highway systems.

The grant is a non-matching grant.

This action complies with the Strategic Operating Plan by better preparing the Hazardous Materials Team to assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The National TRANSCAER will provide $500.00 in non-matching funds for the purpose of a Commodity Flow Study for Asheville and Western North Carolina to provide actual data on what hazards are transported through our city and region.
- Firefighter and citizen safety will be enhanced.

Con:

- There are no con's identified for this grant.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from the National TRANSCAER, to enhance the fire department's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

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ORDINANCE BOOK NO. 25 – PAGE 386

F. RESOLUTION NO. 09-184 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AUTOMATIC AID SERVICE CONTRACT WITH REEMS CREEK FIRE DEPARTMENT

Summary: The consideration of a resolution authorizing the Mayor to sign an automatic aid service agreement in the amount of $75,700 with the Reems Creek Fire Department for response

City Council approved in the Fiscal Year 2009-10 adopted budget funding to continue an automatic aid service agreement with the Reems Creek Fire and Rescue Department. This agreement has been in place since 2007 and provides for automatic response by the Reems Creek Fire and Rescue Department to emergency incidents to locations in the Beaverdam Valley that benefit the City of Asheville. This service agreement provides for a stronger standard of cover in this area.

Reems Creek receives funds through our automatic mutual aid agreement to fund two firefighter positions at their Beaverdam station. With our standard of cover in the Beaverdam Valley at 20%, this is a less expensive option than building and manning a new station in that area.

This action complies with the Strategic Operating Plan by allowing for a stronger standard of cover in the Beaverdam Valley; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pro:

- A strong fire and rescue presence will be maintained in North Asheville through automatic aid response.

Con:

- There is a financial impact of $75,700.

The fiscal impact is $75,700 which has been budgeted in the Fiscal Year 2009-10 adopted budget.

Staff recommends that City Council adopt a resolution authorizing the Mayor to sign an automatic aid agreement in the amount of $75,700 with the Reems Creek Fire Department.

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G. RESOLUTION NO. 09-185 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AUTOMATIC AID SERVICE AGREEMENT WITH THE SKYLAND FIRE AND RESCUE DEPARTMENT

Summary: The consideration of a resolution authorizing the Mayor to sign an automatic aid service agreement in the amount of $53,045 with the Skyland Fire and Rescue Department.

City Council approved in the Fiscal Year 2009-10 adopted budget funding to continue an automatic aid service agreement with the Skyland Fire and Rescue Department. This agreement has been in place since 2007 and provides for automatic response by the Skyland Fire and Rescue Department to emergency incidents to locations that benefit the City of Asheville. The

Asheville and Skyland Fire and Rescue Department's co-locate at a facility on Miller Road. This service agreement places all of the responsibility for the maintenance of the Miller Road facility for normal and routine maintenance operations with the Skyland Fire and Rescue Department.

Asheville Fire Department is co-located with Skyland Fire and Rescue at 9 Miller Road. In 2007 a contract was developed to compensate them for our share of maintaining the actual facility, including electricity, maintenance etc. That amount was set at $50,000 annually with increases based on the annual CIP. Previous to this contract we were obligated to pay half of these costs as they occurred. We had no real oversight as to what these expenses would be from year to year so the amount was annualized based on historical costs. There is a small portion of the automatic aid agreement that is to compensate Skyland Fire and Rescue for them to cover the south end of the airport which is outside of our 5 mile maximum allowed by the Department of Insurance.

This action complies with the Strategic Operating Plan by allowing for a co-located emergency services facility in South Asheville; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- A strong fire and rescue presence will be maintained in South Asheville through automatic aid response.
- Maintenance operations of the Miller Rd. facility will be the responsibility of the Skyland Fire and Rescue Department, allowing for continuity of operations out of that station.

Con:

- There is a financial impact of $53,045.

The fiscal impact is $53,045 which has been budgeted in the Fiscal Year 2009-10 adopted budget.

Staff recommends that City Council adopt a resolution authorizing the Mayor to sign an automatic aid agreement in the amount of $53,045 with the Skyland Fire and Rescue Department.

RESOLUTION BOOK NO. 32 – PAGE 191

H. RESOLUTION NO. 09-186 - RESOLUTION APPOINTING MEMBERS TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE

Summary: The terms of Steve Cochran, Cheryl McMurry, Kim MacQueen and Scott Dedman expired on August 22, 2009.

On August 11, 2009, it was the consensus of Council to reappoint Mr. Cochran, Ms. McMurry, Ms. MacQueen and Mr. Dedman to each serve an additional three-year term respectively, terms to expire August 22, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 192

I. RESOLUTION NO. 09-187 - RESOLUTION AUTHORIZING THE CITY TO REIMBURSE ITSELF FROM LEASE PURCHASE PROCEEDS FOR CAPITAL EXPENDITURES INCURRED RELATED TO THE ACQUISITION OF VEHICLES AND EQUIPMENT

Summary: The consideration of a resolution authorizing the City to reimburse itself from lease purchase proceeds for capital expenditures incurred related to the acquisition of vehicles and equipment.

The current capital improvement program (CIP) includes $1,790,400 previously appropriated by City Council to finance the acquisition of emergency response vehicles (i.e. fire trucks). The vehicles and equipment were budgeted to be funded with proceeds from a lease-purchase financing contract.

Based on varying delivery dates, the City will receive some of the vehicles and equipment prior to the actual execution of the lease-purchase financing contract. As such, expenditures for these vehicles and equipment will initially be paid for with general fund cash. The attached resolution allows the City to reimburse itself for initial vehicle and equipment expenditures incurred and paid 60 days prior to the adoption of this resolution.

With approval of this resolution, the City intends to reimburse its initial vehicle expenditures from a portion of the proceeds to be received from a fully executed lease-purchase contract.

City staff recommends City Council adopt a resolution authorizing the City to reimburse itself from lease purchase proceeds for capital expenditures incurred related to the acquisition of vehicles and equipment.

RESOLUTION BOOK NO. 32 – PAGE 193

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-188 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE IMPLEMENTATION OF TWO TRANSPORTATION PROJECTS KNOWN AS ASHEVILLE SIDEWALK GAP PROJECT AND THE KIMBERLY AVENUE RESURFACING PROJECT

ORDINANCE NO. 3776 – BUDGET AMENDMENT FOR SIX TRANSPORTATION PROJECTS KNOWN AS COXE AVENUE BICYCLE IMPROVEMENTS, DOWNTOWN AND GATEWAY STREETSCAPES, FAIRVIEW ROAD PEDESTRIAN ENHANCEMENTS, SOUTH SLOPE BICYCLE LANES, ASHEVILLE SIDEWALK GAPS AND KIMBERLY AVENUE RESURFACING

ORDINANCE NO. 3777 – BUDGET AMENDMENT TO RECEIVE TRANSIT CAPITAL FUNDS FOR FIVE DIESEL BUSES AND SHELTERS, AND PASS THROUGH FUNDS FOR TWO CNG BUSES AND ONE CNG VAN FOR HENDERSON COUNTY

RESOLUTION NO. 09-189 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MCGILL ASSOCIATES

TO PROVIDE CONTRACT MANAGEMENT FOR DINGLE CREEK WATERSHED IMPROVEMENTS

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

As part of City staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of four (4) items for approval:

- Resolution authorizing the City Manager to enter into agreements with the N.C. Dept. of Transportation for the implementation of two transportation projects known as Asheville Sidewalk Gap project and the Kimberly Avenue Resurfacing Project.
- Budget amendment, in the amount of $3,095,235, in the Grant Fund and an amendment of $366,812 in the General Fund, for six transportation projects known as Coxe Avenue bicycle improvements; downtown and gateway streetscapes; Fairview Road pedestrian enhancements; south slope bicycle lanes; Asheville sidewalk gaps; and Kimberly Avenue resurfacing.
- Budget amendment, in the amount of $2,590,439, to receive Transit Capital funds for five diesel buses and shelters; and pass through funds for two CNG buses and one CNG van for Henderson County.
- Resolution authorizing the City Manager to enter into an agreement with McGill Associates to provide contract management for Dingle Creek Watershed Improvements.

MPO Urbanized Area Transportation Funding Resolution

The resolution authorizes the City Manager to execute the municipal agreements for the remaining two projects selected by the Metropolitan Planning Organization (MPO) for potential ARRA surface transportation program - directly attributable (STP-DA) funding. These projects are known as TIP No. U-5186, Asheville Sidewalk Gaps, which includes gaps I and II and Hilliard Avenue sidewalk; and TIP No. U-5187, Kimberly Avenue resurfacing.

When the MPO selected projects for the ARRA STP-DA funds, they added a 20% contingency to each project funded, and selected about $2 million more in projects than they had funding for, in case any projects dropped out or came in under budget. The sidewalk gaps and Kimberly Avenue projects fell into the category of selected but not fully funded. There is approximately $530,000 in ARRA funding programmed to the sidewalk projects at this time, leaving an unfunded balance of $1.8 million. There is a reasonable expectation that projects funded with the ARRA STP-DA funds will not use all of the funds programmed to each project, and so those unspent ARRA funds will be available to fund a larger percentage of these projects.

In order to complete the municipal agreements for these projects in time to be eligible for the available ARRA funding, another funding source for the currently unfunded balance of the projects must be identified. With City Council and MPO approval, the opportunity is available to use STP-DA funding funds scheduled to come to the city from the MPO for sidewalk construction in Asheville in fiscal years 2014 through 2016 to cover any unfunded balance on these projects so that they can be constructed now. Any regular STP-DA funds used will require a 20% city match.

This matter went before the Finance Committee on August 11th, and the committee directed staff to proceed with seeking full council approval to move forward on the sidewalk gaps and Kimberly Avenue using STP-DA funds. The committee was aware that if ARRA funding is not available then the City will be required to have a 20% match for the portion of the project that is funded with the regular STP-DA funds.

Pros:

- Improves Asheville's transportation facilities for all users

- Implements projects in the City's adopted pedestrian and bicycle plans
- Provides approximately $2.4 million dollars in long term investment in the City's infrastructure

Cons:
- The city will be responsible for future maintenance of the projects
- The city may be responsible for up to $366,812 in local match
- Any regular STP-DA funds spent on these projects will reduce the $6.2 million allocated to the Hendersonville Road and New Leicester Highway projects in FYs 2014-2016

Budget Amendment

The budget amendments for six projects reflect the revenue and expenditures associated with the four ARRA STP-DA agreements authorized at the August 11th council meeting, and the two agreements presented tonight.

Pro:
- Provides authority to receive and spend the grant funds.

Con:
- The city may be responsible for up to $366,812 in local match.

Update on Sidewalk Gaps Project

At Council direction, staff worked with the MPO to remove the Chunns Cove Road and Piney Mountain Road sidewalks from the project list, and replaced it with a segment of Hendersonville Road from West Chapel Road to Forest Street. With this revision, the sidewalk proposal contains the following projects.

Street	Approximate linear feet	Cost Estimate
Hendersonville Road	2,600	$200,000
Depot Street	600	$90,000
Hilliard Street	1,200	$360,000
Short Michigan Avenue	1,350	$270,000
Choctaw	1,400	$350,000
Linden Street	1,100	$165,000
Evelyn Place	130	$32,500
Total	8,380	$1,467,500.00

Staff recommends City Council adopt the resolution authorizing the City Manager to execute municipal agreements between the N.C. Dept. of Transportation and the City of Asheville for the following projects: Asheville Sidewalk Gaps and Kimberly Avenue Resurfacing; and the associated budget amendment for the four ARRA STP-DA agreements authorized at the August 11th Council meeting, and the two projects presented tonight.

At this time, 5:20 p.m., Councilman Newman arrived at the meeting.

Transit Capital

The budget amendment, in the amount of $2,590,439, is to purchase five diesel buses and 10 shelters for the City of Asheville; and two CNG buses and one CNG van for Henderson County.

The City of Asheville was awarded $2,590,439 under the economic stimulus funding, as published in the Federal Register Volume 74, No. 42, page 9675 on March 5, 2009.

The city is intending to use these funds to purchase five (5) 35 foot diesel buses through State contract No. 556a that expires in October 2011. Production is estimated to take 12 months after the buses are ordered. In addition ten (10) shelters will be installed along the main transit corridors; completion of this project is expected by July 2010.

The City was reclassified as Urbanized Area, as part of the 2000 Census; due to the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal allocation. The County will receive $585,841 of the total allocation. The City and the County have signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The City is responsible to Federal Transit Authority (FTA) for use of these funds and owns all the capital items Henderson County will purchase with this allocation. As part of the sub-recipient agreement, the City will acquire two small CNG buses and one CNG van and will lease the vehicles to Henderson County.

This action complies with a goal included in City Council's Strategic Operating Plan, which states that the city will proactively leveraging funding from the Federal Government and other funding sources for transportation improvements.

No fiscal impact has been identified for this project. The Federal Transit Administration will fund 100% of the project.

Pros:

- Access to FTA funds will allow replacement of five buses, which will result in savings in maintenance costs and fuel consumption, as well as reduction in carbon footprint emissions.
- FTA will fund 100% of the project.

Con:

- None.

Staff recommends approval of a budget amendment, in the amount of $2,590,439, to accept funds for Transit Capital funds awarded through ARRA.

Dingle Creek Stormwater Improvements

The City of Asheville, through a previous grant with the Clean Water Management Trust Fund, developed a stormwater master plan for the Dingle Creek Watershed. This master plan indicated that stormwater runoff has increased due to the largely developed urban watershed. In addition, the study showed an increase in pollutant concentrations in this area. Dingle Creek is not currently listed on the N.C. Dept. of Water Quality (NCDWQ) Draft 303 (d) Listing of Impaired Waters like its receiving water, the French Broad River, but impairments are eminent if the urban runoff is not properly managed.

On August 1, 2006, the City of Asheville entered into an agreement with the Clean Water Management Trust Fund (CWMTF) to perform the work necessary for the design of this specific stormwater restoration project. McGill Associates performed the work necessary to complete the initial design of this project.

On September 15, 2008, the CWMTF approved the City of Asheville's grant application for the construction of the Dingle Creek stormwater wetland and stream enhancement project for a total project amount of $442,000. This grant included funding from the CWMTF in the amount of $335,000 and a cash match from the City of Asheville in the amount of $66,000, along with a property value match for the stormwater wetland in the amount of $30,000 and in-kind services match by the City of Asheville in the amount of $11,000. The City of Asheville later received notice that this funding was being held.

The City had the opportunity to apply for and was granted funding through the American Recovery and Reinvestment Act (ARRA) for the implementation of this project. This would be a 50% grant with a 50% loan requirement, in which the CWMTF has agreed to cover the cost of the loan through their grant funding.

On July 17, 2009, NCDENR approved the American Recovery and Reinvestment Act application for the Dingle Creek project in the amount of $454,500. This awarded grant included funding in the amount of $336,000 for construction, $33,600 for contingencies, $80,400 for project administration and $4,500 for the loan closing fee.

Under this contract, McGill Associates will perform the project administration which will include completing a no rise analysis, contract administration for this project and McGill Associates will complete the necessary documentation required for this project. The actual construction contract will follow at a later date.

The primary goals of the project are to (1) reduce the pollutants through the installation of a stormwater wetland and (2) provide additional storage in the area of the wetland for water quality storm event. This project will also provide a much needed stream bank restoration along this reach of Dingle Creek.

Successful implementation of this project will accomplish the following objectives:

1. Protect and enhance water quality of the French Broad River Basin by reducing typical urban runoff pollutants that are released into Dingle Creek and provided flood prevention by implementing the stormwater wetland.
2. Protect and enhance water quality of the French Broad River Basin by reducing erosion of Dingle Creek by implementing stream bank restoration/stabilization along this reach of Dingle Creek.
3. Protect and enhance wildlife habitat of the French Broad River Basin by implementing habitat enhancement through the installation of the stormwater wetland and stream enhancement measures.
4. Protect and enhance water quality of the French Broad River Basin by implementing one step of a focused watershed approach.

Pros:

- Approval of this action will allow the City to move forward with a portion of the Dingle Creek Master Plan
- The project is funded totally, from both ARRA and the CWMTF
- This project will provide both water quality and flood reduction benefits.

Con:

- Coordinating both of these funding sources will be time consuming.

The funds to be expended have been provided by the State through both ARRA and the CWMTF. City staff will provide project management oversight. The contract administration portion of this project will be funded through ARRA.

City staff recommends City Council adopt a resolution authorizing the City Manager to negotiate and then execute a contract with McGill Associates for the Services described in a contractual Scope of Work for an amount of $80,400. Services will include the preparation of a no impact flood study and also for the contract administration of the above subject project.

Assistant Director of Transportation & Engineering Ken Putnam responded to Councilwoman Cape's question regarding the process the City uses to prioritize items for street resurfacing.

When Councilwoman Cape questioned the 12 month waiting period for a new bus, Director of Transportation & Engineering Cathy Ball explained that buses are not pre-made and they don't start the production line until after the order is received. She said that we will order the fareboxes separately and have them installed when the new buses come in.

In response to Councilman Mumpower, Ms. Ball said that these buses are the new diesel buses that are least expensive.

Councilman Mumpower felt that most of this money is for routine surface maintenance rather than significant infrastructure improvements. He was concerned (1) that we are using borrowed money that our children and grandchildren will have to pay back; and (2) that these jobs create very few jobs, but create additional debt.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and ordinances and they would not be read.

Councilman Miller moved for the adoption of Resolution No. 09-188. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 194

Councilwoman Cape moved for the adoption of Ordinance No.3776. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 388

Councilman Newman for the adoption of Ordinance No. 3777. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO 25 – PAGE 391

Councilwoman Cape moved for the adoption of Resolution No. 09-189. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 195

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE SPINNING WHEEL ON 1096 HENDERSONVILLE ROAD AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3778 - ORDINANCE TO DESIGNATE THE PROPERTY KNOWN AS THE SPINNING WHEEL ON 1096 HENDERSONVILLE ROAD AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 5:36 p.m.

Ms. Cristin Moody, Development Review Specialist, said that this is the consideration of an ordinance to designate the property known as the Spinning Wheel, located at 1096

Hendersonville Road, as a local historic landmark. This public hearing was advertised on August 14 and 21, 2009.

The Spinning Wheel, with a period of significance from 1939-1948 is significant for its association with two people important to Asheville's development in the early 20th century. First, Clementine Douglas, the original owner, was a leading figure in the Handicraft Revival Movement during that time. Ms. Douglas was not only instrumental in preserving the traditions of mountain handicrafts, but she also brought national recognition and prominence to Asheville as one of the principal centers for the movement. At the Spinning Wheel, she taught crafts and provided workspace as well as a venue for local artisans to sell their wares. In addition, she was a founding member of the Southern Highland Craft Guild, which continues to flourish today.

The Spinning Wheel is significant also due to its association with prominent Asheville architect William Waldo Dodge, Jr. Built in 1939, his original design is a one-story T-shaped retail building that incorporated a 19th century, side-gabled log dwelling that was salvaged from North Buncombe County and rebuilt at the site. Attached to the log structure on the north side is a "dog-trot" connector leading to a board-and-batten sided wing with a front gable, known as the "loom room."

The reclaimed 19th century log structure is architecturally significant as a rare, well-preserved example of a vernacular style prevalent in the region during the early years of settlement. Its significant features include hand hewn logs, half-dovetail corner joints, a massive exterior fieldstone chimney and vertical plank doors with wrought iron strap hinges. The original Spinning Wheel building as a whole has not been significantly altered in nearly 70 years and retains a very high degree of integrity.

The only modification to the original 1939 design was the addition of a concrete block room on the east end of the "loom room" in the early 1940s. Although not part of the original Dodge design, this room falls within the period of significance and represents a phase of the Spinning Wheel's development. During World War II, when the business depended heavily on mail orders, this room was built and used to process the orders for shipping. It is a small, inconspicuous addition that did not alter the integrity of the original design.

The ordinance designates the Spinning Wheel as a local historic landmark. The designation includes .95 acres, which is all of the property originally associated with the structure, and the entire exterior and interior of the building.

The applicant has indicated that increasing development along Hendersonville Road threatens the preservation of this historic structure. Furthermore, recent appraisals suggest that the highest and best use of the property would be to raze the building.

When a property is designated as a local historic landmark, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $421,200. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be $2,306.07 per year.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area and will be protected from inappropriate alterations.
- The property is surrounded by residential parcels to the North, East and South. Designating it would provide a stable buffer for these properties from commercial development along Hendersonville Road.
- The tax deferral will assist the landowner with maintenance of the historic property.

Con:

- The tax deferral will reduce revenue to the city and county.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating Spinning Wheel, as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Ms. Clementine Douglas explained why she support the local historic designation and asked for Council's support of adoption of the ordinance. He felt this special tax break and that there is no guarantee of permanent preservation, but only guarantee of a permanent tax break.

Mayor Bellamy closed the public hearing at 5:41 p.m.

Councilman Mumpower did not feel that historic buildings are vulnerable as prior years and could not be supportive of this proposal.

Councilwoman Cape was supportive of helping to maintain some of our jewels in the community.

In response to Councilman Newman, Historic Resources Director Stacy Merten said that landmarking the property does not prevent it from demolition, but it does give the HRC a period of 365 days to delay the demolition. That give staff time to work with the property owner to relocate or sell the property to someone else. She said that once this designation is given and a future property owner wants to do something different with the property, the HRC must approve that change first. If approved by the HRC, the property would lose the designation and the property owner would have to pay the taxes back for up to 3 years, per the state regulation.

Councilman Newman would felt the incentive for designation would "stick better" if it was a pay-back period of 5-10 years.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3778. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 393

B. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES

Mayor Bellamy said that this matter was originally placed on the August 11, 2009, City Council agenda; however, it was continued to this date in order for City staff to notify interested parties. Since that time, however, City staff asked this item be removed from Council consideration entirely. Staff will revise the ordinance further and take back to Planning & Zoning Commission, prior to City Council.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-190 - RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE A N.C. PARKS & RECREATION TRUST FUND GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE REID CENTER RENOVATION PROJECT AND TO REAPPLY FOR PROJECT FUNDING IN JANUARY OF 2010

Parks & Recreation Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to terminate a N.C. Parks & Recreation Trust Fund (PARTF) grant agreement with the N.C. Dept. of Environment and Natural Resources (DENR) for the Reid Center Renovation project, PARTF # 2006-476/DENR # P07033, and to reapply for project funding in January of 2010.

The City applied for and received a $500,000 PARTF grant in 2006 to support the renovation of the Reid Center. The grant period ends September 30, 2009. The City recently requested an extension to the grant period.

DENR has reviewed the City's request, the timeline for the project and the City's progress to date. While DENR understands that the City has encountered unexpected cost increases and delays with the project, DENR feels that there has not been sufficient progress on the project to allow a time extension and amendment. In addition, the proposed change in scope, from a renovation to new construction at a new location, differs significantly from the project approved by the PARTF Authority in 2006.

The requests for PARTF funds from across the state are far greater than the funds available to meet those requests. In 2006, local governments submitted requests for more than $9 million in PARTF funding that could not be addressed due to lack of funds. In 2009, the local governments in North Carolina have requested more that $25 million in PARTF funding. Therefore, DENR encourages the City of Asheville to consider withdrawing this project and reapply for the January 2010 funding cycle.

Project History Timeline

For the past several years, the City of Asheville has been planning the redevelopment of the WC Reid Community Center which was initially funded in part via a PARTF grant. The current municipal community center is located on the site that fronts Livingston Street which is southwest from downtown Asheville. The existing facility has served the community first as an elementary school and then as a community center for over 80 years with modest improvements to enhance its basic services. For the facility to evolve into a more focused multi-disciplinary program, the building and grounds require substantial building code, functional and aesthetic improvements.

The Parks, Recreation and Cultural Arts staff began to develop a renovation plan for the Reid Center in January 2006 that included extensive community input and focus group sessions with various users of the facility. The final plan was estimated to cost approximately $8,000,000 to construct. This proved to be too costly as fundraising limitations were reassessed.

Thereafter the staff and the consultant explored the possibility to either renovate only a portion of the existing building or demolish the existing facility and construct a new center on the existing site. The costs for either scenario still proved to be costly at an estimated $4,000,000 especially in light of the challenge to raise additional funds in the recent nationwide, economic downturn. In addition the potential programming and effective impact of the new center was not being realized in this location.

Staff decided to pursue another option. The project budget was reduced to approximately $2,000,000 which is the funds that are currently available. Also a nearby site which is just one block west of the current WC Reid Community Center, Livingston Street Park, was considered as the optimum location for the center.

The budget available now for construction of a first phase is $1,500,000. The Parks, Recreation and Cultural Arts staff will work with the architect on design modifications to bring phase one within the available funds.

Pro:

- Withdrawing from the agreement allows the City to reapply for the next PARTF funding cycle for the project.

Con:

- The three-year PARTF contract is scheduled to end on September 30, 2009. If the City does not withdraw from the agreement it may negatively impact the City's ability to secure a future PARTF grant with DENR in the near term.

If the City withdraws from the grant agreement, there will be no fiscal impact to the City's budget.

City staff recommends City Council to authorize the City Manager to withdraw from the North Carolina Parks and Recreation Trust Fund grant for Reid Center Renovation Project (#2006-476, DENR PO7033) for $500,000, and give authorization to reapply for a PARTF grant funding in January 2010 for construction of the Community Center.

Councilman Newman moved for the adoption of Resolution No. 09-190. This motion was seconded by Vice-Mayor Davis.

Councilman Mumpower felt that in today's economic climate and the loss of $500,000 of the existing budget, he felt City Council should re-consider the project. He understood the importance of the Reid Center, but felt a dramatic restoration is not realistic, but supported cosmetic efforts.

Mayor Bellamy was disappointed that the City is in this position. She said that out of the $1.5 Million of the existing budget, approximately $1 Million came from the community through partnerships and foundations. Her concern is a new Council might not see this as a priority. She supported the Reid Center being redeveloped on their existing site. She felt there was a lot of opportunities of partnerships, e.g., UNC-Asheville, A-B Technical Community College. She could not support the motion because she felt we have enough documentation to begin to get recovery dollars as it create jobs, will be energy efficient, and the capability of hiring local people. This is a City facility and we need to take care of it. She felt strongly that the Reid Center is a safe haven for our children. She's fearful this project will not get completed.

Mayor Bellamy was supportive of the project when we had $2 Million in hand to move forward with the project. However, she felt Council should have been made aware of the timing of this grant when they approved moving forward with the contract for construction drawings a couple of months ago. If this project is re-considered, she wanted to make sure that staff checks with the other funders to make sure they are on board with the new direction.

In response to Councilman Russell, Mr. Simmons said that we will put the project out for bid and come back to Council with a project. If our budget is $1.5 Million, we would award a contract for $1.5 Million to construct the new center. We are looking at the design now to bring the project into the scope of funding that we have. In January, 2010, we will look at anything we could not complete in Phase I (with the $1.5 Million) and include them in Phase II (to be included in the new grant application in January 2010).

Councilman Newman felt that if the majority of Council is not fundamentally supportive of this project, Council should schedule discussion about re-considering the project soon. Once that decision is made, Council needs to be committed to it.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-190. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 32 – PAGE 196

Councilman Mumpower moved that Mayor Bellamy schedule, as soon as possible, the issue of reconsideration of the current Reid Center project and that staff be instructed to provide information on options to include the recommendation today and other opportunities including the incrementally and cosmetic restoration of the existing Reid Center. This motion was seconded by Councilman Newman.

In response to Vice-Mayor Davis, City Manager Jackson said that the policy objective at this point is to construct an approximately $2 Million Phase I project. The City has an architect engaged to develop those construction drawings. If Council's commitment is to the policy decision and they would like to see that through, he suggested the architect be called upon to (1) give Council an estimate on what is feasibility to see that Phase I project; (2) what they anticipate in terms of bid responses; and (3) their recommendation on whether or not this Phase I concept is feasible with a $1.5 Million budget or if additional funds are needed at this time or the project should be deferred to a later date. The architect could also advise Council on whether or not it would be reasonable to proceed in this market place to have a base bid and options, so Council could consider the scope of Phase I, depending upon those responses to those bids. He felt that would benefit from that kind of professional advice if Council's policy goal has not changed.

Vice-Mayor Davis said there are some very special things (e.g., greenhouses) planned for the Reid Center, but if the people who have donated dollars do not support those things we should know it now. He felt it was important to hear from our architect and see realistically where we need to go. He would like to see the conceptual drawings of the gym and see the programming for a $2 Million building.

Mayor Bellamy asked staff to check with all our major funders to make sure they support the new location. She wanted to be committed to completing the project because the funds were raised several years ago and there is not a lot of belief in the community that the project will be completed.

Councilwoman Cape said that a lot of work has been done on this project over the years and Council made an educated choice on this project. She did not support opening this up and starting all over again. We might have to modify the plans and/or policy direction in place, but didn't want to see the Reid Center turning into another Civic Center that doesn't ever get finished.

Councilman Newman withdrew his second. He felt we are committed now to doing this project. The only thing that will stop us if we fall into indecision.

In response to Councilwoman Cape, Mr. Simmons said that the $500,000 PARTF is a competitive grant process and the City will reapply in January 2010. DENR didn't' say that this wasn't a worthwhile project, but the timing for the grant was running out. He previously told Council he would come back to them with a project with the money they had in hand designed for

that $2 Million. Until we put it out for bid, we don't know the ultimate project amount. His goal was to design a project with the money that we had because that was our budget. The goal of this project was to get it done by December because that is when the other grantors said that we need to have construction started. That is the reason staff came to get Council approval a couple of months ago to get approval for the construction drawings.

In response to Councilwoman Cape, Mr. Simmons said that a couple of private grantors are working with the City, but December is our cut-off date and if we don't show significant progress on the project by then we are in jeopardy of losing other funding. She supported bringing this forward to Council with the architect.

Mr. Simmons said that staff has stayed in contact with the funders and have been giving them periodic updates. He said that he would be happy to get some statement from the funders about where they are in relationship to this project.

Councilman Russell seconded the motion made by Councilman Mumpower.

In response to Councilman Mumpower, City Attorney Oast said that in almost every contract there are provisions to withdraw or terminate, but he could not be specific unless he looked at the particular contract.

Councilman Miller seems it would be customary for staff to come back to Council with what a plan looks like with 25% less funding and for staff to get the donor's affirmations of that plan.

City Manager Jackson said that staff will provide Council with the status of the design work and the architect's impression given the status of the overall budget.

Mr. George McDowell questioned how much we have paid the architect in billable hours and felt the architect for this project should have been present at this meeting.

City Manager Jackson said that he felt the original motion of reconsideration is laying out to Council options for aborting and taking a different policy direction. If that is the motion then the staff presentation would be to review the terms for termination with the architect. He felt the direction of Council is to reconsider policy direction by updating Council on how the project is proceeding on schedule and laying out a plan with the pros and cons of staying on that course.

Councilman Russell withdrew his second as he preferred to reconsider policy direction by updating Council on how the project is proceeding on schedule and laying out a plan with the pros and cons of staying on that course.

As there was no second to Councilman Mumpower's motion, the motion died.

It was the consensus of Council to ask Mayor Bellamy to place the W.C. Reid Center project on an upcoming agenda. Mayor Bellamy noted that she would place this on the September 8, 2009, City Council agenda.

B. DISCUSSION OF OPEN AIR DRUG MARKETS

Councilman Mumpower said that the City of Asheville in its commitment to eliminate our open air drug markets in public housing and other vulnerable neighborhoods.

He said it's important because (1) Hard drugs account for much of our crime; (2) Drug thugs/users bring violence and corruption; (3) None of us deserve to live more safely than others; (4) Too many children and elderly struggle in harms way; (5) He agrees with those who suggest our success rate in treating hard drug addicts is under 10%; (6) Active open air drug markets

become recruiting centers for new generations of dealers, users, and enablers; and (7) It is his belief that allowing open air drug markets in public housing is a form of institutional child abuse.

We are failing because (1) Everyone is blaming everyone else – *"I can't do my job because so-in-so is not doing theirs,"* (2) As long as the problem stays mostly in our poor and black neighborhoods, most people seem willing to accept the reality. I believe this is the worst form of racism – the hidden kind; and (3) We do not match the enthusiasm, persistency, and creativity of the drug dealers and users.

He felt City Council deserves a C Grade for Our Performance: (1) Over time the majority has committed to eliminating our open air drug market, a strong drug intervention program, and public safety as a major priority; and (2) We are passive and politically correct with our state legislators regarding our under funded, staffed, and supported state criminal justice system – that dysfunction creates career criminals and places our police at risk with those who mock this system.

He felt the City and Police Administration deserve a C+ grade for their performance: (1) Our police do not match the creativity, persistency, and enthusiasm of our open air drug dealers – fireman offer a model - they stay on a fire until the coals are extinguished and a restart is unlikely; (2) Drug and prostitution enforcement are primarily directed to suppliers (dealers and prostitutes) over users – we will not win without addressing demand; (3) Our patrol officers are rarely on foot in public housing and have limited relationships with residents - both are keys to success in these environments; (4) Our police are persistently placed in harm's way by repeat offenders who are overlooked, coddled, etc. by an underfunded, overwhelmed, and dysfunctional court system; and (5) Our police are marginally supported - more often demonized - by the black community.

Community leaders deserve a D grade: (1) Very few are involved in fighting drug crime; (2) We have ministers and community activists who habitually disparage the police, but avoid the responsibility of holding officers accountable in responsible fashion or supporting their efforts; and (3) We have black leaders who publically discourage "snitching" and feed a "us against them" cultural mindset that enables drug crime to thrive at the primary expense of the black community.

The Court System deserves an F grade: (1) Our state judicial system is underfunded, understaffed, and under resourced at every level; (2) Timely justice is nonexistent – cultivates career criminals; (3) 98% of cases are plea bargained; (4) Jail space and alternative sentencing options do not remotely meet the needs; and (5) The only real beneficiaries of the NC judicial system are the attorney's making $200+ an hour on the inefficiency.

The Public Housing Administration deserves a B- grade: (1) Rule enforcement is improving but inconsistent; (2) Open air drug markets exist is almost all of our 10 developments but managers are fighting back; (3) Management is not backing down to pressures from those who enable or rationalize misbehaviors; and (4) Public housing continues to perpetuate a culture of multi-generational dependency – people make poor pets.

The Faith Based Community deserves a D grade: (1) Few churches are involved in public housing beyond a Sunday morning bus service; (2) The power of the church is evident – their voice in confronting the drug culture is silent; and (3) We have ministers in black churches who routinely attack the police and "snitching" while drug activity occurs in proximity to their church.

The Public at Large deserves a D grade: (1) Most do not care unless things affect them directly; (2) Most accept that crime is a routine part of life in public housing and ignore harms to children and elderly; (3) People who receive direct or indirect pay-offs from drug trade continue to support and enable that trade; and (4) The black community (greatest victims of crime) remain largely passive to the cultural destruction that occurs from drug trade – especially to young black men and women routinely recruited/funded as dealers for Mexican distributors and white users.

So What Do We Do? (1) Treatment, education, and social change are of limited value without good courts and enthusiastic enforcement; (2) We cannot rely on treatment to salvage people – we must fight to keep them from being recruited by unimpaired open air drug markets; and (3) Above all – we must address the weakest link of the chain – our dysfunctional court system.

He recommended a pilot program "Asheville Safe" by (1) A NC pilot program that creates a model of state judicial reform in Asheville and Buncombe County - bring us into the 21st century and return to our historical place as one of the best judicial systems in the country; and (2) Work with the Governor, our state representatives, the NC Department of Crime Control and Criminal Justice, and other vested organized bodies to establish Asheville and Buncombe County as the sites for judicial reform trials.

Emphasis to be on the following and more (1) Timely action on all drug cases (60 days?); (2) Emphasis on alternative sentencing options over jail time; (3) Generation of resources at all levels (admin, space, probation, staffing, technology, etc) adequate to timely judicial action; (4) Increase bench flexibility on consequence and sentencing; (5) Strengthen interagency cooperation on judicial continuum - borrow from prior state level studies pointing the way to success; (6) Expand drug court capacities to a level that provides full access for all drug crime related defendants; (7) Fix broken parts wherever they may be (an example would be how long it takes to get drug testing results back from SBI lab); (8) Expand our efforts to educate the public on the importance of funding and supporting solid judicial reform immediately; (9) Devote $1,000,000 per year from the city budget/reserve fund for the next 3 years in cooperative partnership with the county and state as a part of this pilot initiative; and (10) Develop a local judicial reform action committee.

The mission of **Asheville Safe!** will be to explore, model, and perfect judicial reform in a manner that will lead the way toward making **North Carolina Safe!** Asheville can lead the way.

We start by (1) Persistently and publically acknowledge the harms of our open air drug markets; (2) Illuminate and confront the causes; (3) Actively reach out to those responsible at every level – track our success or failure; and (4) Refuse to back away or pretend it's OK.

He said that when you look at the parade of death, crime, and corruption that continue to occur from hard drug activity in Asheville, it is clear that this is a highly destructive form of ***urban terrorism*** that continues to our collective shame.

He said that he would work with any to achieve the goal but not be passive to continue the open air drug market in Asheville.

In response to Councilwoman Cape, Councilman Mumpower said felt that we should form a committee that is devoted to holding all the pieces of the chain accountable and measuring our progress (City Council; City and Police Administration; community leaders; court system; public housing administration; faith based community; and the public at large). The weakest link is the judicial system as they are underfunded and under resourced. He proposed we form a committee and approach the court system and others to create a pilot project in Buncombe County as we are chasing the symptoms instead of the core issue. He would be willing to see the City invest money upfront to tackle the foundation issues instead of investing more money chasing the symptoms. He suggested we partner with others to illuminate the court system problems and find solutions.

Councilwoman Cape was concerned about the City's ability to step into the realm of the court system. The City just created a nuisance court and maybe this is just another step in that direction. She was also concerned over the $1 Million for 3 years

In response to Councilwoman Cape, City Attorney Oast said he felt the focus of our efforts should be on what the Council can control, like increase police patrols and enforcement efforts on drug enforcement. Council can lobby the legislators (and they do that on a yearly basis) to increase funding for the general court system. He felt Council could step up those lobbying efforts.

Councilwoman Cape would be supportive of looking at a community discussion around this issue, as we've looked into other issues.

Councilman Mumpower said that he would be happy to have Council refer this issue back to the Public Safety Committee for further review.

Councilman Newman noted that even though we don't have direct control over the judicial system, we did put together a nuisance court and that is a significant step. If the nuisance court effort is successful, perhaps we could scale it up. He supported this going back to the Public Safety Committee to see how we can build on the ideas.

Councilman Russell liked a judicial reform action committee maybe created at the Public Safety Committee level. He felt many more details needed to be worked out before the City puts money into it.

Councilman Miller supported this going back to the Public Safety Committee with perhaps the Housing Authority Executive Director and the Police Chief providing their input.

When he asked if Councilman Mumpower would be willing to accept stimulus dollars for the effort, Councilman Mumpower replied that he would not.

Vice-Mayor Davis noted that 37% of our payroll budget is for the Police Department, showing that Council is committed to public safety. We have made a step with the nuisance court and would support looking at a direction to gain some attention with the court system. He supported referring this back to the Public Safety Committee.

Mayor Bellamy felt Councilman Mumpower should have focused on factual information and not conjecture in some of the statements made about the black community as a whole. She apologized to members of the community who heard the presentation who were offended, as she was. She felt an apology was in order. She said that if we want to focus on issues and partnership, we need to look at the fact that during the last few years Council has steadily increased funding for public safety in our community, not only for police. With her lobbying and the help of Senator Nesbitt, the State has been responsive in that our community has received additional District Attorneys and an additional judicial judge. There is a N.C. Metropolitan Mayor's Coalition retreat at the end of August at which time they will discuss this issue on a state-wide basis. They will then provide input to the already established committee formed by the Governor to look at our judicial system and how it can be re-vamped. She felt it was important to have factual data while working with other elected officials to create a committee of not just Council, but community members and personnel from the District Attorney's Office. She supported referring this to the Public Safety Committee.

Councilwoman Cape said that while she supported Councilman Mumpower's passion, she did not support the spirit of judging of the community.

Councilman Mumpower felt that the nuisance court is a model of success and he felt we can pull this off as it's just on a larger scale. In terms of facts, he is rarely careless, never intentionally so, and he tries to learn from experience. He felt that it appears that he has offended some people, but his goal was to offend everyone who listened because we all have something to be ashamed of and he makes no apologies. He was pleased this will be put in the hands of the Public Safety Committee and would be happy to participate with the Committee if they wish.

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-191- RESOLUTION AUTHORIZING THE MAYOR TO SIGN AMENDMENT 1 TO THE BLACK MOUNTAIN WHOLESALE WATER PURCHASE AGREEMENT

Water Resources Director Steve Shoaf said that this is the consideration of a resolution authorizing the Mayor to sign Amendment I to the Wholesale Water Purchase Agreement between the City of Asheville and the Town of Black Mountain.

The Town of Black Mountain is one of four City of Asheville wholesale water customers. They are charged a capacity commitment fee of $184.00 per 10,000 gallons. The current wholesale water agreement specifies a capacity commitment of 200,000 gallons for Black Mountain. Due to leaks and drought, their capacity needs escalated to 232,000 gallons for a period of time. Since that time, Black Mountain has fixed the leaks thereby reducing their water consumption to within the originally agreed upon 200,000 gallons per day as specified in the Agreement dated February 14, 2006.

In the agreement, there are provisions to increase Black Mountain's capacity commitment, but not to reduce it. Therefore, after inquiry from the Town of Black Mountain, the Water Resources Director has proposed Amendment I that will add a paragraph to allow them to reduce their capacity commitment via formal request. The charge of $184.00 per 10,000 gallons will remain the same.

In addition, another paragraph has been added in the Amendment to update the contact information for the City and the Town.

This project is part of City Council's strategic plans to work cooperatively with a local government agency to implement practical water system management.

Pro:

- Allowing Black Mountain to reduce their capacity commitment will encourage water conservation.

Con:

- None noted.

The adoption of Amendment I will result in an approximate $600 reduction in revenue from Black Mountain. This revenue reduction will not require any budget transfers.

City staff recommends that City Council authorize the Mayor to sign Amendment I to the Wholesale Water Purchase Agreement between the City of Asheville and the Town of Black Mountain.

There was a brief discussion, initiated by Councilman Newman, about if the City can adjust the rates of wholesale customers like we do others.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-191. This motion was seconded by Councilman Russell and carried unanimously.

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B. DISCUSSION OF EARLY VOTING LOCATIONS

Mayor Bellamy said that there has been a request from several members of the community to consider additional locations for early voting. She provided Council with the following information: (1) Citizens always have the opportunity to vote 2.5 weeks early at the College Street office; (2) There are 37 normal polling places for City Council elections – during the primary and general elections; (3) The City must notify the Board of Elections 30-45 before the election they would like to have more remote sites, in order for them to submit a plan of implementation to the State Board of Elections for approval; (4) City can tell the Board of Elections what location they would like to have a remote site and the Board of Elections will then have to find a suitable site in that area; and (5) Remote sites can be open anywhere from 1 week early to 2.5 weeks early. For 1 week early, the remote site is $11-15,000, per site per election. For 2.5 weeks early, the remote site is $17-20,000, per site per election.

For instance: (1) If you have 1 additional remote site (2.5 weeks early), for both the primary and general election, the price would be approximately $34-40,000; If you have 1 additional remote site (1 week early), for both the primary and general election, the price would be approximately $22-30,000; If you have 1 additional remote site (2.5 weeks early) for only the primary, the price would be $17-20,000; or If you have 1 additional remote site (1 week early) for only the general election, the price would be approximately $11-15,000; and (2) If you have 2 additional remote sites (2.5 weeks early), for both the primary and general election, the price would be approximately $68-80,000; If you have 2 additional remote sites (1 week early), for both the primary and general election, the price would be approximately $44-60,000; If you have 2 additional remote sites (2.5 weeks early) for only the primary, the price would be $34-40,000; or If you have 2 additional remote sites (1 week early) for only the general election, the price would be approximately $22-30,000.

In response to Councilwoman Cape, City Manager Jackson said that the City has budgeted $160,000 for the current system of elections. If Council chooses to add additional early voting locations, those funds would come out of Fund Balance.

Councilman Mumpower felt there was a conflict of interest for an announced candidate to vote on an issue that has potential to affect their election one way or another. He therefore moved to recuse himself from participating in this matter.

City Attorney Oast said that voting on this issue is not a disqualifying conflict.

The motion made by Councilman Mumpower died for lack of a second.

Vice-Mayor Davis supported early voting, but due to the difficult economy, the City's budget, and the fairly small turnouts for municipal elections, he could not support adding early voting locations at this time.

Councilman Russell questioned how locations would be chosen. He felt it was a good idea, but not at this time.

Councilman Miller supported this idea and suggested as much promotion as possible be done to let people know of the early voting locations.

Councilwoman Cape was very supportive of getting voting in the hands of the people, but felt we should have a citizen engagement process first and then in two years budget for the additional costs and begin making people aware of the additional sites.

The following individuals spoke in support of additional voting locations:

Mr. Charles Carter
Ms. Michelle Pace Wood
Mr. Isaac Coleman
Mr. Fred English
Mr. George McDowell

Councilman Newman moved that the City of Asheville give instructions to the Buncombe County Board of Elections to provide 4 additional early voting sites (North, South, East and West, preferably at the libraries) for one week early for the general election on November 3, 2009. This motion was seconded by Councilman Miller.

Councilwoman Cape noted the 4 additional early voting locations would be approximately $60,000.

In response to Councilman Miller, Mr. Carter said that the Board of Elections is charged with promoting the locations.

Councilman Newman was persuaded that early voting has become the norm in terms of voting. He would love to have more early voting locations, but it's financially prohibitive.

Councilman Mumpower felt it is a moral conflict of interest for him to participate in this matter and would not support the motion.

After 20 minutes of debate, Councilman Newman moved to call the question. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

The motion made by Councilman Newman and seconded by Councilman Miller carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

At Mayor Bellamy's suggestion, it was the consensus of Council to have Mayor Bellamy write a letter to other municipalities in Buncombe County who have an election this year and ask them for a small contribution to the early voting locations. Even though their constituents would have to drive into Asheville, they would have the opportunity to vote early.

Mayor Bellamy instructed City staff to place a budget amendment on the September 8, 2009, Consent agenda for this issue.

C. DISCUSSION OF "ADOPT AN ISLAND" PROPOSAL

Councilman Mumpower said that we have traffic islands throughout the city (especially in neighborhoods) that are neglected and otherwise poorly maintained. We have limited staff resources to address the maintenance needs in a consistent manner.

His proposal would be to establish a program using engaged volunteers who agree to maintain a respective island for a one to three year period.

His suggested methods include (1) Recruit individuals, clubs, neighborhoods, or organizations; (2) Provide loose guidelines for appropriate landscaping and/or maintenance; (3) Provide an annual "Fantasy Island" award for the best kept/most attractive traffic island; (4) Provide small signage to identify those who adopt an island; and (5) Freed up staff time to be devoted to those islands without a volunteer caretaker.

Models include: (1) The "Adopt a Highway" program offers us a local model; (2) We have volunteer groups who provide more random forms of beautification and maintenance services to public areas throughout the city – including traffic islands; (3) Salem, Massachusetts, offers a more specific model; and (4) Cincinnati provides still another.

Councilman Mumpower read a letter from Robert and Patricia Dockery, Co-Chairs of Island Committee Upper Malvern Hills Neighborhood Coalition, who "would like to be the first to request an island. Specifically the island on the corner of Patton, Haywood and Ormond Avenues. We have been looking for a way to improve the appearance of that entrance into West Asheville. Concerning safety concerns, it was suggested we gardeners do our work in off heavy traffic times, wear orange traffic vests, and work only ON the island. This we can comply with."

Councilman Mumpower moved to request staff review potentials for an adopt an island program and initiate action to that affect. This motion was seconded by Councilwoman Cape.

When Mayor Bellamy asked for public comment, she received none.

Councilwoman Cape liked engaging the community and recognizing the City needs their participation. She suggested an adopt a sidewalk program downtown.

Councilman Mumpower moved to amend his motion to include staff also look at potentials for an adopt a sidewalk program. Councilwoman Cape accepted that amendment.

The amended motion made by Councilman Mumpower and seconded by Councilwoman Cape carried unanimously.

Mayor Bellamy noted that since this has been directed to City staff, it will be coming back to City Council.

D. RESOLUTION NO. 09-192 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Davis said that the terms of Wind Peter Motika and Adam Pittman, as members on the Recreation Board, expired on June 30, 2009. They were not interested in reappointment.

On July 14, 2009, it was the consensus of Council to interview David Mosrie, Wayne Wheeler, Mary Ann West and Nelson Sobel. Mr. Wheeler was unable to attend the interview.

After Council spoke highly of the candidates, David Mosrie received no votes, Wayne Wheeler received 4 votes, Mary Ann West received 7 votes and Nelson Sobel received 3 votes. Therefore, Mary Ann West and Wayne Wheeler were appointed as members of the Recreation Board to each serve three-year terms respectively, terms to expire June 30, 2012, or until their successors have been appointed.

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E. RESOLUTION NO. 09-193 - RESOLUTION APPOINTING A MEMBER TO THE TRANSIT COMMISSION

Vice-Mayor Davis said that the term of Ryan Pickens expires on December 31, 2009.

On August 11, 2009, it was the consensus of Council to interview Tom Tomlin, Georgia M. Shannon and Rachael Bliss.

After Council spoke highly of the candidates, Tom Tomlin received 5 votes, Georgia M. Shannon received no votes and Rachael Bliss received 1 vote. Therefore, Mr. Tomlin was appointed as a member of the Transit Commission to serve an unexpired term until December 31, 2009, and then a full three-year term, term to expire December, 31, 2012, or until his successor has been appointed.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy noted that Council has had the topic of "Other Business" on the agendas, however, that has been deleted as that is not listed in Council's rules as an official agenda topic. The topic of informal discussion and public comment is on the agenda for light items. Any weighted or policy recommendations are to be scheduled.

Councilwoman Cape and Councilman Russell reminded the public that school started and to please obey the school zone rules, in addition to encouraging carpooling, walking and riding bikes where safe.

In response to Mayor Bellamy, City Manager Jackson said that he would provide Council with details on what the Police Department has in place for enforcement of laws regarding bus stops.

Mayor Bellamy encouraged the public to attend the Goombay Festival.

When Mr. Fred English expressed concern over the lack of enforcement of bicycle laws, Mayor Bellamy suggested the Public Safety Committee review that issue.

Councilman Mumpower discussed with Council the issue of agenda protocols. He felt this is a body of elected officials and not a game of Mother May I. In the past few months he has had repeated difficulty raising agenda issues. Going forward, unless the Mayor would like to talk with him about an alternative method, he will present the issues, but if they go into that black hole, or laid aside, he will reserve the right to come to Council and raise the issues before the full Council. The majority of Council can decide to deal or not deal with the issues as they wish. His job is to raise issues as enthusiastically and as passionately as he can. With that in mind, he has a list of the following things he would like to see addressed: a graffiti vandal "cloud of shame" proposal; action to address excessive late charges for stormwater runoff fees; availability of on-line sexual services in Asheville and enforcement potentials; exploring the 24/7 climate control system potentials and energy saving performance contracting potentials for the City of Asheville; and City government following our flag protocol. He then provided Council with information on the proper protocols for the flag. He would like to see the City of Asheville model what we are asking other people to do.

In Mayor Bellamy's defense, she provided Council with a timeline on actions requested by Councilman Mumpower.

Claims

The following claims were received by the City of Asheville during the period of July 2, 2009 – August 6, 2009: PSNC (Water), Brittany Bedgood (Parks & Recreation), Barb Hoski (Sanitation), Brandon Phillips (Police), Ruth Pitts (Streets), Ann Forbes (Water) and Charter Communications (Water).

The following claims were received by the City of Asheville during the period of August 7, 2009 – August 13, 2009: David Hirschman (Water), Dominik Downs (Transit), Celeste Adams

(Water), Stella Longshore (Transit), Progress Energy (Water), Progress Energy (Water), and AT&T (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Closed Session

At 8:09 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on the northwest corner of Riverside Drive and Lyman Street, and the City-owned parking lot on Brick Street. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Newman and carried unanimously.

At 8:22 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:22 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – September 8, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 2009 AS "LIFE INSURANCE AWARENESS MONTH"

Councilman Russell read the proclamation proclaiming September 2009 as "Life Insurance Awareness Month". He presented the proclamation to Mr. Chris Clark, Financial Representative from Northwestern Mutual, who briefed Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING SEPTEMBER 2009 AS "PREPAREDNESS MONTH"

Councilman Newman Bellamy read the proclamation proclaiming September 2009 as "Preparedness Month". He presented the proclamation to Interim Fire Chief Scott Burnette, who briefed Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING SEPTEMBER 8, 2009, AS "NOAH RATNER DAY"

Mayor Bellamy read the proclamation proclaiming September 8, 2009, as "Noah Ratner Day" in the City of Asheville. As Noah has started college, she presented the proclamation to Noah's parents Bob and Susan Ratner. She said that Noah, a recent graduate of Asheville High, grew up playing golf at Asheville Municipal Golf Course. He just returned from the Maccbiah Games in Israel as part of the USA team. He took 2 gold medals and named the Junior Champion in golf at these world games. The Maccabiah Games are held every four years and attract Jewish athletes from around the world. Noah will be attending Guilford College in the fall where he will play golf.

D. PROCLAMATION PROCLAIMING SEPTEMBER 9, 2009 AS "FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY"

Vice-Mayor Davis read the proclamation proclaiming September 9, 2009 as "Fetal Alcohol Spectrum Disorders Awareness Day". He presented the proclamation to Ms. Leslie McCrory with Fullerton Genetics Mission Hospitals, who briefed Council on some activities taking place during the day.

E. PROCLAMATION PROCLAIMING SEPTEMBER 15 – OCTOBER 15, 2009 AS "HISPANIC HERITAGE MONTH"

Councilman Miller read the proclamation proclaiming September 15 – October 15, 2009 as "Hispanic Heritage Month". He presented the proclamation to Pastors Raul and Lidia Gonzalez who briefed Council on work they have accomplished and what they will continue to work on to accomplish.

F. PROCLAMATION PROCLAIMING SEPTEMBER 21-25, 2009 AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Councilwoman Cape Bellamy read the proclamation proclaiming September 21-25, 2009 as "Minority Enterprise Development (MED) Week". She presented the proclamation to Ms. Brenda Mills, 2009 MED Week Chair, Mr. James Lee, Minority Business Coordinator, Ms. Sharon Oxendine and Ms. Joyce Harrison, who briefed Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "E", "G", "H" and "K" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 25, 2009

B. RESOLUTION AUTHORIZING THE CITY MANGER TO WAIVE THE FORMAL BID REQUIREMENTS AND AWARD THE BID FOR FIVE HYBRID BUSES USING THE "PIGGY BACK" PROVISION FROM THE AWARD OF BID FROM THE KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY TO GILLIG LLC

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION NO. 09-195 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A N.C. DEPT. OF TRANSPORTATION TRAFFIC CONSTRUCTION AGREEMENT FOR ROAD IMPROVEMENTS TO US 70, COLLEGE STREET FROM BEAUCATCHER TUNNEL TO CHARLOTTE STREET

Summary: The consideration of a resolution authorizing the Mayor to enter into a N.C. Dept. of Transportation (NCDOT) traffic construction agreement for road improvements to US 70, College Street between the Beaucatcher Tunnel and Charlotte Street.

The NCDOT is making roadway improvements on US 70, College Street between Beaucatcher Tunnel and Charlotte Street. The Water Resources Department installed a new 24-inch water line in this section of College Street as part of the Revenue Bond Projects, which replaced the three water lines on top of the tunnel.

The Water Resources Department has negotiated a participation rate of $50,000 of the total project cost to replace aging infrastructure with the minimum repaving cost of $50,000. This is a local NCDOT project and was not on the State NCDOT project lists for capital improvement funding, so funding was not specifically set aside for this project. Due to cost savings on some of the bond projects, the funds are available for this project within the Central Business District

Revenue Bond Project. Approximately 1,900 feet of road will be repaved, which will improve roadway conditions for local motorists.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:
- This project will improve local roadway conditions by the milling and resurfacing of US 70, College Street between Beaucatcher Tunnel and Charlotte Street.
- Water infrastructure over 90 years old has been upgraded.
- This partnership between agencies allows both parties to cost share and experience savings on the overall project.

Con:
- There are no cons to this project. The Water Resources Department would have to resurface Tunnel Road as part of the infrastructure improvements, which would cost more than partnering with NCDOT.

The cost share on this project is $50,000, which is currently available in the Central Business District Revenue Bond Project.

Staff recommends approval for the Mayor to execute the Traffic - DOT Construction Agreement with NCDOT for the US 70, College Street improvements in the amount of $50,000.

RESOLUTION BOOK NO. 32 – PAGE 202

D. RESOLUTION NO. 09-196 - RESOLUTION AMENDING THE POLICY GOVERNING CITY COUNCIL BOARDS AND COMMISSIONS

Summary: The consideration of a resolution amending the policy governing City Council appointments.

On August 11, 2009, the City Council Boards & Commissions Committee reviewed proposed amendments to their policy governing City Council appointments.

Although there are some minor policy changes regarding clarification, the following represent the major changes added to the policy:

- An oath of office (or affirmation) is required for some boards and commissions. Where applicable, newly appointed board members will take and sign an oath of office or affirmation following their appointment.

  If a board member enters on the duties of his or her office before taking, subscribing and filing the oath of office, he or she may be removed from office.

- The board will comply with open meeting laws, including notice of meetings.

- The board is to provide the City Clerk with their schedule of regular meetings with the predetermined time and place. The schedule will be revised only in accordance with legal requirements for notice.

- In order to conduct official business at a regular or special meeting, a quorum of the board must be present. In the absence of a rule, by-law, or statute providing otherwise, a quorum is more than half of the members of the board, not counting vacant seats. If a quorum is not present at any meeting, the chairperson will postpone the meeting until such time as a quorum can be present, provided adequate notice is given pursuant to the open meetings law.

Staff recommends City Council adopt a resolution amending the policy governing City Council appointments.

RESOLUTION BOOK NO. 32 – PAGE 203

E. BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE ASTON PARK FIT COMMUNITY COLLABORATIVE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. ORDINANCE NO. 3780 - BUDGET AMENDMENT TO ACCEPT A DONATION FROM BB&T TO COVER COST OF MATERIALS AND NEW EQUIPMENT TO SUPPORT A VOLUNTEER PROJECT AT THE SHILOH COMMUNITY CENTER

Summary: The consideration of a budget amendment for acceptance of a donation of $10,600 from BB&T to cover cost of materials and new equipment to support a volunteer project at the Shiloh Community Center.

Nationally, BB&T has created a corporate volunteer program to encourage local branches to give back to the community. In addition to making a provision for paid time off for staff to volunteer, BB&T has created a pool of funds to be used to support projects identified by local BB&T branches. Asheville Area BB&T branches have chosen the Shiloh Community Center as the site for their 2009 project and, in addition to providing approximately 100 volunteers, will be donating $10,600 to cover the costs of materials and improvements for the Center. A representative from BB&T has been working with Parks, Recreation and Cultural Arts staff to develop a scope of work and indentify materials and equipment necessary to complete the project. The project will include painting the entrance hall and community room, refinishing the floor of the stage, installing new seating on outside bleachers and purchase of a recycling center and new chairs and tables for the community room. The project is slated to occur in late September 2009.

This action complies with the City Council Strategic Operating Plan in that it addresses the city's aging infrastructure and improves the customer experience at the Shiloh Center. This action also reflects the City of Asheville's efforts to improve and extend services by identifying volunteer opportunities and working with community groups to accomplish improvement projects on public property and in public facilities.

The project has the support and approval of the Shiloh Community Association.

Pros:

- Improvement in infrastructure and customer experience at the Shiloh Center
- Demonstration of community support for the Shiloh Community
- Incorporates citizen volunteers in providing essential services to the community

Con:

- None noted

The project has been budgeted so that the donation will cover all costs for the project.

City staff recommends City Council adopt a budget amendment to accept the donation from BB&T in the amount of $10,600.

ORDINANCE BOOK NO. 25 – PAGE 399

G. BUDGET AMENDMENT FOR YEAR 2 FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER IN ASHEVILLE'S WEED & SEED TARGETED AREA AND AMENDMENT TO THE GENERAL FUND TO REFLECT A TRANSFER FROM THE GRANT FUND TO SUPPORT PERSONNEL COSTS ASSOCIATED WITH THE GRANT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. BUDGET AMENDMENT FOR FOUR ADDITIONAL EARLY VOTING LOCATIONS ONE WEEK BEFORE THE GENERAL ELECTION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION NO. 09-197 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSTALLATION OF A PROTECTIVE/PERMISSIVE PHASE FOR SOUTHBOUND TRAFFIC AT THE INTERSECTION OF US 25 (BROADWAY) AND COLLEGE STREET

Summary: The consideration of a resolution to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) regarding the installation of a protective/permissive phase for southbound traffic at the intersection of US 25 (Broadway) and College Street.

In an effort to minimize "cut-through" traffic through the Pack Square Park, College Street from US 25 (Broadway) to Market Street will be converted to two-way traffic flow. Once this conversion is accomplished, eastbound traffic along Patton Avenue would be able to turn left onto US 25 (Broadway) and then make a right turn onto College Street. Please note that the current movements onto South Pack Square will ***not*** change. The proposed conversion of College Street will simply provide drivers an alternative. Asheville Transit will be required to use the new route.

Since the proposed conversion will directly impact the Biltmore Building, staff met with representatives of the Biltmore Company during May 2007 to share the idea with them. Staff has continually been in contact with representatives of the Biltmore Company in order to give them as much lead time as possible before the conversion is made.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by maintaining and managing street infra-structure to improve traffic flow and efficiency to help support the healthy growth of the City.

Pros:

- Minimizes "cut-through" traffic through Pack Square Park.
- Improves traffic flow and efficiency.
- Enables direct right turns into the Biltmore Company parking structure.

Cons:

- Cost to the City is estimated to be $5,000.
- Requires left turns into the Biltmore Company parking structure to yield for on oncoming traffic.

The City is responsible to pay 100% of the actual cost of all work performed by the NCDOT, including administrative costs. The cost of the work is estimated to be $5,000. The necessary funds will come from the current Traffic Engineering operating budget.

Staff recommends that City Council enter into an agreement with the NCDOT for the installation of a protective/permissive phase for southbound traffic at the intersection of US 25 (Broadway) and College Street.

RESOLUTION BOOK NO. 32 – PAGE 209

J. RESOLUTION NO. 09-198 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE CURRENT CONTRACT WITH DIXON HUGHES, PLLC, CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS, FOR AUDITING SERVICES FOR FISCAL YEAR 2008-09AMENDING THE CAFR CONTRACT

Summary: The consideration of a resolution authorizing the mayor to execute an amendment to the current contract with Dixon Hughes, PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2008-09.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. On June 23, 2009, City Council approved a contract for $110,000 to retain the services of Dixon Hughes to conduct the basic audit of the city's accounts for the fiscal year ending June 30, 2009.

In addition the basic audit, various auxiliary financial services must be performed in order to ensure a complete and transparent representation of the City's financial condition. These services include preparation of various city financial statements and production of the Comprehensive Annual Financial Report and are traditionally performed in-house by various accounting staff.

Due to Finance staff's current involvement in converting to a new citywide core financial system (i.e. BTIP), which has a scheduled "go-live" date of January 1, 2010, staff currently does not have the capacity to simultaneously produce the Comprehensive Annual Financial Report (CAFR) and complete the BTIP conversion process without additional contracted support. As such, staff is requesting an amendment to the existing basic audit contract to allow for production of the CAFR to be outsourced to Dixon-Hughes. Staff feels that this is prudent use of resources in order to ensure that timely and successful completion of the CAFR and BTIP conversion processes.

Pro:

- Will help ensure the timely and successful completion of two high-priority, critical projects

Con:

- Requires a $43,450 increase to the contract.

The cost to amend the contract and provide for outsourcing of the CAFR is $43,450. This cost is currently provided in the Finance Department's professional services line item budget.

City staff recommends adoption of the resolution authorizing the Mayor to execute an amendment to the contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for production of the CAFR in the amount of $43,450.

RESOLUTION BOOK NO. 32 – PAGE 211

K. RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE TO PACK SQUARE CONSERVANCY FOR A

PRIVATE EVENT IN ROGER MCGUIRE GREEN IN PACK SQUARE PARK ON SEPTEMBER 21, 2009

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-194 - RESOLUTION AUTHORIZING THE CITY MANGER TO WAIVE THE FORMAL BID REQUIREMENTS AND AWARD THE BID FOR FIVE HYBRID BUSES USING THE "PIGGY BACK" PROVISION FROM THE AWARD OF BID FROM THE KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY TO GILLIG LLC

Summary: The consideration of a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for five (5) 30 foot Low Floor hybrid buses in accordance with the N.C. Gen. Statutes using the "piggy back" provision from the award of bid from the Kanawha Valley Regional Transportation Authority, Charleston, West Virginia, Contract KRT 2008 – 4, issued on September 25, 2008.

In 2008, the City of Asheville received a grant from the State for the purchase of five hybrid buses. At that time, Council approved a budget amendment for the entire purchase allocating $300,000 of City funds for the City's match of 10%.

The City has the opportunity to acquire these buses through a "piggy backing" process. Staff recommends that we utilize a contract from the Kanawha Valley Regional Transportation Authority, Charleston, West Virginia, Contract KRT 2008, issued on September 25, 2008. Kanawha Valley Regional Transportation Authority bid buses that will meet our operational needs. State statutes allow us to "piggy back" that bid. By doing so, the City avoids the cost increases and expedites the bidding process which can take between six months to one year.

The new hybrid buses will replace five of the 1996 diesel buses that have already reached their useful life. This is part of the City staff's effort to replace sixteen 1996 buses. The aging fleet is still operative; however, the 1996 buses have begun presenting the problems attributable to age, engine repairs and other parts increasing the maintenance costs.

The contract has been reviewed by the N.C. Dept. of Transportation and the Federal Transit Administration and complies with local, State and Federal regulations. Following the N.C. Gen. Statutes, an advertisement informing the Council's intent to utilize the "piggy back" option and waive the formal bidding process was posted on August 26, 2009.

The estimated cost of this project is $2,625,000. The City is funding this project using section 5309 of the Federal Transit Administration which provides 80% for capital projects or $2,100,000. The City will provide 10% or $262,500 and the State will contribute the additional 10%. According to the manufacturer, the buses will be delivered in approximately fourteen months after the buses are ordered.

The acquisition of hybrid buses is in alignment with the 2009-10 Strategic Plan to reduce carbon emissions by 2% per year and in the acquisition of new technology that will support the area of environmental sustainability, as well as operating the organization to the highest responsibility.

Pros:

- Using an existing bid will allow us to make a better use of City's resources, specifically related to staff time and funds, since we can obtain a better price.
- The units will be delivered in approximately fourteen months, and put in service immediately, compared with twenty four to thirty six months if we follow the bidding process.
- These new vehicles will reduce emissions, improve fuel efficiency and will increase reliability by replacing the 13 year old buses.

Con:

- None at this time.

The project cost will be $2,625,000, with 80% of this total to be paid by federal funds - FTA section 5309; 10% or $262,500 by the City and 10% or $262,500 by the State. In 2008, the City of Asheville received a grant from the State for the purchase of five hybrid buses. At that time, Council approved a budget amendment for the entire purchase allocating $300,000 of City funds for the City's match of 10%.

City staff recommends City Council adopt a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for five 30 foot Low Floor Hybrid buses in accordance with North Carolina General Statutes using the "piggy back" provision from the award of bid from the Kanawha Valley Regional Transportation Authority, Charleston, West Virginia, Contract KRT 2008 – 4, issued on September 25, 2008.

Councilman Mumpower questioned the utilization of borrowed federal dollars for a local effort.

Mayor Bellamy noted that we have a local company (Eaton) that produces engines for hybrid buses and wondered if there was a way to promote the cycle of keeping jobs in our community by assisting our local companies. At the Mayor's request, City Manager Jackson said that he would follow-up with Eaton to see who they sell their products to and report back to Council.

Councilman Newman moved for the adoption of Resolution No. 09-194. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 201

E. ORDINANCE NO. 3779 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE ASTON PARK FIT COMMUNITY COLLABORATIVE

Summary: The consideration of a budget amendment, in the amount of $60,000, establish a budget for the Aston Park Fit Community Collaborative, reflecting a reimbursement grant from the North Carolina Health & Wellness Trust Fund, *Fit Community* initiative for costs up to $60,000.

City Council authorized the application and acceptance of a North Carolina Health & Wellness Trust Fund *Fit Community* grant in January 2009. The City submitted the grant to act as the fiscal agent for the project, which is a community-led collaboration with multiple community groups. The City received an executed grant agreement in June 2009 and the City Manager has

authorized the grant contract. The budget amendment is needed to establish the grant project budget.

The awarded reimbursement grant is for $60,000 for two years to support the Aston Park Fit Community Collaborative project. The primary goal of the project is to promote physical activity by increasing the use of Aston Park. Funds will be used to purchase additional playground equipment as well as promote activities in Aston Park. A community collaborative will manage the programming aspects and program reporting of the grant.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

This $60,000 amendment to the Special Revenue Fund is fully funded with grant proceeds. There is no impact to the General Fund budget.

Staff recommends City Council adopt a budget amendment, in the amount of $60,000, to establish a budget for the Aston Park Fit Community Collaborative, for a reimbursement grant from the North Carolina Health & Wellness Trust Fund, *Fit Community* initiative for costs up to $60,000.

Councilman Mumpower felt this is a nice program, but not necessary. He felt what Aston Park needs from the State is a court system that does not have a revolving door that keeps putting criminals back on the streets that help corrupt the neighborhood.

Councilwoman Cape moved for the adoption of Ordinance No. 3779. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 397

G. ORDINANCE NO. 3781 - BUDGET AMENDMENT FOR YEAR 2 FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER IN ASHEVILLE'S WEED & SEED TARGETED AREA AND AMENDMENT TO THE GENERAL FUND TO REFLECT A TRANSFER FROM THE GRANT FUND TO SUPPORT PERSONNEL COSTS ASSOCIATED WITH THE GRANT

Summary: The consideration of 1) a budget amendment in the Grant Fund, in the amount of $130,000, for Year 2 funding from the N.C. Dept. of Public Instruction for the 21st Century Community Learning Center in Asheville's Weed & Seed targeted area; and 2) a budget amendment in the General Fund of $61,566 to reflect a transfer from the Grant Fund to support personnel costs associated with the grant.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of target area residents and was received favorably with the understanding that residents would be integrally involved in the planning and

implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life.

Weed & Seed sites are required to leverage additional funds to carry out their respective goals and objectives. The 21st Century Community Learning Center grants provide funds for academic based afterschool programs serving youth who are not performing at grade level. Asheville's model will serve any middle and high school student attending Asheville City Schools. Programs will take place at the Pisgah View Community Center and the Burton Street Recreation Center, both of which are designated Weed & Seed Safe Havens. This grant represents the first time these highly competitive funds have been awarded in Buncombe County.

This action complies with the City Council Strategic Operating Plan in that it expands community policing initiatives and supports recreation and employment alternatives for youth at risk of gang exposure.

This action also complies with the community driven Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults. The program also meets needs identified in other citywide collaborative efforts such as the Mayor's RICH Taskforce and Asheville City Schools' School Success Council.

Pros:

- Program will bring much needed academic assistance to middle and high school students who are struggling in school.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the targeted area.

Con:

- Additional funds will need to be leveraged during the 2010-2011 school year to sustain the program since funding decreases by 20% in that year and 40% the following year.

Grant revenue in the amount of $130,000 will cover all personnel and operating expenses related to the afterschool program at no additional cost to the City. Expenses include, but are not limited to: salary for a full time program director, part-time assistants, contracted teachers and resource providers, and supplies and transportation costs. Additional funds are expected to be raised through grant applications and other funding opportunities in Year 3 and Year 4.

City staff recommends City Council adopt a budget amendment in the Grant Fund in the amount of $130,000, to establish a budget for the 21st Century Community Learning Centers which will occur in Asheville's Weed & Seed target area; and adopt a budget amendment in the General Fund of $61,566 to reflect a transfer from the Grant Fund to support personnel costs associated with the grant.

Councilman Mumpower felt what we need from the State is a court system that does not have a revolving door that keeps putting criminals back on the streets.

Councilwoman Cape moved for the adoption of Ordinance No. 3781. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

H. ORDINANCE NO. 3782 - BUDGET AMENDMENT FOR FOUR ADDITIONAL EARLY VOTING LOCATIONS ONE WEEK BEFORE THE GENERAL ELECTION

Summary: The consideration of a budget amendment, in the amount of $60,000, for four additional early voting locations one week early for the general election on November 3, 2009.

On August 25, 2009, City Council approved a motion giving instructions to the Buncombe County Board of Elections to provide four additional early voting locations (one each in the north, south, east and west sections of Asheville, preferably a library or community center) for one week early for the general election on November 3, 2009.

Pro:

- Potential for increase of voter turn-out

Con:

- Additional costs

The funding will reduce estimated available Fund Balance from $15.43 million to $15.37 million, leaving a Fund Balance equivalent to 16.5% of the General Fund.

Staff recommends City Council adopt the budget amendment, in the amount of $60,000, for four additional early voting locations one week early for the general election on November 3, 2009.

Councilman Mumpower had no problem with the early voting concept, but was concerned with changing the voting procedures after Council candidates have been announced. He is an announced Council candidate and feels it's morally and legally wrong for any Council member who is a candidate to vote on this. As Council refused to recues him from voting at the last meeting when this was discussed, he will vote against this action.

Councilwoman Cape said that if there was any way at all this was hindering voting or being a barrier to voting in our community she could understand why there would be objections. All this does is add more opportunities for the community to participate.

Vice-Mayor Davis liked the early voting concept; however, he felt the cost of $60,000 for one week in four locations, when there is already one early voting location already now, is a high price to pay in a lean economy. He suggested we monitor the results to see the percentage difference from the primary and the general elections and compare it to times past.

Councilman Newman agreed and explained why we should monitor the results over a series of election cycles because a lot of different factors influence how many people vote in any given year.

Councilman Miller heard that 70% of those who ride our transit system ride out of necessity and he felt it would be a mistake not to offer that opportunity for many of those people who are working two jobs and take transit to and from work.

Councilwoman Cape moved for the adoption of Ordinance No. 3782. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

ORDINANCE BOOK NO. 25 – PAGE 403

K. RESOLUTION NO. 09-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND

CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE TO PACK SQUARE CONSERVANCY FOR A PRIVATE EVENT IN ROGER MCGUIRE GREEN IN PACK SQUARE PARK ON SEPTEMBER 21, 2009

Summary: The consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine to Pack Square Conservancy for a private event in Roger McGuire Green in Pack Square Park on September 21, 2009, from 6:00 p.m. to 8:00 p.m.

Pack Square Conservancy has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event in Roger McGuire Green area in Pack Square Park for a private event.

Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the issuance of an Outdoor Special Event permit to the Pack Square Conservancy for the Roger McGuire Green in Pack Square Park and the event organizers receipt of the one-time use permit from NCABC.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None.

Cons:

- Potential for public safety issues;
- The event is not open to the public.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine for a private event on the Roger McGuire Green in Pack Square Park on September 21, 2009, from 6:00 p.m. to 8:00 p.m. for Pack Square Conservancy.

Councilman Newman moved for the adoption of Resolution No. 09-199. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 212

Mr. Gary Giniat, Executive Director of the Pack Square Conservancy, asked City Council to waive the building/fire/safety permit fee ($150) and the parking meter closing permit fee (8 meters at $15 each = $120) for a total fee waiver request of $270 for their event.

Councilman Mumpower felt the Conservancy has known about the opening for at least a couple of months and had the time to go through the proper channels for a requested fee waiver. He felt this is a special deal and it's not fair to others who have had similar requests.

In response to Councilman Mumpower, Mr. Giniat said that this is a private event for donors that have supported the Park over the years.

As there was not time to go through the normal process of waiving fees and since the City is a partner with the Pack Square Conservancy in the Pack Square Park, Vice-Mayor Davis moved to waive the $270 fee for building/fire/safety permit fee ($150) and the parking meter closing permit fee (8 meters at $15 each = $120) for a total fee waiver request of $270 for their

event. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Councilmen Mumpower, Newman and Russell voting "no."

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

ORDINANCE NO. 3783 - BUDGET AMENDMENT TO ACCEPT FUNDS FOR THE DINGLE CREEK STORMWATER IMPROVEMENT PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council consideration and review of the following:

- A budget amendment, in the amount of $454,500, to accept funds for the Dingle Creek Stormwater Improvement project awarded through ARRA; and
- Providing City Council with an update on the ARRA funding announcements and opportunities.

Budget Amendment Dingle Creek Stormwater Improvement

The budget amendment, in the amount of $454,500, includes funding in the amount of $336,000 for construction, $33,600 for contingencies, $80,400 for project administration and $4,500 for the loan closing fee. This project includes installing a one acre wetland and provide approximately 400 feet of stream stabilization and stream enhancement.

The City had the opportunity to apply for and was granted funding through the American Recovery and Reinvestment Act (ARRA) for the implementation of this project. The City of Asheville was awarded $454,500 under the ARRA of 2009. This would be a 50% grant with a 50% loan requirement. The loan must be paid over a 20 year period. The Clean Water Management Trust Fund (CWMTF) has agreed to cover a portion of the loan ($165,000) up to half of what was originally approved for this project through the CWMTF in 2008 ($335,000). The remaining portion of the loan ($62,250) will be paid over the 20 year period out of the Stormwater Enterprise Fund.

This action complies with a goal included in City Council's Strategic Operating Plan by developing a green project that will provide environmental sustainability for our City.

Pros:

- Approval of this action will allow the City to move forward with a portion of the Dingle Creek Master Plan
- The project is funded from both ARRA and the CWMTF
- This project will provide both water quality and flood reduction benefits.

Cons:

- Coordinating both of these funding sources will be time consuming.
- There will be a cost to be covered by the City of $62,250 over a 20 year period. This cost will be paid for out of the Stormwater Enterprise Fund.

The City will be responsible to pay the loan amount not covered by the CWMTF which is $62,250 over a 20 year period paid out of the Stormwater Enterprise Fund.

Staff recommends approval of a budget amendment, in the amount of $454,500, to accept funds for the Dingle Creek Stormwater Improvement project awarded through ARRA.

Updates and Funding Announcements

Community Development Block Grant-R ($332,942) - Funding for CDBG-R is currently in the contract stage with sub-recipient agencies.

Homeless Prevention and Rapid Re-Housing ($509,460) - Public hearing on September 8, 2009, to review the proposed grant funding distribution as a collaborative application approved by staff and the Council Housing and Community Development Committee.

NCDEER Mobile Emission Grant ($30,000) - The City of Asheville has been awarded a $30,000 grant to reinstate the "Clean and Green Local Fuel" program for the municipal fleet. This grant will support the use of biodiesel fuel for all 450 city diesel vehicles over the course of next year. The North Carolina Department of Natural Resources awarded Asheville this grant with stimulus funding so that the City can reduce its carbon footprint. The $30,000 will supplement the additional cost to purchase half a million gallons of a 5% biodiesel blended fuel. This program expects to reduce the municipal carbon footprint by 223 tons which is equal to planting 6,600 trees. Per NCDENR, funding for this grant is expected on or around September 11th.

NCDENR Drinking Revolving Fund ($510,000) - Water Resources held a pre-bid meeting August 25, 2009, for the North Fork WTP Pumping System Improvement Project. There were six interested construction companies who attended the meeting. Outreach for this project was accomplished by posting on the City of Asheville website including the Economic Recovery area, Minority Business Development Agency, Small Business Administration vendors and the State of North Carolina's Interactive Purchasing System as of August 10, 2009. The bid opening is still expected on September 9, 2009, with recommendation for bid award to City Council on September 22, 2009.

Transparency and Accountability - NC Recovery providing outreach historically underutilized businesses on September 23, 2009, from 9:30-12:30 p.m. at the Morning Star First Baptist Church, 126 4th Avenue, SW in Hickory, NC. All vendors welcome to attend.

Locally, outreach session planned for all local vendors on ARRA update funding areas and doing business and funding along with a session on capital access options. The session is scheduled for October 15, 2009, from 9:30 a.m. to 3:30 p.m. at the A-B Tech Enka Campus Haynes Room. No RSVP required. Presenters include the City of Asheville, Buncombe County, regional business service providers and local financial institutions.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

When Councilman Mumpower asked if there is a provision to ensure contractors have to hire legal workers, City Attorney Oast said that these are contracts administered by the City of Asheville and we use our usual safeguards and will do what the law allows.

Councilman Mumpower felt that the law is making no provision for E-Verify and other things that improve our changes of making sure that the people that are hired are legal workers. He felt this is borrowed dollars that our children will have to repay and felt we should take care of the things we have control over because the federal and state governments have their own responsibilities.

Director of Public Works Cathy Ball responded to Vice-Mayor Davis when he asked if this will resolve the problems of the Dingle Creek stormwater or if it is another step along the way to

resolve the issue. She responded that this is a big piece of the puzzle but there is still flooding upstream issues that need to be addressed.

Vice-Mayor Davis suggested the next time a drainage project comes before Council, it would be helpful to have staff provide a report on what are we doing with stormwater revenues.

Councilman Miller moved for the adoption of Ordinance No. 3783. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 405

Public Contracting and Local Preference Determination

Ms. Mills said that the following information is to provide Council with an overview of public contracting guidelines according to the North Carolina General Statutes and as a part of this, discuss local preference and the City's options in support of local vendors. The information will hopefully assist you in your efforts to support local vendors while maintaining the proper procedures for contracting and purchasing.

There are recommendations for outreach efforts that City staff can undertake to help support vendors in our area. These options can be done in the short run and can provide support to our vendors in time to help them get prepared for ARRA funding which is expected to start more significantly in the next 30-45 days through the City of Asheville and the region.

Statutes Governing Purchasing and Contracting $30,000 and Above

General statues for the State of North Carolina govern award of contracts $30,000 and above to the lowest responsible, responsive bidder. There is a reference page on the School of Government's webpage that references these statutes for construction, purchasing and service contracting per the North Carolina General Statutes.

Here is the breakdown as it pertains to this level of contacting:

G.S. 143-129 – formal bidding required for
- Purchases costing $90,000 or more, and for
- Construction and repair contracts costing $500,000 or more

G.S. 143-131 – informal bidding required for
- Purchases costing $30,000 up to the formal limit ($90,000), and for
- Construction and repair contracts costing $30,000 up to the formal limit ($500,000)

G.S. 143-64.31 – architectural, engineering, surveying, and construction management at risk services
- Must use a qualifications based (not cost based) selection process, unless local government exempts itself under G.S. 143-64.32;
- No other services are addressed in the statutes, so it is up to the local government to determine how best to procure those services

Statutes Governing Purchasing and Contracting Below $30,000

Bidding requirements are not required until the $30,000 threshold. The statutes do not specify award under this amount and for service contacting beyond G.S. 143-64.31 above. Local governments have options for award of contracts at this level.

In obtaining information in this area, it should be noted that there has been no precedence in North Carolina for local preference and the impact to contracting and contracting dollars. Consideration will be needed to think about the following:

a. How will local be defined?
b. What exemptions will be made, if any? These would include costs above a certain amount budgeted for projects in the below $30,000 threshold.
c. What impact will this have on our Minority Business Program policy currently in affect?
d. What impact will this make for outside vendors seeking to do business with the City of Asheville?

N.C. General Statutes and Local Preference

As for local preferences, here's an excerpt from "A Legal Guide To Purchasing and Contracting for North Carolina Local Governments," by Frayda S. Bluestein, Professor of Public Law and Government (p. 73):

Section 121. Can a local government establish a preference for local bidders?

Local governments have no statutory authority to establish preferences of any kind and are bound by the "lowest responsible bidder" standard when awarding contracts that are subject to the bidding requirements. (See Question 117.) The fact that a bidder is local cannot, by itself, be a basis for awarding a contract to a higher bidder. Some argue that doing business with local companies will help build and maintain the local government's tax base. (This of course depends on how "local" is defined and whether such a policy stirs other jurisdictions to adopt similar policies, which might ultimately cause losses for local companies.) Local governments do have authority to engage in local economic development, but this authorization does not include the use of the contracting function to provide what amounts to a subsidy to a local company that is not otherwise the lowest responsible bid.

In some cases, local companies may provide better, more cost-effective, or more timely service. These factors can legally be considered under the lowest responsible bidder standard, which explicitly allows consideration of quality, performance, and time. Local governments are not, however, entitled to assume that a local company will be superior in these areas and should be careful to document the basis for a decision based on these factors.

Local governments can promote local businesses by making sure they are given notice of opportunities to bid and can use local businesses for convenience when purchasing small items or obtaining quotes for informal bids. The governing board could legally adopt a policy of sending individual notice of bidding opportunities only to local bidders, since the statute does not require such notice in the first place and local governments may have authority to establish a local preference for contracts that are not subject to the competitive bidding requirements. (See Question 33.) Boards considering this option should evaluate whether the loss of competition and potential cost savings is outweighed by the benefit to be gained from promoting local businesses in this way.

Options to Support Local Businesses

There is encouragement for local governments to help support their businesses with additional and targeted outreach which will keep them apprised of bidding opportunities. This has been widely accomplished through the Minority Business Program over the years to register minority and women businesses and to show them how to access bidding opportunities in our region and beyond.

City staff can hold a series of sessions at convenient locations to help local companies understand how to register, find bidding opportunities and how to follow the ARRA funding. We

could advertise this on the ARRA site, email online vendors, send through the ARRA newsletter, use the VendorLink System to notify all those in the local (City Council will need to define this for staff) on these sessions and use our current vendor database to contact vendors.

In addition, an ARRA Business Update and Information Session in planned in conjunction with the region's business service providers such as Mountain BizWorks, Self Help Credit Union, our local SBA office and the financial institutions to support local vendors with obtaining business assistance, understanding ARRA and doing business with government and access to capital in the current economic market.

These options will go a long way to supporting businesses with having immediate knowledge of the city's contracting opportunities and how to submit bids.

Conclusion

Staff will rely on City Council's direction on this matter. The support of businesses in our region has been a priority for City staff and even more with the ARRA funding with the current economic issues we are facing.

The next 30-45 days will see more contracting opportunities and we will continue to provide outreach education to the public on all opportunities that are available to them.

In response to Councilman Russell, Ms. Mills said that going forward we will have the ability to track local vendors for contracts under $30,000.

Councilman Mumpower suggested we direct staff to make every effort to pursue whatever exemptions we can to magnify our capacity within the limits of state law, e.g. contacting the State Contracting Construction Office to find out how Asheville can exempt itself under G.S. 143-64-32.

Councilman Newman supported doing everything we can within our power to know about jobs and have our local businesses compete for them, but we also need to be aware of the pros and cons of these kinds of policies to make sure it is a good deal for the taxpayers and local businesses.

In response to Councilman Miller, City Attorney Oast said that it is illegal to split a project to evade the purpose of the article on formal bidding requirements.

Councilman Miller felt it was important to let people know how they can get on an approved vendor list.

When Councilman Mumpower asked if we give preference to minority businesses, Ms. Mills replied that only the federal government gives preference to minorities. However, we do reach out to them to make sure they know the process, just like local vendors.

Mayor Bellamy suggested on our agendas that we identify companies who are being awarded contracts with the City so people can see their money is staying within our community. She did note, however, that times there are no local companies that provide the service, e.g., bulletproof vests.

B. QUARTERLY REPORTS

Planning & Economic Development Committee Chair Report

Councilwoman Cape, Chair of the City Council Planning & Economic Development Committee, provided Council with an update of their activities during the last quarter. She

thanked her other Committee members of Vice-Mayor Davis and Councilman Russell for their hard work on this Committee.

End of Year Strategic Operating Plan Update

Assistant City Manager Jeff Richardson reviewed with Council the End of the Year Strategic Operating Plan.

In the affordable focus area (1) Housing (a) 95 New Affordable Housing Units; (b) 24 First Time Homeowners Used the City's Down Payment Assistance; and (c) 4,500 Households Received Housing Counseling Services or Homelessness Prevention and Housing Services; (2) Asheville as an Employer of Choice (a) CAYLA; (i) 100% of Graduates Currently in College; (ii) Over 400 Hours of Community Service Per Year; and (iii) Over $100,000 in Scholarships awarded annually; (3) Homelessness; (a) 5% up From January 2008; (b) Chronic Homelessness: down by 25% from January 2008; (c) 231 People in Permanent, Supportive Housing; and (d) 36% increase in People Using Homeless Management Information System; and (4) City Owned Land - Five City Properties (a) Armory Update; and (b) 4 City Sites/Developer Request for Qualifications Process Still Underway.

In the green focus area (1) Sustainability Office (a) Completed Sustainability Master Plan; (b) Municipal Electricity Usage down by 6.3%, Totaling 867,380 kWh; (c) 20% of Employees working 4/10 schedules; (d) 90% of Computers on Shutdown Program; and (e) 75% of All Municipal Buildings Displayed Energy Reduction; (2) Pack Square Park Key Dates (a) Phase One: Vance Monument Now Open; (b) Phase Two: McGuire Green (Fall 09/Open Spring 2010); (c) Veterans Monument Dedication: Nov 11; and (d) Urban Trail Reinstallation: Late Sept; and (3) Pack Square Park Still Left to Fundraise (a) $1.2 Million: Complete Park; (b) $2.1 Million: Pavilion; and (c) $1.5 Million: Endowment; (3) Received ARRA Funds for 5 Replacement Buses ($2 M); (4) Received Funds for Hybrid Bus; (5) FTA Grant for Development of ISO 14001 Training Program; and (6) Completed the Avon Road and New Haw Creek Sidewalk Projects.

In the safe area (1) Asheville Police Department (a) Nuisance Court; (b) 8-Member Downtown Patrol Unit Formed; and (c) Increase Dedicated Resources to Address Internet Child Pornography; (2) Asheville Police Department in Fiscal Year 2008-09: (a) Answered 113,104 calls for service; (b) Proactively contacted more than 4,600 businesses and responded to 4,200+ calls for service in CBD; (c) 1,130 charged in drug cases (i) 332 charged classified as dealers; (3) Asheville Police Department from Fiscal Year 2007-08 to Fiscal Year 2008-09: (a) 6.6% down in violent crime; and (b) 12.6% down in property crime; (4) Asheville Fire and Rescue (a) Activation of 300 Merrimon Ave Fire Station: Response Time Coverage Up 31%; (b) Haw Creek Partnership; and (c) Capital Fleet Replacement.

In the sustainable area (1) UNC-Asheville Partnership; (a) Memorandum of Understanding; (b) Emergency Planning Surveys; (c) UNC-A NEMAC to Develop Powerful Tools; (d) RENCI for an Engagement Site Downtown; and (e) Civic Center/Campus Event Coordination; (2) ARRA Grant Success (a) Entitlements - $7,597,242; (b) Grant Funding Applied for to Date - $12,800,149; and (c) Grant Funding Awarded to Date: - $994,500; (3) WayFinding Update; (4) 6.09 miles of sidewalk; (5) Neighborhood Partnerships Plans (a) - South French Broad Neighborhood Plan; (6) Civic Center (a) Capital Improvement Plan Project Finished; (b) Arena Roof Starts in Sept 2009; and (c) Customer Service Survey Fiscal Year 2009: 92% Satisfaction Level; and (7) Development Review – One Stop Shop (a) All Effected Departments Moved by August 28; (b) Cooperation from Asheville Fire & Rescue, Dept. of Public Works, Parks & Recreation, and Building Safety saved in Excess of $220,000 in Labor Costs; (c) Energy Efficient Lighting will save $5,000 Per Year; (d) "Green" Carpet Project; and (e) Improved Efficiency and Customer Service.

Mr. Richardson said that Council has been provided with an economy report for Fiscal Year 2008-09 (4th Quarter); the Asheville Police Department's outreaches/actions for the month of

July, as well as a wrap-up of Fiscal Year 2008-09; and an update on the South French Broad Neighborhood Visioning project.

Throughout discussion, Mr. Richardson and Police Chief Bill Hogan answered various questions/comments from Council, some being, but are not limited to: was the City successful in the grant for 12 additional police officers; was the City successful in the security grant to upgrade the Municipal Building and if so, is that included in this report; why is the discrepancy in the crime statistics reported in the Asheville Citizen-Times vs. the information presented to Council; has the Police Department identified patterns in the downtown area for calls of service with the new 8-person downtown unit; what type of crimes are not included in this report; has our efforts to more enthusiastically go after hard drug crime in public housing have any impact of these statistics; and homelessness and crime statistics are interconnected.

Mayor Bellamy noted that from January 2009 to the present, we are seeing a double digit decrease in violent and property crimes.

Mayor Bellamy recalled that Council mandated anyone who received Community Development Block Grant funding from the City to utilize the HMIS system. She was pleased that there is a 36% increase of people using that system. We are now able to track who is receiving services and what type of services they are receiving to avoid abuse of the system. Regarding accountability, she said that the service providers are committed in holding themselves accountable with the services they provide as well as the users. She felt that we are addressing the chronic homelessness in our community.

Councilman Mumpower questioned why we create new housing stock for the homeless when there are vacancies in our own public housing developments. He questioned if it is success to create publicly subsidized housing that doesn't reform people, but basically provides a temporary escape from reality. He felt there are better models for helping people than this one.

Vice-Mayor Davis was concerned about the number of homeless on the west end of our downtown gateway and expressed his, and other property owners in that area, frustration with the use of drugs and intimidation. He hoped that the nuisance court and more police patrol will eliminate some of the problems.

Mayor Bellamy said that since Council makes policy direction, we need to direct the Police Chief to look at more coverage in that area, particularly on Ann Street, and the possibility of placing a police substation in that area.

At 7:16 p.m., Mayor Bellamy announced a short recess.

Planning & Development Director Judy Daniel briefed Council on the Downtown Master Plan. She said that Council adopted the Downtown Master Plan in May of this year, with instructions to the staff that the details of implementation would be critical in their support for the required changes to the Unified Development Ordinance (UDO) necessary for full implementation. The Council directed the staff to strongly take into consideration the concerns over certain recommendations of the Master Plan expressed by those who testified at the public hearing.

Since that time, the staff has been working on both a framework for implementation and drafting the UDO changes that will implement the Master Plan recommendations. She provided Council with the action timeframe matrix. Implementation Matrix highlights include (1) Arts and Culture Subcommittee to track Strategy One (A-H) - primarily private sector led actions; (2) Historic Preservation Subcommittee to track Strategy One (I-N) – most recommended actions already in process by HRC; (3) Transportation and Parking Subcommittee to track Strategy Two – many actions already in process by public and private sectors; (4) Urban Design and Development (UDO changes) Subcommittee to track Strategies Three to Six – staff already

working on drafts; and (5) Downtown Management Subcommittee to track Strategy Seven – fully private sector led actions. A major part of that effort has been to coordinate these efforts with the Downtown Commission, and gain their support for methodologies to begin the implementation process. In August, the Downtown Commission gave its support to both an overall matrix for implementation and the formation of committees that will work to push for implementation of the seven major strategies recommended.

She said the activity since Council adoption is as follows: (1) Spring 2009 - Downtown Master Plan Adopted in Concept by City Council; (2) Summer 2009 (a) June – Planning staff begins work on UDO changes; (b) July - Staff works with Downtown Commission on implementation plans; (c) August - Downtown Commission supports Implementation Matrix and Implementation Pursuit Committees, and begin to discuss revisions to Downtown Design Guidelines. Proposal for five sub-committees to pursue implementation strategies for: Arts and Culture; Historic Preservation; Transportation and Parking; Downtown Management; and Urban Design and Development (UDO Changes) (d) September – (a) DMP Subcommittees to begin meeting; (b) Urban Design & Development (UDD) Sub-committee begins evaluating first set of UDO changes (*project review processes*); and (c) Dates set for other Sub-Committees to begin meeting; (e) October – (a) Downtown Commission (DC) considers UDD recommendations for first set UDO changes; (b) Planning and Zoning Commission reviews first set of UDO changes; and (c) UDD Sub-Committee begins review of second set of UDO Changes; and (f) November – (a) City Council reviews first set of UDO changes; (b) Downtown Commission, then Planning and Zoning review second set UDO changes.

The Downtown Commission is working to assure balanced membership on the "Implementation Pursuit Committees", so that the energy that worked to create the Master Plan will continue. As noted in the Implementation Matrix, a large portion of the recommendations will require action on the part of the private sector; and it has been exciting to see those groups start to coalesce and move toward action without staff participation. With all the committees, the standard for their work will be to advise and push for implementation of the Plan recommendations not to change or modify those recommendations; unless significant problems are seen in the technical aspects of the recommendations.

The current timeline for the Downtown Master Plan during this fall will include the formation of the committees, and the review of the first set of UDO changes by the "Urban Design and Development" Committee, then the Downtown Commission and Planning and Zoning Commission – and then presentation to the Council sometime in November. The first set of changes will be the modifications to the development review process. The staff has already drafted these changes, and has begun drafting the second set pertaining to the actual design related standards (which will be more complicated). The planning staff has been working with the Downtown Commission's Design Review Committee on these changes, which has been a very helpful process.

Implementation staffing includes (1) Planning and Development staff working with Urban Design and Development Subcommittee – primarily UDO changes; and (2) Sasha Vrtunski – contract employment to provide staff support for implementation for (a) Arts and Culture Subcommittee; (b) Historic Preservation Subcommittee; (c) Transportation and Parking Subcommittee; and (d) Downtown Management Subcommittee.

Finally, the implementation work by the Planning and Development staff (primarily the UDO changes for the Urban Design elements and the Historic Preservation aspects) is now being augmented by the addition of Sasha Vrtunski, who is working on a short term contract to provide staff support for the other aspects of implementation related to the Arts and Culture, Transportation and Park, and Downtown Management elements. Finally, it is important to convey that many aspects of implementation are already underway from both the public and private sectors.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER SPECIFIC RECOMMENDATIONS FOR THE DISTRIBUTION OF HOMELESSNESS PREVENTION AND RAPID REHOUSING PROGRAM GRANT FUNDS

RESOLUTION NO. 09-200 - RESOLUTION AUTHORIZING AGENCY FUNDING USING HOMELESSNESS PREVENTION AND RAPID REHOUSING PROGRAM GRANT FUNDS

Mayor Bellamy opened the public hearing at 7:41 p.m.

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution authorizing agency funding using Homelessness Prevention and Rapid Rehousing Program grant funds. This public hearing was advertised on August 28 and September 4, 2009.

The City of Asheville was approved to receive $509,460 in Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds. In May, City Council approved the Action Plan amendment for the use of funding, which was subsequently approved by U.S. Dept. of Housing & Urban Development (HUD). The Action Plan approved by HUD detailed the process by which the City would distribute those funds.

In June, the City initiated a pre-application process to assess whether interested parties qualified to apply for HPRP funds, using thresholds set by HUD's HPRP guidelines. The pre-application process resulted in five agencies qualifying to submit full applications. Those agencies are:

- Asheville Buncombe Christian Community Ministry (ABCCM)
- Eblen Kimmell Charities (Eblen)
- United Way 2-1-1 (2-1-1)
- Pisgah Legal Services (PLS)
- Western North Carolina Aids Project (WNCAP)

As the application process unfolded, it became clear that rather than a competitive process, each of the qualified agencies felt they had a clear role to play in meeting a portion of the HPRP priorities. A collaborative application was proposed, and the concept accepted by staff.

Collaboratively, the agencies agreed to the following:

- Participate in joint City-County HPRP Oversight Team—The oversight team will meet to ensure that the HPRP is efficiently and effectively implemented since it is an entirely new source of funding from HUD;
- Case managers will participate in the HPRP Case Review—these reviews will be a collaborative team of HPRP staff and other relevant staff from community partner agencies. This team will meet monthly to review assessments and scan the environment for additional resources available to all applicants;
- Based on national and state best practices, WNCAP, ABCCM and Eblen-Kimmel will establish uniform assessment, screening tools, and evaluation processes tailored for our community.
- Make interagency referrals designed to best meet particular households' needs beyond the scope of HPRP;
- Enter data into HMIS consistently;
- Provide reports as necessary;
- Send all payments to third party vendors directly.

2-1-1 will provide community wide outreach. When potential HPRP participants call, 2-1-1 will perform a short assessment and, if the household seems eligible, refer callers to an HPRP lead agency for a full assessment. 2-1-1 will perform follow-up calls on a sample of people referred to evaluate the process.

ABCCM, Eblen-Kimmel Charities, and WNCAP are lead agencies. They will accept referrals from 2-1-1, community agencies, and individuals. Agencies will evaluate to ensure households would remain or become homeless but for HPRP assistance, and verify that there are no other resources available to the household. If a household qualifies, lead agencies will provide housing stabilization, case management, and housing search and placement services. If clients need specialized supports, referrals will be made to Pisgah Legal, On Track, or other community support agencies.

Pisgah Legal will offer legal services to clients so that they can maintain or obtain housing.

OnTrack will subcontract with HPRP agencies to provide Credit Counseling and credit repair as needed.

Community Partner Agencies are not funded, but are an essential support to HPRP. Agencies providing services such as mental health, public health and human services, employment training and education, family reunification, and domestic violence counseling will accept referrals from HPRP funded agencies and make referrals as appropriate.

On August 26, 2009, the Housing & Community Development Committee (HCD) met, reviewed the application requests, staff report for the distribution of HPRP grant funds, and heard presentations from the agencies.

Funds must be committed before September 30, 2009. HPRP guidelines require that all funds be used within a thirty-six month period, or by September 30, 2012.

Regarding the City Council Strategic Operating Plan, this hearing is part of the process that will enable funds to be directed to prevention and rapid re-housing, strategies that have been proven nationally to reduce homelessness.

Pros:

- The collaborative HPRP proposal advances our homeless service delivery system to one designed to prevent homelessness and reduce the effect of homelessness on households.
- It directly supports the goals of the Asheville-Buncombe 10-Year Plan to End Homelessness.
- It advances a System of Cares model in which agencies collaborate to provide client services based upon the agency's strengths, avoiding service duplication and ensuring that clients access housing and supportive services, achieving the most cost-effective and responsive results.
- The collaborative commitment to use HMIS will enable the City to better understand the scope and nature of homelessness in our community.
- The lead agencies bring other funding resources to the table. By skillfully combining a variety of funding sources to meet people's housing crisis needs, agencies ensure that HPRP funds will be maximized to the best possible extent. Along with additional funds, lead agencies also offer experienced and caring human resources as part of their service models. .

Con:

- There is very little administrative funding in this program given the proposed outcomes and scopes of work. The City and agencies will be sharing only 5% of the

total grant (or about $26,000) for administration, which (according to the terms of the grant) is supposed to cover all administrative activities over 3 years.

By preventing homelessness and rapidly re-housing households that are in a housing crisis, we limit the probability that individuals will become chronically homeless. The 10-Year Plan estimates that it can cost up to $12,000 annually in public funds to pay for someone who is experiencing chronic homelessness. The project increases the likelihood that households will obtain or maintain housing as well as employment, education, and community relationships.

The HCD recommends approving the collaborative proposal and budget as presented. The proposal was also reviewed and endorsed by the Homeless Coalition Advisory Committee.

Mayor Bellamy closed the public hearing at 7:46 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

When Councilman Russell asked what the City's administrative costs would be over the 3-year period, Mr. Staudinger said that he didn't think there would be any costs that would be attributed to the City's General Fund.

Councilman Mumpower explained why he felt this is will be a failed effort of well attended social engineering but it does not address the core issues.

Councilwoman Cape spoke in support of the action and said that we have looked at duplication of services for years and these agencies have stepped up to the plate and found a way to collaborate together.

Councilman Newman was pleased with the collaboration of these agencies. He said there will always be a need for strategies to address people, due to whatever circumstances, might be homeless, but during this recession, this need is unique and at a level that a response is necessary. The response put together by these agencies is the right one.

Councilman Miller spoke in support of this action and suggested in one year the agencies report to Council the impact of this collaboration.

Councilman Newman moved for the adoption of Resolution No. 09-200. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

RESOLUTION BOOK NO. 32 – PAGE 215

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY IDENTIFIED AS IRENE WORTHAM ADULT DAYCARE CENTER LOCATED AT 16 AND 18 AZALEA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE CONSTRUCTION OF A NEW 7,169 SQUARE FOOT ADULT DAYCARE CENTER TO REPLACE THE EXISTING STRUCTURE AT 18 AZALEA STREET

ORDINANCE NO. 3784 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY IDENTIFIED AS IRENE WORTHAM ADULT DAYCARE CENTER LOCATED AT 16 AND 18 AZALEA STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-

FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE CONSTRUCTION OF A NEW 7,169 SQUARE FOOT ADULT DAYCARE CENTER TO REPLACE THE EXISTING STRUCTURE AT 18 AZALEA STREET

Mayor Bellamy opened the public hearing at 7:59 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone property identified as Irene Wortham Adult Daycare Center located at 16 and 18 Azalea Street from 16 and 18 Azalea Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning to allow for the construction of a new 7,169 square foot adult daycare center to replace the existing structure at 18 Azalea Street. This public hearing was advertised on August 28 and September 4, 2009.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for two parcels located at the end of Azalea Street from RS-8 (Residential Single-Family High Density District) to RM-16 (Residential Multi-family High Density District) 16 in accordance with Section 7-7-8 of the UDO.

The site consists of two separate parcels located at 16 and 18 Azalea Street with a combined area of approximately 1.49 acres. The lots are currently zoned RS-8, as are adjacent parcels.

Both parcels are owned by the Irene Wortham Center for their adult day care facility, which has been operating at this site since the early 1980s. There is a one-story brick structure on the westernmost parcel, which will remain. The one-story modular structures on the easternmost parcel will be removed and although both parcels will be conditionally-zoned, all construction activity (and staging) will occur on this eastern parcel only.

The applicant is proposing to construct a new building on the eastern parcel for their "Adult Day Activities Program," currently operating in the existing structures. The building will be sited towards the rear of the parcel, with parking in the front, accessed from Azalea Street. The single-story structure is proposed at 7,169 square feet and approximately 17 feet in height. Twenty-two parking spaces (including 2 accessible spaces and 2 bike spaces) are included in the vehicular use area.

Landscaping and open space are required on this site due to both the rezoning and the new construction, and includes a Type A (20') property line buffer around the entire project area, street buffer in front of the parking area, street trees, parking lot landscaping and building impact landscaping. Although not technically required on the parcel where no development activity will occur, staff is recommending that street trees and sidewalks be extended across the entire road frontage of the project area to enhance walkability in the neighborhood and to maintain a consistent streetscape.

The applicant is requesting a conditional zoning to RM-16 to expand their facility and rectify what appears to be a legal (grandfathered) non-conforming situation. The use was established prior to the Unified Development Ordinance (UDO) and would have been allowed under its previous zoning designation (R3), however this use is not allowed in the current (RS-8) zoning district.

Adult Day Care Centers are considered as a Use By Right Subject to Special Requirements (USSR) in the RM-16 zoning district. In these situations, the special requirements are that the maximum building size allowed is 20,000 square feet and there must be a courtyard space facing the street. Both of these conditions have been met and the RM-16 CZ designation would allow the Center to rebuild a more modern and capable facility.

The project was approved with conditions by the Technical Review Committee (TRC) on Monday, July 20, 2009. No members of the public were present and no comments have been received as of the writing of this report. Discussion at the TRC meeting was centered on two issues – the applicant's opposition to staff's recommendation to extend street trees and sidewalks across the entire property frontage and the extent of the water line improvements required by the water allocation process and associated costs. Further study by the applicant revealed that the original waterline improvements indicated in the Letter of Commitment will not be required and the existing waterline provides adequate capacity.

The Planning & Zoning Commission unanimously recommended approval (6-0) of this proposal at their August 20, 2009, meeting. A representative from the Shiloh Community Association voiced support of the project.

Representatives from Irene Wortham Center and the architect met with members of the Shiloh Community Association on Wednesday, July 1st and Monday, July 6th to share the details of this project and answer questions.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural features and topography of the site as well as the surrounding area. Significant landscaping and open space will be provided that will mitigate any incompatibility with the residential neighborhood surrounding this location. There are no significant topographic features on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposal is not expected to injure the value of adjoining or abutting properties. The use has been in operation on the same site for more than 20 years and neither the use nor the existing boundary limits are changing.

4. **That the proposed use or development on the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed development includes a structure that is larger than the average single-family home and a parking lot which is somewhat inconsistent with single-family residential development; however, the proposed project complies with planning and zoning requirements for non-residential uses allowed in residential districts and will be buffered from the adjacent homes by a 20' wide landscape strip of trees and shrubs that should mitigate any negative visual impact.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This proposal meets several goals and objectives of the *Asheville City Development Plan 2025*, including infill development and locating an employment center along a transit route. Additionally, the Sustainable Economic Development Strategic Plan lists the health-care sector as a locational advantage for the City of Asheville. This proposal is to support the continued operations of a local, existing health-care related facility that serves primarily low to moderate-income Asheville residents and improves their quality of life.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This proposed development is located near major road facilities within walking distance to two City bus routes (# 6 & 8). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Remedies a non-conforming zoning situation.
- Allows an existing community support organization to upgrade their facility to improve the client experience.
- Significant landscaping will be installed onsite to provide a buffer to adjacent homes.

Con:

- Will result in a larger parking area than currently onsite, which is not typical in residential areas.

Based on the above findings, staff recommends approval of the conditional zoning as requested by the applicant.

The Executive Director of the Irene Wortham Center explained the mission of Irene Wortham Center and noted they have been in the Shiloh community for over 45 years. They are currently licensed for 47 but they would like to provide services to 77 people. Their current building is not large enough nor does it have the quality their clients deserve. She urged the Council to vote in support of this action.

Mayor Bellamy closed the public hearing at 8:05 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3784, to conditionally zone property identified as Irene Wortham Adult Daycare Center located at 16 and 18 Azalea

Street from 16 and 18 Azalea Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning to allow for the construction of a new 7,169 square foot adult daycare center to replace the existing structure at 18 Azalea Street, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) Staff recommends that street trees and sidewalks be installed across the entire frontage of the site (both parcels) to enhance walkability in the neighborhood and to maintain a consistent streetscape. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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V. UNFINISHED BUSINESS:

A. W.C. REID CENTER CAPITAL PLAN

Project Update and Reid Center Funding and Project Design Status

Parks, Recreation and Cultural Arts Director Roderick Simmons said that this report is to provide City Council an update on the status of funding for the development of a new community center and the progress on completion of the construction documents.

On January 13, 2009, City Council reviewed and approved the new construction plan for the WC Reid Center for the Creative Arts. This action was recommended by the WC Reid Center Advisory Board and the Parks and Recreation Advisory Board.

On May 12, 2009, City Council approved authorizing the City Manager to enter into a contract with Mathews Architecture to develop Master Plan for site development and construction documents for the construction of the WC Reid Center for Creative Arts for an amount not to exceed $278,600.

On August 25, 2009, City Council was notified that a North Carolina Parks and Recreation Trust Fund grant extension and site change for the project was not granted. City Council approved authorization for the City Manager to withdraw from the North Carolina Parks and Recreation Trust Fund grant for Reid Center Renovation Project (#2006-476, DENR PO7033) for $500,000, and gave authorization to reapply for a PARTF grant funding in January 2010 for construction of a new W.C. Reid Community Center. City Council requested an update on project funding and facility design.

Funding Update

Assistant Parks, Recreation and Cultural Arts Director Debbie Ivester said that staff has managed relationships and regular communication with all major funders since the inception of the project. All funds committed to the first phase of construction are designated for theater, classrooms, office, restrooms, storage and parking. The City allocated $500,000 as part of the Fiscal Year 2006-07 capital improvement budget for the project. A portion of the funds have been used for project design and minor improvements at the Reid Center.

Most recent update to funders includes (1) December 2008 regarding change from renovation to construction, and (2) May 2009 regarding phase I and II of project. Below is information pertaining to the major funders.

Funder: Junior League of Asheville Amount: $45,000
Award Date: 2004 Expire Date: NA Purpose: Theater, classrooms, office, foyer, design
Comment: Agrees to the use of funds for construction rather than renovation, expects construction to begin by end of 2009. Funds are committed to project.

Funder: Janirve Foundation Amount: $600,000
Award Date: 2006 Expire Date: 2010 Purpose: General construction
Comment: Agrees to the use of funds for construction rather than renovation, expects construction to begin by end of 2009. Currently in discussion regarding commitment of funds in relation to withdrawal of PARTF grant and feasibility of project.

Funder: Eaton Charitable Fund Amount: $25,000
Award Date: 2007 Expire Date: NA Purpose: General construction
Comment: Agrees to the use of funds for construction rather than renovation, expects construction to begin by end of 2009. Funds are committed to project.

Funder: Glass Foundation Amount: $50,000
Award Date: 2007 Expire Date: NA Purpose: General construction
Comment: Agrees to the use of funds for construction rather than renovation, expects construction to begin by end of 2009. Funds are committed to project.

Funder: U.S. Dept. Housing & Urban Development Amount: $137,200
Award Date: TBA Expire Date: 5 years Purpose: General construction
Comment: Currently conducting technical change in award from renovation to new construction.

Funder: Eckerd Family Foundation Amount: TBA
Award Date: TBA Expire Date: NA Purpose: General construction
Comment: Will reconsider its commitment once the final construction plan is complete that ensures timely completion of the project.

Facility Design Update

Mr. Simmons said that Mathews Architecture began work when the contract was approved in June 2009.

Mathews Architecture is responsible for fulfilling two stages of project development that would enable the project to be bid out: (1) Master Plan for site development and (2) Construction documents for the construction.

(1) Master Site Plan for the building and site.

The master plan stage has been completed and entailed a site survey, researching and designing the facility for every phase of development to meet UDO requirements, preparation for LEED requirements, and addressing utility easement considerations.

(2) Construction documents for the construction

The second stage of design development/construction documents is well under way and is expected to be competed by October. This includes the next level of refinement design and engineering that addresses the layout of the facility, basic

structural components and foundations, finishes and preliminary observation of costs. The fundamental plans will be laid out in this stage along with specifications and finalized by the architect and engineers prior to going to bid.

The timeline we are currently working on is the bids will go out on November 4, the bid opening is set for December 4, depending on Council's schedule they hope to bring it back in December, with construction starting in late December or early January.

This project complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it supports strategically increasing recreational programming level of service, ensures a continued high level of service in parks, and increases connectivity to parks and greenways. In the Master Plan neighborhood input indicates a strong desire to continue a variety of programs for youth at this site and highlights the need for the continuation of neighborhood services in this part of the city. The Master Plan prioritizes this project as the highest ranking new facility in the park system.

With the lost of PARTF funding in the amount of $500,000 the budget available now for construction of a first phase is $1,500,000. After paying architect fees in the amount of $278,600, we will have $1,221,400 remaining for building the new community center.

Final cost estimations from the architect will not be available until November, but the preliminary review suggests the project scope will be in the range of $2,000,000 or more.

Staff met with the Chief Financial Officer Ben Durant to discuss possible funding options if the bid price for the project comes in higher than expected.

There is approximately $650,000 of un-programmed funds in the City's capital reserve accounts that could be appropriated as needed to fund higher than expected bids for the Reid Center project:

General Capital Reserve Account	$180,000
Donations from Jake Rusher Estate	$470,000
Total	$650,000

Alternatively, there may be an opportunity to combine any additional Reid Center costs with a larger financing package that is planned for Fiscal Year 2009-10 that currently includes the acquisition of fire trucks, two sewer projects, installation of an irrigation system at the golf course, and pool improvements.

If the financing option is chosen, debt service costs would increase depending on the additional amount that is financed.

Pros:

- By proceeding with the final design and appropriating funds keeps the project on track with key components of the master plan
- Leverages the private funding already in place to support the project

Cons:

- Construction at the Livingston Street Park site removes one adult size ball field from the City's inventory
- Appropriating additional funds from the City's capital reserve accounts would deplete the capital reserve

Staff is recommending proceeding with the final designs for the project and asks City Council to provided policy direction on appropriating funds to replace the loss of the PARTF grant for project construction or placing project construction on hold for future development.

He provided Council with a cost breakdown for renovations of the current W.C. Reid Center (total probable cost is $5.4 Million), along with a list of minor improvements that have been made to the existing facility.

In response to Councilwoman Cape, Mr. Simmons said that after we apply for the PARTF grant in January, we would know be notified in July, would enter the contract in August, and expend funds in September. Any funds awarded would have to be for construction that hasn't occurred up to that point. We would be looking at elements that were left out of Phase I.

In response to Councilwoman Cape, Ms. Jane Mathews, with Mathews Architecture, said that they have not discussed a staging aspect that would adhere to the ¼ reduction of PARTF funds. They won't know an exact more defined budget until they complete the design development which is scheduled to be completed in a few weeks. That will be the first point they will have detailed independent cost estimates. They only now have a conceptual budget that doesn't take into account the bidding climate, which is now very favorable.

Upon inquiry of Councilwoman Cape, Ms. Ivester said that the Junior League of Asheville, Eaton Charitable Fund and Glass Foundation funders have been flexible. The Janirve Foundation is also flexible; however, the only thing binding them now is their close-down process. When we met with them in May to talk more specifically, they focused on the close-down process. They felt that if construction could start by the end of the year and then see some good progress into the first couple of month of 2010, they could continue to commit the funds. If the breaking ground occurs in January vs. December, staff would be happy to have that conversation with the funders.

In response to Councilwoman Cape about possible funding options, City Manager Jackson said that (1) the applicable Energy Block Grant funds have been committed, but the ARRA Project Manager will look for other sources of funds; and (2) the Jake Rusher funds are held by the Trust for Public Lands and there is $470,000 available for land acquisition and possibly park development; however, Council shouldn't bank on that entire amount but may need to supplement it with a combination of funds. He would need Council direction if they want staff to follow-up with the Trust for Public Land as well as with other funding sources.

After hearing from Mr. Simmons and Ms. Mathews about the schematic designs and the current bidding climate, Vice-Mayor Davis said that he would really like to see a good facility at the Reid Center and this is a worthwhile project, but we need to be realistic about how much it will cost.

Councilwoman Cape noted that when Council compared the cost of a new building vs. renovation, the new building would be cheaper to construct. We have a community in that area that relies heavily on an active engaged center for our children. We need a safe, healthy and warm place for children to keep them off the streets. We have had a commitment to that area community for a long time to do something. She wanted to see some innovative funding options to fill this gap. She said there are some new funding mechanisms that are available to cities to get good infrastructure loans. She didn't want to walk away from fulfilling some project in this area.

Councilman Mumpower felt that we had an unreliable budget from the beginning and Council can't make good decisions without a reliable budget.

Councilman Mumpower presented the following proposal to reconsider the new Reid Center. He said that the problem is that last year the Council majority committed a half million of City tax dollars to the renovation of the Reid Center. This past winter the Council majority passed a resolution supporting the construction of a new Reid Center on the site of the current ballpark on the corner of Depot and Reid. In May, the majority followed-up with a vote to commit

$250,000 of the roughly $2 Million existing budget for architectural fees. Two weeks ago, the majority voted to return a jeopardized half million grant – reducing the current funds to $1.5 Million. There are several problems associated with these actions (1) $1,250,000 is an inadequate budget for the first (and largest) phase of the proposed project; (2) We are losing a ballpark and will still need action on the existing facility; and (3) The need for a functional facility in this community remains, but the project continues to struggle under unrealistic proposals, budget limitations, and procedural missteps.

Councilman Mumpower's proposal is (1) that the Council majority instruct the City administration to stop action on the new Reid Center site; (2) That the administration be instructed to fast track (90 day) a *plan* for the incremental repair and cosmetic upgrade of the existing Reid Center in a manner that limits code considerations but increases the utility and attractiveness of the facility; (3) That a budget be developed to assure a 3+/- year plan to enhance the existing Reid Center; (4) That the City sponsor a aesthetic design competition for key rooms of the facility and thus borrow from the creative energies of local designers/artists/ citizens who can assist in making cosmetic changes to the facility that assure a long-term, special, affordable, and functional role for the existing Reid Center facility; and (5) That an informal design contest be held to develop visions for the cosmetic improvements of the outside of the building and landscaping of the facility.

He said that incremental repair that does not trigger primary code considerations, and we can use local talent to maximize our limited dollars and make the best of what we have. The Civic Center renovations are one model of incremental improvements without triggering code considerations and the City Hall is another.

In response to Councilman Newman, Mr. Simmons said that for renovations we must meet the Minimum Building Code, but he did not know what triggers that code. One problem with renovation incrementally is that if we do electrical or plumbing work, it has to be the entire building, not one section. The building is in compliance with the Fire Code.

In response to Councilman Newman, Mr. Simmons said that staff's decision came after they looked at the life of the building – an 80 year old structure – and how much money they would have to put in it to make it functionable. We could put a lot of money in it to make it a presentable community center, but it still won't function in the best way to deliver programs and services because it wasn't designed as a community center – it was designed as a school. Even though the square footage is 37,000, there is a lot of square footage that is lost because it's not programming area, just dead space within the building. Even if we renovated the building we still wouldn't be able to take advantage of that square footage and space.

Mayor Bellamy felt the process was flawed. When staff met with the community to refurbish the Reid Center there were some things that should have been in place at that time, but we don't need to go back and rehash that process. But, we can learn from it. She felt that Council needs to understand that we have to stop asking other people to take care of our assets, whether it's the Grove Arcade or the Pack Square Park, or our facilities that are in disrepair. The City should have taken the leadership in repairing the Reid Center, but the community responded with grants. Regarding renovation, the Stephens-Lee Center is an example of a facility that has been in existence for many years, or the Municipal Building. We must take the leadership and say we are going to invest the money to fix up our facilities, in this instance the Reid Center. She said that 7,000 square feet vs. 37,000 square feet is not apples to apples, but it doesn't meet the needs of the community either. If you go to the Reid Center any time of the week you will see the number of children and adults that use that facility. The number of independent uses in that building is significant. She felt it's important not only to complete Phase I, but the entire Master Site Plan and we need a complete timeline for the different phases too. Council needs all information to make an informed decision. She would love to have a new building but the LEED certification by Council is an additional 15% of the cost. That's an example of what needs to be laid out so it's transparent. We need to be committed to start the project and finish it. She felt it

was realistic to say that we will finish the project and find the money, whether through a creative green grant financing or using our bond capacity. We do not want that community to be let down as they say we have done with the Eagle-Market Street area in that nothing has moved forward. She asked Council to stand firm on a commitment to finish what we start. We cannot turn our backs on another project and allow the community to step forward and say we'll do it. The City must take care of their assets in the community. We could have a new Council come in and this might not be their priority. She could not support 7,000 square feet when we have lost ¼ of the funding. She disagreed with the amount of dead space in the 37,000 square foot building. When we looked at refurbishing the building, there was a commitment to utilize every square foot in the building. She felt what's dead is the desirability to complete the project.

Throughout discussion, Mr. Roderick and Ms. Ivester responded to various questions/ comments from Council, some being, but are not limited to: is there a programming enhancement piece associated with the 7,000 square foot new building; what do we get with the new building that may not be offered in the new building; will the gymnasium be added in Phase II; has there been a priority list put for the renovation piece; what risk do we have if we deplete the City's capital reserve fund; when staff spoke with the Eckerd Family Foundation did they get a sense of whether they will contribute to the project or not; was there a problem with the U.S. Dept. of Housing and Urban Development's technical change in the award; what is the status of the effort with the Chamber of Commerce to look at a greenhouse; and what is the status of conversations with UNC-Asheville using the facility, in what phases and at what cost.

Ms. Meg White, former fundraising specialist for the City of Asheville, said that with the work of a committee of 16 people they raised $1 Million, all of the money outlined above except for the Junior League of Asheville money and the U.S. Dept. of Housing and Urban Development money. That $1 Million was to be matched with $500,000 by the City and $500,000 from PARTF. The Eckerd Family Foundation grant was $300,000 but she was not sure if that is still accurate. She noted that $25,000 was also raised by the community – a dinner they hosted, individuals writing $5-50 checks, and pennies collected from the children. She urged Council not to let the community down and build a new Reid Center.

In response to Mayor Bellamy, Mr. Simmons said that his goal is to get Phase I completed and then they can start identifying how much it will cost with the gym since we have the footprint. Then when we do apply for grants we can break ground and start the project right away, instead of using the grant dollars to design the gym. With UNC-Asheville, there are a couple of grants they have identified for an initiative to do some interaction with students coming into the Reid Center to do program space, the greenhouse component, etc. They have been meeting with UNC-Asheville representatives to see what that program would look like. Also, after we reapply for the PARTF grant and, if we are successful with that grant, we will use it for the gym, along with matching money in our Capital Improvement Plan (CIP) process.

Mayor Bellamy felt that staff has not given Council the entire picture of the scope and process of this initiative. Council must have details about funding at every level. Council should be provided information on all the funding partners and what grants they are pursuing. She asked the City Manager to provide Council a clear picture of what is in the architect's purview, what staff is working on in terms of funding sources, what is lacking, and how those funds will be raised. We need to look at where we are with our debt capacity and go after the funding to complete this project.

Councilman Mumpower moved to cease all operations on the development of a new Reid Center, to adjust our contractual arrangements within whatever parameters are set up in those contracts, and to re-direct our efforts to developing a 30-day plan for a 3-year incremental repair and cosmetic upgrade of the existing Reid Center facility using old and current information.

Councilman Russell offered a friendly amendment that we not cease progress, but pause it for 30 days while we look into options of this other proposal.

Councilman Mumpower accepted Councilman Russell's friendly amendment. Councilman Russell then seconded Councilman Mumpower's amended motion.

Upon inquiry of Vice-Mayor Bellamy, Mayor Bellamy said there is no plan in place to pay for Phase II. She wanted Council's commitment to complete the entire project, not just phasing the project on paper.

Vice-Mayor Davis agreed with Mayor Bellamy in that we need a clear direction from staff in how we are going to fund the entire project. The new building makes sense if we can pay for it. If necessary, we can rehabilitate the old facility in increments.

Councilman Russell withdrew his second to Councilman Mumpower's amended motion in that he felt Council should move forward with this project.

In response to Councilwoman Cape, Ms. Mathews said they have prepared a detailed Master Site Plan that shows all phases. They are taking the Phase I component of the Master Site Plan and expanding that into complete detailed drawings and documentation for bidding. She did note that architects do not work alone and what the City is paying is a lot of people working on this project between her office and other consultant offices who are participating in the project.

Councilwoman Cape moved to move forward with Phase I of the Master Plan, with the understanding that we are under-funded at this point, and direct staff to continue to look for other funding options. This motion was seconded by Vice-Mayor Davis.

When Mayor Bellamy asked what happens to Phase II, Mr. Simmons explained that their goal is to finish the Master Site Plan. As we move into the CIP process we will be able to present to Council with Phase II of the project, along with possible funding sources and the amount of money they need in their CIP so we know what the City commitment is even before starting fundraising for the project. We contracted with Mathews Architecture to do a Master Site Plan for the entire site knowing that we will need future elements. We are now doing construction drawings for Phase I because we need to get it out to bid and build it. After we get that moving forward we start to look at Phase II, with staff time identifying the funding sources. Again, his goal is to meet the Phase I deadline and get bids out for construction and then look at how we design Phase II and how much it will cost and build that cost into the CIP budget.

When Mayor Bellamy asked City Attorney Oast what she could do to make that commitment happen, City Attorney Oast said that City Council, in their planning processes, sets the CIP. If Council moves ahead with Phase I, they can give direction that Phase II be brought to Council as appropriate with the funding sources and the other aspects of the project identified.

Mayor Bellamy asked for a friendly amendment to Councilwoman Cape's motion to make sure that there is a commitment that Phase II be brought back to Council with funding sources identified. She wants a commitment to complete the entire Master Site Plan.

Councilwoman Cape accepted the friendly amendment, noting that we have a goal to complete the Master Plan for the whole project and we are going to phase it as opportunities arise and funding options become available.

City Attorney Oast re-stated the motion that staff is directed to move forward with Phase I and that at the appropriate time (whether through the budget process or the CIP process) that Mr. Simmons will come back to Council with more details about Phase II to include funding and implementation.

Councilman Miller suggested the following friendly amendment language "and provide Council with a detailed staging plan complete with estimate costs and funding options as available."

Councilman Mumpower felt that with our 10% unemployment rate, undertaking new capital construction is ill advised. And, we will continue to own 37,000 square feet that we will have to renovate. He suggested that if we drop down our vision and start thinking incrementally, cosmetically and creatively we are not talking about an $8-10 Million proposal. He felt you can take a 37,000 square foot facility and work on it a piece at a time.

The following amended motion made by Councilwoman Cape and seconded by Vice-Mayor Davis carried on a 6-1 vote, with Councilman Mumpower voting "no": Staff is directed to move forward with Phase I (with staff directed to continue to look for other funding options) and that at the appropriate time (whether through the budget process or the CIP process) staff is directed to provide Council with a detailed staging plan, complete with estimate costs and funding options as available.

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS

At the recommendation of the Boards & Commissions Committee, Councilwoman Cape moved to instruct the City Clerk to prepare the proper paperwork to appoint Ms. Julie Fulwood (representing the business or non-profit sector) and Ms. Teresa Foster-Moorehead (representing the education and the health/medical profession) to the Americans with Disabilities Act Compliance Committee, to each serve a three-year term respectively, terms to expire August 22, 2012, or until their successors have been appointed. This motion was seconded by Councilman Russell and carried unanimously.

At the recommendation of the Boards & Commissions Committee, Councilman Mumpower moved to instruct the City Clerk to prepare the proper paperwork to extend the terms of Mr. Steve Sizemore and Mr. Tom Byers for an additional six months, term to expire February 14, 2010, or until the stormwater and erosion control ordinance has been adopted by City Council, whichever occurs earlier. This motion was seconded by Councilman Russell and carried unanimously.

It was the consensus of Council to interview Bob Patel for a vacancy on the Buncombe County Tourism Development Authority.

It was the consensus of Council to interview Stephanie Weil for a vacancy on the URTV Inc. Board of Directors.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Angela Smith spoke to Council about a failed stormwater adversely affecting 96 S. French Broad Avenue. Mayor Bellamy referred Ms. Smith to City Manager Jackson, who in turn said that he would investigate the concern and would update Council and Ms. Smith.

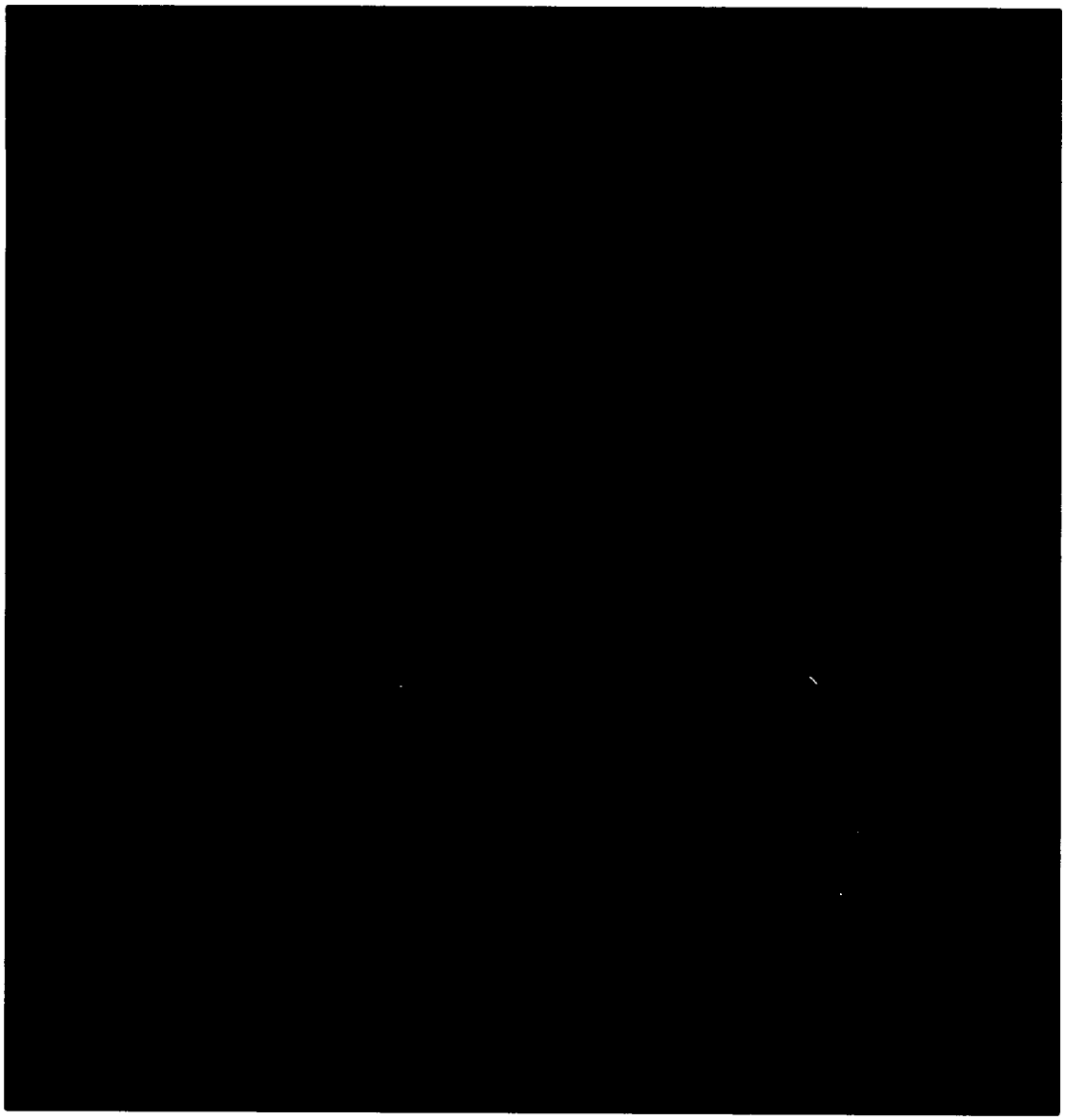
The following claims were received by the City of Asheville during the period of August 14-27, 2009: Doug Chrisawn (Police), Greg Lewis (Water), Stewart Coleman (Streets), AT&T (Water), Lula Mays (Water), AT&T (Water), Ray Quate (Fire) and Donald Taylor (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:37 p.m.

Magdalen Burdison
CITY CLERK

MAYOR



BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 86

(SEPTEMBER 22, 2009 – MAY 25, 2010)

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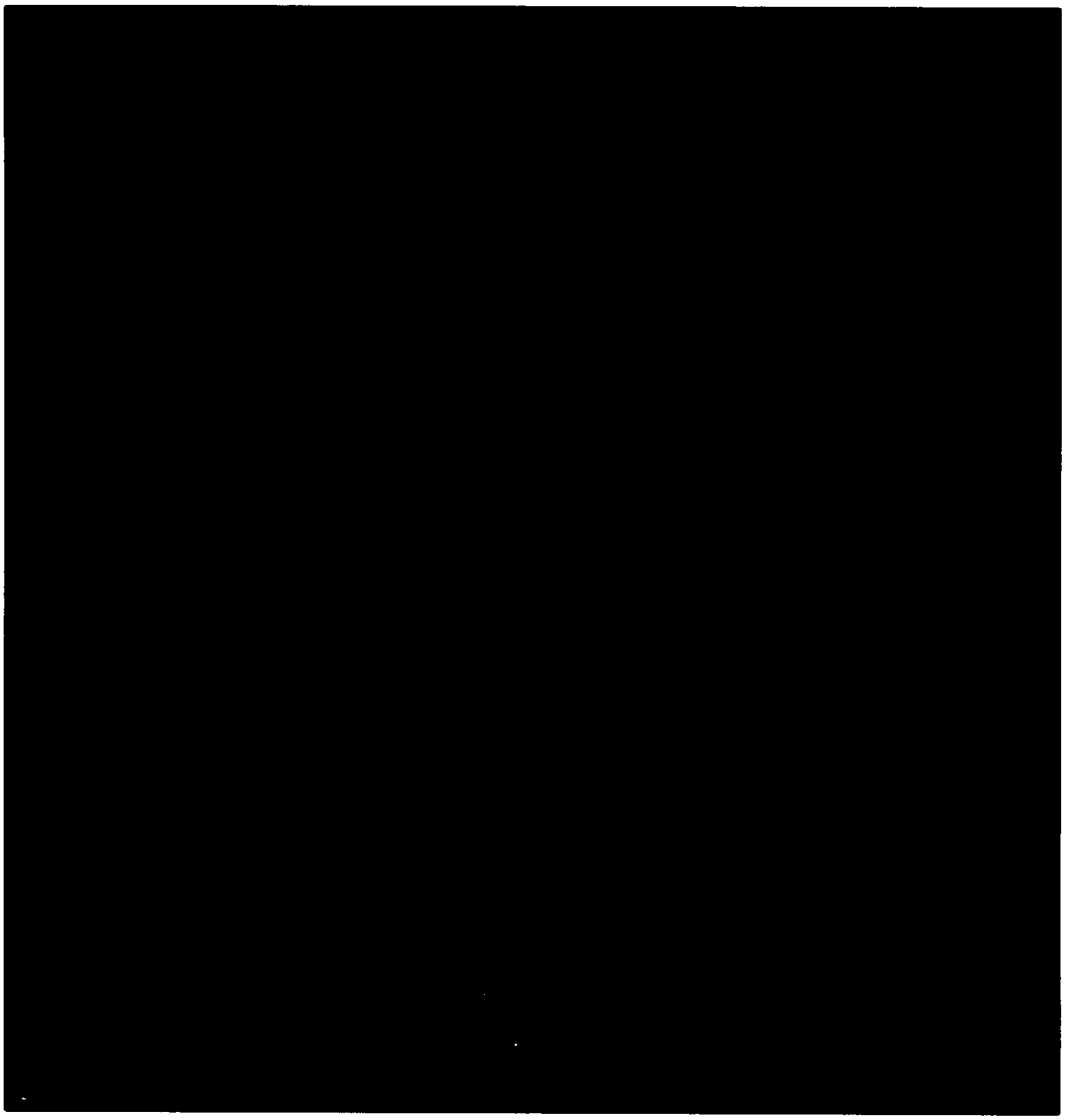

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Tuesday – September 22, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Miller gave the invocation.

FLOOD UPDATE

Interim Fire Chief Scott Burnette updated City Council on the recent rains. He provided them with information on the impact of the heavy rains and the City's actions. Using graphs, he explained the flooding situation of the French Broad River and the Swannanoa River.

I. PROCLAMATIONS:

A. RESOLUTION NO. 09-201 - RESOLUTION NAMING THE BASEBALL/SOFTBALL COMPLEX AT VALLEY SPRINGS MIDDLE SCHOOL FOR IRBY BRINSON, FORMER DIRECTOR OF ASHEVILLE PARKS, RECREATION & CULTURAL ARTS DEPARTMENT

Mayor Bellamy was pleased to recognize Mr. Irby Brinson, former director of the Asheville Parks, Recreation & Cultural Arts Department. Mayor Bellamy then read the resolution naming the baseball/softball complex at Valley Springs Middle School for Irby Brinson, former director of Asheville Parks, Recreation & Cultural Arts Department, in agreement with the Buncombe County's School Board's approval in January of 2007 naming the baseball/softball complex "The Irby Brinson Athletic Complex".

The baseball/softball complex is located at Valley Springs Middle School which is owned by the Buncombe County Board of Education. In June of 1992, the City and the Buncombe County School Board entered into a 30 year agreement with the Buncombe County School Board wherein the Buncombe County School Board would provide land at Valley Springs Middle School for the purpose of providing athletic fields that the City would fund, install and maintain.

Irby served in several positions in the City of Asheville Parks, Recreation & Cultural Arts Department, most recently as the director for 15 years and until his retirement in 2006. During his tenure, Irby provided leadership and dedication to the operation and delivery of parks and recreation services. He oversaw significant improvements and additions to the park, greenway and facility system; and expansion of a comprehensive recreation, cultural art and fundraising program. His most notable achievement was leading the Department to become the first municipal recreation department in the nation to be accredited under the American Academy for Park and Recreation Administration in 1994, followed by the Gold Medal Award as a department of excellence by the National Recreation and Parks Association in 2002.

The Recreation Board unanimously approved the naming of the baseball/softball complex at Valley Springs Middle School in honor of Irby Brinson at its regular meeting in November 2006. The Buncombe County School Board approved the naming of the baseball/softball complex "The Irby Brinson Athletic Complex" at its regular meeting in January 2007.

Pros:

- Recognize a long-time public servant for his considerable contributions to Asheville in providing parks, facilities and recreation services for all citizens and visitors of Asheville.

Con:

- None

The Recreation Board recommends City Council approve the naming of the baseball/softball complex at Valley Springs Middle School for Irby Brinson, in agreement with the Buncombe County's School Board's approval in January of 2007 naming the baseball/softball complex "The Irby Brinson Athletic Complex".

Mr. Brinson thanked City Council for their support, his family for their understanding, and the thousands of volunteers who worked with him during his service with the City.

When Mayor Bellamy asked for public comment, none were received.

With a standing ovation, Councilman Mumpower moved to adopt Resolution No. 09-201. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 216

B. RECOGNITION OF GROVE PARK INN SPONSORSHIP DONATION FOR THE 2009 SEASONAL SIZZLE AT SEVEN

ORDINANCE NO. 3785 - BUDGET AMENDMENT FROM THE GROVE PARK INN FOR THE 2009 SEASONAL SIZZLE AT SEVEN

On behalf of the City of Asheville, Mayor Bellamy thanked the Grove Park Inn and Spa for their support again this year for the Seasonal Sizzle at Seven. The City is pleased to have the support of an organization like the Grove Park Inn and Spa and all of us look forward to working with them again this year.

Mr. Ron Morin, Grove Park Inn and Spa Executive Director of Operations, presented the City with a check for $40,000 to fully fund the event. The Sizzle was started last year by the Grove Park Inn and Spa with support from the City to bring people to Downtown Asheville to eat in our great restaurants, to shop in the wonderful stores, and in the end help to support the local economy during the holiday season. This year, Downtown Asheville will be filled with fireworks on during the first three Saturday's in December (December 5, 12, and 19) at 7:00 pm.

Summary: The consideration of a budget amendment, in the amount of $40,000, for a sponsorship donation from the Grove Park Inn Resort and Spa for the 2009 Seasonal Sizzle at Seven.

The Grove Park Inn is donating $40,000 to the City of Asheville to fund the 2009 Seasonal Sizzle at Seven. The 2009 Seasonal Sizzle at Seven is a fireworks show that will take place on Saturday, December 5, 12, and 19 at 7:00 pm in downtown Asheville.

The Seasonal Sizzle at Seven was started in December 2008 as a way to bring people to downtown Asheville to eat in the restaurants and shop in the stores. Local area restaurants and shops will be offering discounts and specials on the evenings of the event.

The funding will fully support the cost of the fireworks and related administrative costs, permit fees, police support, public works support, program enhancements, and marketing.

The City of Asheville will create a stronger, more prosperous community with smart investments that accomplish real, lasting, tangible returns.

Pros:

- Provide full funding for the cost of the event.
- Managed by the City of Asheville Parks, Recreation and Cultural Arts Department.

Con:

- None

The budget amendment will increase the operating budget in the Parks, Recreation and Cultural Arts Department in the Cultural Arts Division for contracted services by $40,000 to fund the Seasonal Sizzle at Seven in December 2009.

City staff recommends City Council to authorize the City Manager to increase the budget for funds received from the Grove Park Inn in the amount of $40,000 to fund the 2009 Seasonal Sizzle at Seven in downtown Asheville.

When Mayor Bellamy asked for public comment, none were received.

Mayor Bellamy said that members of Council have previously been furnished a copy of the ordinance and it would not be read.

Councilman Mumpower moved to adopt Ordinance No. 3785. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 414

C. PROCLAMATION PROCLAIMING SEPTEMBER 28, 2009, AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN"

Mayor Bellamy proclaimed September 28, 2009, as "Family Day – A Day to Eat Dinner with your Children" in the City of Asheville.

D. PROCLAMATION PROCLAIMING OCTOBER, 2009, AS "FIRE PREVENTION MONTH"

Vic-Mayor Davis read the proclamation proclaiming October, 2009, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Interim Fire Chief Scott Burnett, who briefed City Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING OCTOBER, 2009, AS "CRIME PREVENTION MONTH"

Councilman Newman read the proclamation proclaiming October, 2009, as "Crime Prevention Month" in the City of Asheville. He presented the proclamation to Master Police Officer Allen Dunlap, who briefed City Council on some activities taking place during the month.

F. PROCLAMATION PROCLAIMING OCTOBER 4-11, 2009, AS "MENTAL ILLNESS AWARENESS WEEK"

Mayor Bellamy read the proclamation proclaiming October 4-11, 2009, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Mr. Jim Pitts, President of the National Alliance on Mental Illness North Carolina, and Ms. Christine Smith, Co-President, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "F", "G" and "K" were removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 8, 2009

B. RESOLUTION NO. 09-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER TARGET COMMUNITY RELATIONS PROGRAM

ORDINANCE NO. 3786 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER TARGET COMMUNITY RELATIONS PROGRAM

Summary: The consideration of (1) a resolution authorizing the City to accept funds for a TARGET Grant, and (2) the accompanying budget amendment, in the amount of $1,000.

The Asheville Police Department (APD) has been awarded a TARGET grant for 2009, in the amount of $1,000. These funds are to be used for the enhancement of the APD Explorer post through the purchase of uniforms and equipment.

In 2008 APD re-instituted our youth Explorer Program. This program is geared toward involving youth in a hands-on interactive learning about the APD. This program not only educates youth but also instills responsibility by challenging youth to earn supervisory promotions within the unit. Part of this program involves practical training in Law Enforcement skills such as radio communications, traffic stops, traffic directions, etc. Additionally our Explorers are able to compete in Explorer competitions to display the skills they have learned – which includes best dress uniform.

This non-match 100% TARGET grant will aid the APD in furthering our program in the purchase of dress uniforms for our Explorer Post.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing youth awareness and involvement with APD
- Expanding our positive reach into the communities we serve through youth and their families/friends
- Utilize Explorers to assist APD in special events for traffic control/direction or similar activities

Con:

- None.

There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept grant funds from TARGET; and (2) the associated budget amendment, in the amount of $1,000.

RESOLUTION BOOK NO. 32 – PAGE 217

ORDINANCE BOOK NO. 25 – PAGE 416

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT

BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT

These items were removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 09-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE RECEIPT, RELEASE AND REFUNDING AGREEMENT TO ACCEPT FUNDS ACCORDING TO THE WILL OF NELL G. BADGETT

ORDINANCE NO. 3788 - BUDGET AMENDMENT FROM THE BADGETT ESTATE FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of (1) a resolution authorizing the City Manager to sign the Receipt, Release and Refunding Agreement with the Badgett Estate to accept funds according to the will of Nell G. Badgett; and (2) the associated budget amendment, in the amount of $5,000.

The Asheville Police Department (APD) has received funds according to the will of Nell G. Badgett in the amount of $5,000. These funds are to be used by the APD as needed. The APD has requested that these funds be applied to the APD Community Policing line for the Annual Awards Banquet as a means to honor our employees, citizens and the generosity of Nell Badgett. As condition upon receiving the funds the estate has requested that the agreement be signed indicating that the funds will be transferred to the APD.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe.

Pros:

- Acceptance of gift from the Estate of Nell Badgett
- Furtherance of APD Annual Awards Program to recognize employees and citizens in enhancing our community

Con:

- None.

There is no fiscal impact at this time for City Council to approve the resolution accepting funds.

City staff recommends City Council authorize the City Manager to sign the Receipt, Release and Refunding Agreement with the Badgett Estate; and to adopt the associated budget amendment, in the amount of $5,000.

RESOLUTION BOOK NO. 32 – PAGE 219

ORDINANCE BOOK NO. 25 – PAGE 420

E. ORDINANCE NO. 3789 - BUDGET AMENDMENT TO TRANSFER FUNDS FROM THE CAPITAL RESERVE FUND TO COVER CLOSING COSTS INCURRED DURING THE PURCHASE OF LAND FOR A FIRE STATION OFF OF SAND HILL ROAD

Summary: The consideration of a budget amendment transferring $3,566 from the capital reserve fund to cover closing costs incurred during the purchase of land for a fire station off of Sand Hill Road.

Asheville City Council budgeted $250,000 in the Fiscal Year 2006-07 capital improvement budget for the purchase of land off of Sand Hill Road for the purpose of locating a future fire station. During the land purchase closing, additional expense was incurred to conduct an environmental site survey as well as attorney's closing costs. This additional expense will require transferring $3,566 from the capital reserve fund to this project.

This action complies with the Strategic Operating Plan by ensuring financial accountability by matching resources with strategic initiatives.

Pros:

- This budget amendment allows for financial accountability in moving the total funds needed for this project into the project account to reflect the total amount spent for this purchase.

Con:

- Reduces the capital reserve fund by $3,566.

There is currently $180,000 available in the City's capital reserve fund. This amendment will reduce that amount to $176,434.

City staff recommends that City Council approve this budget amendment to transfer $3,566 into this project.

Ordinance Book 25 - Page 422

F. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF MARTIN LUTHER KING JR. DRIVE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION TO PROVIDE RESTORATION AND REPAIR SERVICES FOR THE WALL STREET AND RANKIN AVENUE PARKING GARAGES

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION NO. 09-207 - RESOLUTION APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The terms of Bonnie Love (representative from the business or non-profit sector) and Carol Ann Pothier (representative from the education and the health/medical profession) expired on August 22, 2009.

On September 8, 2009, it was the consensus of Council to appoint Julie Fulwood (representative from business or non-profit sector) and Teresa Foster-Moorefield (representative from the education and the health/medical profession) to each serve a three-year term respectively, terms to expire August 22, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 223

I. RESOLUTION NO. 09-208 - RESOLUTION EXTENDING THE TERMS OF MEMBERS TO THE PLANNING & ZONING COMMISSION

Summary: The terms of Tom Byers and Steve Sizemore expired on August 14, 2009.

At the Planning & Zoning Commission meeting on August 20, 2009, the Commission unanimously recommended that City Council consider extending the terms of Mr. Byers and Mr. Sizemore until the final review of the Stormwater & Erosion Control Ordinance has been adopted.

On September 8, 2009, it was the consensus of Council to extend the terms of Steve Sizemore and Tom Byers for an additional six months, term to expire February 14, 2010, or until the stormwater and erosion control ordinance has been adopted by City Council, whichever occurs earlier.

RESOLUTION BOOK NO. 32 – PAGE 224

J. RESOLUTION NO. 09-209 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH WILLIAM S. HARRISON JR. AND CHARLOTTE DE. HARRISON LIVING TRUST FOR REAL PROPERTY LOCATED OFF OF EAGLE STREET

Summary: The consideration of a resolution authorizing the Mayor to execute a Lease Agreement between the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust and the City of Asheville for real property located off of Eagle Street.

The subject property off of Eagle Street, identified as PIN # 9649-50-1164-00000, is owned by the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust and has been utilized by the City for several years as secured parking for police vehicles and outdoor storage. This surface parking lot has a total of 35 parking spaces and is secured by a chain link fence.

The proposed term for this lease is five years, at a rental rate beginning at $1707.00 with annual increases of 3.5%. The City will also be responsible for paying related tenant expenses, including property tax, storm water bills and upkeep. Staff has performed analysis of monthly parking rates in downtown, and found this price point to be consistent with those numbers.

The opportunity to obtain secured parking that is directly adjacent to the City Municipal Building allows the Police Department to park vehicles and utilize outdoor storage that, in turn, supports efforts to improve public safety in downtown.

Pros:

- Optimum location for downtown city vehicle and police parking
- Secured area with fencing

Con:

- None

The fiscal impact will be as follows: (1) Fiscal Year 2010: $20,484 expenditure each year, plus $7,829.25 for property taxes and stormwater; and (2) Beyond Fiscal Year 2010: Additional expenditure to include the base rate of $20,484 per year plus 3.5% escalation per year.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust on behalf of the City of Asheville.

Mayor Bellamy recognized Mr. Tim Harrison and thanked him for leasing the parking lot property to the City of Asheville for many years.

RESOLUTION BOOK NO. 32 – PAGE 225

K. RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A PRIVATE EVENT IN THE PACK SQUARE AREA OF PACK SQUARE PARK FOR WINDOWS ON THE PARK ON OCTOBER 9, 2009

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 09-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT

ORDINANCE NO. 3787 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT

Summary: The consideration of (1) a resolution authorizing the City to accept funds for the 2009 Byrne Justice Assistance Grant – Local Solicitation and (2) the accompanying budget amendment, in the amount of $90,560.

The Asheville Police Department has been awarded the Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. The Asheville Police Department (APD) and Buncombe County Sheriff's Department have been allocated $90,560 with Asheville receiving $64,516 and Buncombe County receiving $26,044. The distribution of funds has been approved through a signed Memorandum of Understanding.

The APD plans to purchase in-car video systems to place in patrol cars. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens. The digital cameras provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens

as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure evidentiary storage and wireless upload capabilities of the system create a user friendly system that is extremely secure and versatile.

The Buncombe County Sheriff's Department plans to purchase enhanced laser rifle sights and rifle simulator training equipment. Through the purchase of these items the department seeks to improve the confidence, skills and abilities of deputies responding to active shooter situations. These items will serve to enhance a program which already issues rifles to deputies who perform enforcement actions.

There will be an expense of $64,516 by the APD for the in-car video system. The Buncombe County Sheriff's Department will expend $26,044 for the purchase of enhanced rifles sights (laser) and rifle simunition training equipment. This accounts for the total allocation of $90,560 for this Grant.

This is a 100% non-matching grant that will enable the APD to greatly improve the Municipal Building Security and improve the processing of fingerprints and palm prints to compare to those compiled locally.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing In-Car video will allow for better documentation of police related incidents.
- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept grant funds through US Office of Justice Programs; and (2) the associated budget amendment, in the amount of $90,560.

Councilman Mumpower was troubled with the dysfunctional court system and felt that the state should use those funds for that purpose and let the City use it's own funds to fund the equipment.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-203. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 218

Vice-Mayor Davis moved for the adoption of Ordinance No. 3787. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 418

F. RESOLUTION NO. 09-205 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property off of Martin Luther King Jr. Drive.

A bid has been received from Simon Western Properties, LLC in the amount of $115,000 for the purchase of land off of Martin Luther King Jr. Drive (PIN # 9648-58-8911-00000).

The land off of Martin Luther King Jr. Drive was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a sloping to steep parcel measuring approximately 0.67 acre±. The parcel has frontage on Martin Luther King Jr. Drive and is appropriate for sale as a residential lot with current zoning RM8. The bid from Simon Western Properties LLC is in the amount of $115,000. We have an appraisal on file prepared by Dry Ridge Appraisal Service, LLC dated August 28, 2009 that estimates the fair market value of the property to be at $115,000. The current bid is equal to the appraised fair market value.

This action complies with the strategic operating plan in that income from the sale of this property will directly benefit the CDBG Program, thus providing funding towards affordable housing.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will be CDBG Program Income.

Economic Development staff recommends City Council approve a resolution authorizing the City Clerk to advertise an offer to purchase property off of Martin Luther King Jr. Drive.

Upon inquiry of Councilman Mumpower, Real Estate Manager Nikki Reid said that this property was transferred to the City via the Housing Authority and therefore those funds must be circulated back into CDBG fund.

In response to Councilwoman Cape, Economic Development Director Sam Powers said that any possible linkages associated with this property will be reviewed by the Greenway Commission prior to it being brought back for Council final consideration.

Councilman Newman moved for the adoption of Resolution No. 09-205. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 220

G. RESOLUTION NO. 09-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION TO PROVIDE RESTORATION AND REPAIR SERVICES FOR THE WALL STREET AND RANKIN AVENUE PARKING GARAGES

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Perry Bartsch Jr., Construction to provide restoration and repair services for the Wall Street and Rankin Avenue parking garages.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center garage was built in 1976 and the others were built in 1988. Like any structure, these parking garages deteriorate over time and require restorative maintenance and repairs. This type of work normally consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs. The City of Asheville began a multi-year program to accomplish restoration of all three garages in 2007. The restoration work was completed in the Civic Center garage in 2008. City staff recommended, and Council approved, including restoration work on the Wall Street and Rankin Avenue garages in the Capital Improvement Plan for Fiscal Year 2008-09.

During spring of 2009 an engineering firm retained by the City did an assessment of the condition of the Wall Street and Rankin Avenue garages. While they are generally in good repair some moderate restoration and repair work is required in both garages. Requests for bids were sent out and twelve firms responded. The bids were publicly opened on August 18, 2009. The bids ranged from $907,048.64 to $342,921.49. Perry Bartsch Jr. Construction, Asheville, N.C., was the apparent low bidder at $342,921.49. In coordination with an engineering firm retained by the City and an internal review committee consisting of the Interim Transportation Director, Minority Business Outreach Coordinator, and the Parking Services Manager, Perry Bartsch Jr. Construction was determined to be the lowest responsive bidder. Staff is requesting authorization for the City Manager to sign a contract with Perry Bartsch Jr. Construction for an amount not to exceed $377,000.00; $342,921.49 for the contract and $34,078.51 for contingencies. These funds are currently budgeted and do not require further budget action.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

Pros:

- Combining the restoration and repair services for both the Rankin Avenue and Wall Street garages significantly reduces the overall cost of the project compared to being accomplished as separate projects.
- Making moderate restoration and repairs now will minimize and/or prevent more costly repairs later and will extend the useful life of the parking garages.

Cons:

- Accomplishing the work on both garages at the same time can be administratively cumbersome but it is not insurmountable.
- Minor customer disruptions may be encountered but should be minimized by performing the work during the slowest part of the year.

Funding was previously approved in the Fiscal Year 2008-09 Capital Improvement Plan.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with Perry Bartsch Jr. Construction in an amount not to exceed $377,000.00 for repair and restoration services to the Wall Street and Rankin Avenue parking garages.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects.

Councilwoman Cape suggested concrete staining in parking garage stairways to make them more inviting.

In response to Councilman Miller, Interim Transportation Director Ken Putnam said that working on both garages at the same time will save the City money on the overall work, but they will still look at options to minimize customer disruptions.

Councilman Newman moved for the adoption of Resolution No. 09-203. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 221

K. RESOLUTION NO. 09-210 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A PRIVATE EVENT IN THE PACK SQUARE AREA OF PACK SQUARE PARK FOR WINDOWS ON THE PARK ON OCTOBER 9, 2009

Summary: The consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at a private event on the grass area in the Pack Square area of Pack Square Park on October 9, 2009.

Those Girl, LLC has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the grass area of the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building.

Those Girls, LLC have requested a temporary extension of their ABC permit (premise 0016753AJ) from the North Carolina Alcoholic Beverage Control Commission (NCABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the event organizers receipt of the temporary extension from NCABC and an Outdoor Special Event permit from the City of Asheville.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None.

Cons:

- Potential for public safety issues;
- The event is not open to the public.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine for a private event on the grass area in the Pack Square area of Pack Square Park on October 9, 2009, for Those Girls, LLC.

Councilwoman Cape moved for the adoption of Resolution No. 09-210. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 226

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-211 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR THE LOCAL ENERGY ASSURANCE INITIATIVE GRANT

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APPLICATION AND AUTHORIZATION TO ACCEPT AND EXECUTE SAID GRANT WITH THE LAND-OF-SKY REGIONAL COUNCIL TO DEVELOP A REGIONAL STRATEGIC FUEL PLAN

American Recovery & Reinvestment Project Manager Brenda Mills said that staff is seeking City Council authorization to apply as the fiscal agent for a grant opportunity through the Local Energy Assurance (LEAP) Initiative for a project that will be implemented by the Land-of-Sky Regional Council to create a Regional Strategic Fuel Plan.

The communities of Western North Carolina share a reliance on outside sources of fuel. In the last five years, the region has experienced fuel shortages, nearly running out of fuel on two occasions. These crises have occurred due to limitations in the fuel infrastructure provided to the region through the Colonial Pipeline. Tropical storms hitting the gulf coast have exposed our vulnerability. While these variables cannot be controlled locally, the region can work together to plan and implement strategies that limit future exposure to fuel shortages.

After the fuel shortage in 2008, Land-of-Sky Regional Council was asked to take advantage of its position as an intergovernmental agency with established partnerships with the region's five county governments and 17 municipal governments to aid in the fuel planning process. Preliminary work occurred in January. In response to NC League of Municipalities Emergency Fuel Use Survey conducted in the fall of 2008, the Land-of-Sky Regional Council hosted a meeting to address the most recent regional fuel shortage. The survey showed that over two thirds of the local governments expressed interest in a regional collaboration to mitigate the effect of future fuel shortages.

The governments all wanted to ensure that emergency services would be able to continue to offer fire protection, ambulance service, and police protection. They hoped a plan could be developed for better communication between municipalities to ensure continuation of services, and they were willing to work together as a region to establish conservation in times of crisis, levels of fuel alters, and other specific details.

A goal of the American Recovery and Reinvestment Act, in part, is to "facilitate recovery from disruptions to the energy supply" and "enhance reliability and quicker repair of outages." The "Local Energy Assurance Planning" (LEAP Initiative) focuses on developing new, or refining existing, plans to integrate new energy portfolios (renewables, biofuels, etc.) and new applications, such as SMART Grid technology, into energy assurance and emergency preparedness plans. The initiative will focus on building local energy assurance capability to allow cities to better coordinate and communicate state-wide, regionally and with one another, on energy security and reliability and related emergency response issues.

Land-of-Sky Regional Council has developed partnerships with municipal and county governments to apply for $210,000 through the LEAP Initiative. The grant will fund the creation of the Regional Strategic Fuel Plan including a regional emergency energy plan, a long-range alternative fuel plan, and local government training curricula focused on fuel emergencies and alternative technologies. The planning initiative will also involve local fuel suppliers, the bio-diesel industry, and representatives from the propane and compressed natural gas industries. The scope of work required to develop the plan will include:

- Analyzing the current fuel infrastructure and assess fuel use;
- Creating a regional emergency fuel plan to unify the energy plans in the five county region;
- Assisting governments without emergency fuel plans in developing a plan;
- Developing a plan to mitigate energy supply disruptions, and
- Establishing a long range plan that incorporated local bio-fuels, electric vehicles, propane, and compressed natural gas to reduce the reliance upon traditional vehicle fuels.

LEAP encourages regional participation and requires a city to be the grant applicant. For this reason, as the largest city in the region, the Land-of-Sky Regional Council has requested that the City of Asheville be the grant applicant and fiscal agent for the grant. The Land-of-Sky Regional Council would manage implementation of the project.

The grant request will be used directly to fund staff to: collect data on fuel storage and use, to analyze and review existing emergency fuel plans, to conduct training on developing emergency fuel plans, to develop a regional emergency fuel plan which unify the emergency fuel plans in the region, and to create a long range plan to assist in the development of a fuel plan that focuses on non-traditional vehicle fuels.

Pros:

- The Regional Strategic Fuel plan will enable the region to better endure a fuel shortage without breaks in vital services such as law enforcement, volunteer and municipal fire protection, and other emergency services.
- The LEAP grant if funded, will give the region the tools to better manage future fuel crisis and mitigate the reliance on fuel from a single source for a more energy independent future.
- Creation of more current or up-to-date energy assurance plans.

Con:

- The City of Asheville will be bear responsibilities as the fiscal agent of the grant for a regional project. This will include ARRA reporting requirements.

This is a 100% non-matching grant.

Staff recommends the adoption of a resolution to apply for the Local Energy Assurance (LEAP) Initiative grant and to allow for the management and implementation of the grant through the Land of Sky Regional Council. Staff also recommends that Council direct staff to develop a Memorandum of Agreement with Land-of-Sky Regional Council to outline role and responsibilities for implementing the project.

In response to Councilwoman Cape, Mr. Keith Bamberger, from the Land of Sky Regional Council, said that they are allowed to use a certain amount of those funds to address programming, specifically for ARRA reporting, and in their detailed budget they do have the City receiving funds to do part of that reporting.

Councilman Mumpower spoke against the City's participation in the economy recovery stimulus package in that the program is based on borrowed dollars that will have to be repaid by our children and grandchildren. He felt there are other creative ways, like an action committee, to achieve the same conclusion.

Vice-Mayor Davis said this item was thoroughly discussed at the Metropolitan Planning Organization meeting and they concluded that there are many small communities who do not have the staff or resources to participate in the committee that Mayor Bellamy arranged last year during the fuel crisis.

Mayor Bellamy said that when there was no gas for our community last year there was an outcry from our community for this not to happen again in the future. She felt this is a step in the right direction to get us in the planning mode and to take care of our citizens in case of an emergency.

When Mayor Bellamy asked for public comments, none were received.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-211. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 229

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS FLYNN CHRISTIAN HOME LOCATED AT 141 COURTLAND AVENUE TO SUBDIVIDE THE PARCEL CREATING A SMALLER PARCEL FOR THE EXISTING USE

ORDINANCE NO. 3790 - ORDINANCE GRANTING AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS FLYNN CHRISTIAN HOME LOCATED AT 141 COURTLAND AVENUE TO SUBDIVIDE THE PARCEL CREATING A SMALLER PARCEL FOR THE EXISTING USE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:58 p.m.

Mayor Bellamy, Vice-Mayor Davis and Councilman Newman disclosed that they were on Council when the Conditional Use Permit was approved and Vice-Mayor Davis also spoke to neighbors after that that approval. They would, however, consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Assistant Planning & Development Director Shannon Tuch entered into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of an amendment to a conditional use permit for the project identified as Flynn Christian Home located at 141 Courtland Avenue in order to subdivide the parcel, creating a small parcel for the existing use.

She said that the original Conditional Use Permit was issued in March 2004. Not too long after the group home was constructed and occupied, the original owners, the Flynn Christian Home, sold the property and all assets to ABCCM who, in turn, leased the group home to Next Steps for Recovery who maintained the approved group home use for the last several years.

The current owners, ABCCM, wish to subdivide the 3.69 acre tract and sell the larger 2.63 acre tract to Next Steps while retaining the smaller tract, which would be a little over 1 acre. The property line would follow the approximate center line of the existing natural drainage (Aerial Map – Attachment to City Exhibit 3). Tract A is proposed to contain the entirety of the existing group home development along Courtland Avenue and would consist of 2.63 acres that supports the three separate structures. Tract B, facing Houston Street, would consist of 1.06 acres and is proposed to remain vacant (Site Plan – Attachment to City Exhibit 3).

The current owners, Asheville-Buncombe Community Christian Ministry (ABCCM), wish to subdivide the existing 3.69 acre tract to allow for the sale of the majority of the tract to their current tenants Next Steps to Recovery who intend to continue the operation of the existing group home facility. No immediate plans for development are proposed for the remaining tract of land although the proposed subdivision, if approved, would create a conforming lot that would support a variety of uses allowed in the RS-8 zoning district. This request does include the removal of the newly created lot from the Conditional Use Permit Master Plan to allow future development to proceed without public review. All residents within 200 feet of the property boundary were notified for both the Technical Review Committee (TRC) meeting and the City Council hearing. Approximately six individuals called to inquire about the notification prior to the TRC meeting but generally seemed satisfied upon learning the extent of the proposal – there were no members of the public in attendance at the TRC meeting.

In 2004, the Conditional Use Permit Master Plan included the entire lot and specifically identified the natural drainage area as an effective buffer between any activity on the subject property and the adjacent single family neighborhood on Houston Street. Consequently, any changes to the site plan including a simple subdivision, would necessitate an amendment to the existing Conditional Use Permit (CUP) and site plan.

Although no new development is proposed at this time, because a subdivision is a type of land division for the purpose of sale or development, it was necessary to bring this before Council for consideration.

If approved, the resulting lot would be a conforming lot and could be further subdivided for a variety of purposes, the most common of which is single family development since the property is zoned RS-8.

The proposal is to remove the new smaller tract from the Master Plan; however, if there is concern over potential future development on the new tract (which can include other non-residential uses normally allowed in a residential district), the approval could be conditioned to allow the subdivision but retain the two lots within the approved Master Plan which would require additional notification and Council consideration if or when new development is proposed. It could also be conditioned to require that anything other than single family development be required to return for new consideration.

This project was approved with conditions by the TRC on August 17, 2009. No members of the community expressed opposition to the proposed subdivision.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise

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appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and has been reviewed by the Technical Review Committee to ensure compliance with technical and safety requirements. No new development is being proposed at this time; however, any subsequent development proposals on the group home property would require a detailed review by both the TRC and City Council while any new development proposals for the subdivided tract would require compliance with basic technical standards.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   At this time, no development is being proposed; however, the proposed subdivision would create a conforming lot that could support up to eight separate single family home lots or other uses allowed in the RS-8 zoning district with adequate access. It is worth noting that the existing topography and other site constraints may limit density to a number lower than what can theoretically be supported by the acreage and existing frontage. Single family development would be reasonably compatible with natural features of the site and typical of much development in the Montford neighborhood.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   As previously noted, no development is proposed at this time; however, development typically found in the RS-8 zoning districts would not be expected to adversely impact the value of adjacent property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   As previously noted, no development is proposed at this time; however, development typically found in the RS-8 zoning districts should be harmonious with the scale, bulk, coverage, density and character of the neighborhood in which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   *This proposal supports the **Asheville City Development Plan 2025** smart growth goal of infill development by allowing a subdivision of a large urban parcel for the purpose of sale or development. Additionally, this proposal will provide an opportunity for compatible residential development in an underdeveloped portion of an established neighborhood which supports one of the City Council's Strategic Operating Plan priorities of sustainability.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is located near transportation facilities and other utilities appear adequate. The project area is located within walking distance of downtown, near major road facilities, interstate connections and very near the bus line that serves Montford with bus stops nearby. Preliminary review by other utility providers has not revealed any problems for serving future development in this area.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   No development is proposed at this time that would affect traffic congestion. Nevertheless, preliminary review of potential future development has not identified any potential problems with traffic congestion or hazards.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides the opportunity for future infill development in an underdeveloped part of the neighborhood.
- Removing the newly created lot from the CUP Master Plan would facilitate future development.

Cons:

- Would remove the newly created lot from the Conditional Use Permit Master Plan – future development would not be required to gain approval from the City Council and adjacent property owners would not be notified or provided opportunity for public input.
- Maximizing development opportunities on the property where extreme topography and other site constraints exist could result in heavy impacts to the site.

Staff recommends approval of the proposed subdivision.

All residents within 200 feet of the property boundary were notified for both the TRC meeting and the City Council hearing. Approximately six individuals called to inquire about the proposal but generally seemed satisfied upon learning the extent of the proposal.

Should the community express concern over potential future development, Council may modify the proposal to retain the inclusion of the newly created lot in the original CUP Master Plan so that the compatibility of any future development could be insured through a public notification and review process.

When no one from the public spoke, Mayor Bellamy closed the public hearing at 6:05 p.m.

Councilman Mumpower spoke against this action in that he recalled when the matter originally came before Council they struggled to create a plan that protected the neighborhood. He now felt Council is stepping away from that assurance.

Ms. Tuch briefed Councilwoman Cape in the original CUP approval and why the original Master Plan was not completed.

Councilwoman Cape was interested in what other uses were allowed in the RS-8 District, other than residential, and read the uses from the Code of Ordinances.

There was a brief discussion, initiated by Vice-Mayor Davis, about the distinction of a group home vs. a family care home. She said that all group homes in residential districts are required a CUP and those are not too difficult to monitor. We do have a number of group homes; however, that are grandfathered and it is much more difficult to monitor those because we don't have the same information available. Regarding family care homes, staff is trying to better monitor those and to make sure they comply with all applicable standards.

In response to Mayor Bellamy, Ms. Tuch said that should the amendment for changes to the family care home standards be adopted by Council later during the meeting, then a family

care home would not be possible anywhere on that property because part of that amendment includes a 600 feet separation requirement between family care homes and group homes. Because we have the presence of both a family care home and a group home within that 600 feet separation that is being proposed, it would not be possible to add another one.

Mayor Bellamy said that in the past there have been illegal activities in this area because there are no people there to keep an eye on that part of the community. Allowing single-family development homes will help alleviate that concern and will also help to slow traffic down.

Councilman Newman moved for the adoption of Ordinance No. 3790, granting an amendment to a conditional use permit to the allow for the subdivision of land into two parcels (subject to the conditions recommend by City staff), with the condition that the two lots remain within the approved Master Plan and anything other than single family development on the smaller 1.06 acre RS-8 parcel be required to return to Council for new consideration. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3791 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (SITE COMPLIANCE REQUIREMENTS: BUILDING RENOVATION COSTS AND PARTIAL PARKING LOT IMPROVEMENTS)

ORDINANCE NO. 3792 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (TEMPORARY USES AND STRUCTURES)

Ms. Kim Hamel, Technical Review Manager, said that this is the consideration of ordinances amending the Unified Development Ordinance (UDO) to respond to the current economic climate. This public hearing was advertised on September 11 and 18, 2009.

Mayor Bellamy opened the public hearing at 6:24 p.m.

This proposed set of amendments is designed to promote economic growth for businesses and smaller economic endeavors while ensuring that city adopted goals and policies are maintained and preserved.

At the beginning of the year staff began evaluating the UDO to identify development processes, standards and compliance issues that could be amended to encourage and foster economic development opportunities. To date, the Planning and Zoning Commission and City Council have supported and approved more than 15 amendments to the UDO. In addition, staff was encouraged to continue identifying potential code amendments that would further assist in providing economic relief without sacrificing standards of quality development that are important to the citizens of Asheville. Prior to each formal recommendation, the staff has held meetings with neighborhood representatives, members of the business community and other stakeholders to ensure that each party's concerns are taken into consideration in drafting the proposals.

The current proposals are based upon comments received at the Developers Forum Meeting in May and from various community members and business owners wishing to pursue or expand upon a variety of permanent and temporary business ventures. Each amendment has

been evaluated to ensure that the goals and objectives of the City Council, the UDO, and other technical requirements necessary to satisfy life safety standards have not been compromised.

1. ***50% Cost of Renovation Standard*** - A number of business owners have expressed concern over a UDO requirement that relates to building renovation projects. Currently the ordinance requires a site to come into compliance with the development standards of article XI (parking, loading, landscaping, buffering, open space, traffic management and sidewalks) when the proposed cost of a renovation to an existing structure exceeds 50% of the tax accessed value of the building. Some developers/property owners feel that this requirement discourages renovation and improvement to existing structures, particularly for those improvements that may be considered necessary for maintenance and that would not contribute significantly to the value of the structure over time.

   Intent: The intent of this requirement is to provide a standard threshold for requiring non-conforming sites to be brought into compliance with the design and technical standards of the UDO.

   Proposal: Raise the threshold for the cost of renovation amount from 50% to 75% of the tax assessed value of the building; and add a definition for *Renovation Costs* to provide clarification as to the type of construction improvements that are to be included when determining when a project must comply with this standard.

   Relevant Code Sections: 7-11-1(3) - General; 7-11-3(1)d. – Landscape Buffering Standards,7-11-8(b)(4) – Sidewalks, 7-11-9(b)(2) – Emergency Wireless Communications, 7-5-9(c)(1)e. – Level One Site Plan Review Process, 7-17-2(b) – Dimensional Nonconformities, 7-2-5 – Definitions

   Pros:
   - Supports a number of City adopted goals and objectives including: smart growth policies, adaptive reuse, and sustainable development ;
   - Brings noncompliant structures into compliance with current building codes which often incorporate enhanced sustainable and green features;
   - Responds to the increased costs of construction and materials by reducing some of the financial burden (site improvements) to business owners.

   Cons:
   - Existing nonconforming properties will remain noncompliant until a cumulative threshold of improvements (over a 3 year period) reaches 75 percent;
   - May result in a reduction of new public sidewalks and sidewalk connections between existing developments; and
   - May delay landscape improvements including: buffers between dissimilar zoning designations, street tree enhancements, and parking lot landscaping.

   Note: The proposed 75% threshold only applies to article XI (Development and Design Standards) and not to article XII (Environmental Protection Standards). The 50% substantial improvement threshold will remain for properties located in flood hazard areas. This number cannot be adjusted without violating the City's qualification for participation in the federal flood insurance program, which is a FEMA program.

   In order for the City of Asheville to qualify for the FEMA program, it must maintain an ordinance that is at least as restrictive as the State's model ordinance. Both the State's model ordinance and the City of Asheville's local ordinance specify a minimum 50% threshold.

2. ***Parking Lot Improvements*** - Currently the ordinance is unclear and could be interpreted to mean that whenever any existing unpaved parking lot is repaved, or whenever any existing paved lot is demolished and repaved, the entire site must be brought into

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compliance with article XI (parking, loading, landscaping, buffering, open space, traffic management and sidewalks if applicable).

Intent: The intent of this requirement is to provide a standard threshold for requiring non-conforming sites to be brought into compliance with the design and technical standards of the UDO.

Proposal: Create a new subsection that addresses partial parking lot improvements for projects that disturb less than 50% of an existing parking field. The new requirement creates standards that allows for an incremental improvement of the parking field that is determined by the location and amount of land disturbance occurring on site.

Pros:

- Provides clarity to existing standards by creating a separate set of standards that address partial parking lot improvements;
- Allows for incremental improvements to parking fields versus full site compliance, ultimately reducing the financial burden to businesses wishing to improve and enhance existing noncompliant parking lots; and
- Encourages redevelopment of unimproved parking areas that would otherwise not be improved due to the cost of exterior site enhancements.

Cons:

- Will allow extended delay in compliance with applicable UDO standards for sites that are currently deemed nonconforming.

Relevant Code Sections: Section 7-11-1- General and Section 7-11-3(b)(1) – Landscape and Buffering Standards, Applicability

Note: As part of this amendment staff has proposed to eliminate duplicate references regarding the types of development projects that require full site compliance. The ordinance places all the applicable standards into one location at the beginning of article XI. Additionally, while evaluating sections of the UDO to be amended in order to reflect the above proposals (items 1 and 2) staff discovered that several sections in article XI referencing sections in article XVII had been omitted in error as part of a prior code amendment. As a result staff has restored those sections to their appropriate location (referenced below).

Relevant Code Sections: 7-17-2(c) and 7-17-3(c) concerning "overcoming presumption of cessation of use."

3. ***Temporary Uses*** – The current ordinance provisions addressing temporary uses and structures are difficult to administer due to provisions that are incomplete and/or unclear. Additionally, the current regulations are often limiting to those wanting to set up temporary uses as a means of generating income. The Planning and Development Department is seeing increased interest in the establishment of temporary uses in recent months, which are likely related to current economic conditions. The proposed ordinance revision will provide a means of allowing for more temporary uses while clarifying the requirements for such uses.

Intent: The intent of this ordinance revision is to allow more temporary uses and clarify requirements for such uses.

Proposal: The ordinance completely revises the section of the UDO addressing temporary uses and structures. It divides temporary uses into those that require obtaining a permit and those that must meet standards but do not have to go through the process of obtaining a permit. The draft provides for a more comprehensive listing of

temporary use situations and allows temporary uses to be located on vacant lots as appropriate. The ordinance provides regulations for signs for temporary uses and allows factory fabricated buildings to be used for institutional uses other than schools.

Pros:

- Provides clarity to standards for temporary uses;
- Allows more temporary uses to be established without a permit;
- Expands opportunities and time allowances for temporary uses; and
- Simplifies the regulation of temporary uses.

Cons:

- May delay permanent development of vacant parcels that are revenue generating.

These proposals were shared with the Coalition of Asheville Neighborhoods (CAN) at their meeting on July 13, 2009. Some expressed concerns with item #1 (*50% Cost of Renovation Standard*) and asked for clarification as to how the cost of a renovation project (provided by the applicant) is verified. The Building Safety Department evaluates construction costs using generally accepted construction cost estimating practices that includes a staff verification that the application cost provided by the application meets or exceeds the International Code Council's square foot construction costs.

On Wednesday, September 2, 2009, the Planning and Zoning Commission reviewed the proposals and recommended approval of all three amendments by a unanimous vote (6-0).

Collectively, these amendments may encourage some additional or small scale development or redevelopment without increasing a need for service. Fiscal benefits include those typically associated with new development or redevelopment but actual benefits cannot be predicted.

City staff recommends approval of the code amendments as proposed.

Mayor Bellamy closed the public hearing at 6:29 p.m.

At the request of Vice-Mayor Davis, and with the consensus of Council, City Manager Jackson was directed to revisit landscaping requirements in parking lots.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3791 (site compliance requirements: building renovation costs and partial parking lot improvements). This motion was seconded by Councilman Russell and carried unanimously.

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Councilman Mumpower moved for the adoption of Ordinance No. 3792 (temporary uses and structures). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 435

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES

ORDINANCE NO. 3793 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES

Mayor Bellamy opened the public hearing at 6:36 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to refine the City's existing standards for family care homes, along with the consideration of a new requirement that would require a minimum distance between family care homes and between group homes and family care homes. This public hearing was advertised on September 11 and 18, 2009.

While this amendment is simple in its form it required a fair amount of research. Particularly challenging was understanding the relationship, or more often, the lack of relationship between the State's social services system and State statutes and our local ordinances. Contributing to this confusion is the Federal laws that address discriminatory practices against special populations. She then summarized what we have come to understand:

- The Federal Fair Housing Act defines "disability" as any physical or mental impairment that substantially limits one or more major life activities. This ends up including a host of impairments including those recovering from substance abuse.

- The NC State statutes also defines "person with disabilities" as someone who suffers from a temporary physical, emotional, or mental disability including but not limited to .... This definition does not specifically identify persons recovering from substance abuse as does the Federal definition; however, it does not exclude it either.

- The State and the City of Asheville include definitions of family care homes defined as a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment resident persons with disabilities. The state allows a cap on the number of residents but Asheville has not included a cap in the past.

- The Federal Fair Housing Act and our State Statutes establishes that family care homes are considered a residential use and they shall be a permissible use in all residential districts of all political subdivisions and that it is illegal to discriminate against them or prohibit them in residential districts. This includes homes designed to support those individuals who are in recovery programs, provided they meet all the other requirements.

What the State statute does allow is for local ordinances to require a separation between family care homes. Asheville has not previously taken advantage of this option; however, we are beginning to experience some community issues in association with the clustering of these homes that we feel it is worth considering.

- The state statute allows up to a ½ mile separation (which is 2,640 feet) which we felt was quite large and would likely render a number of the existing homes as being non-conforming. As an alternative, we are proposing a 600 foot separation which is what is currently required between group homes. It seemed to serve us well for Group Homes so we thought it appropriate for family care homes as well where the intensity of activity is usually not as significant. As a point of reference, in an average urban neighborhood, 600 feet is about 10-12 lots away from the subject property.

- Also included in this amendment is a revised definition of family care homes which is proposed to be broader and include homes in Asheville that had previously escaped classification as family care homes.

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- The easiest way to separate family care homes from other residential applications is to identify them as a Use by Right, subject to special requirements. However, all Use by Right applications are limited in respect to being able to obtain variances. They simply are not eligible for variances, so we are also including an exception that would allow family care homes to receive a variance similar to any other residential structure; however, variances to the separation requirements may not be considered unless there is significant land forms that separate the homes.

- We've also added a standard to require a separation between family care homes and group homes since they have similar impacts.

- We have taken this opportunity to clarify a parking standard that had been addressed through a long-standing interpretation. They clarified that they are not allowing parking in any setbacks and they expect the parking to be typical of what occurs in a normal residential district.

This action complies with the City Council Strategic Operating Plan in that it provides for the long-term stability and *sustainability* of a neighborhood by maintaining a controlled amount of housing for a select population while preserving (often *affordable*) housing opportunities for working families. Lastly, maintaining the integrity of a residential neighborhood has been commonly linked to providing a stable and *safe* family environment.

Identifying either a need for an increase in the supply or, the need for controlling the proliferation of family care homes in residential neighborhoods, is not specifically identified in other adopted plans; however, the Asheville City Development Plan 2025 places value on the preservation of the character of our existing neighborhoods.

The Planning & Zoning Commission initially reviewed this amendment at their July 23, 2009, meeting where the amendment received support by a vote of 4-1. Additional information was received by the staff after the meeting, and rather than proceeding directly to City Council for consideration, staff felt it valuable to further refine the proposal, which returned to the Commission's September 2, 2009, meeting. The revised proposal, with certain modifications, was approved 6-0.

Pros:

- Limits destabilization of neighborhoods that are typically more vulnerable – may help control resident turnover.
- Maintains housing stock for working families.
- Provides more flexibility and options than what can be exercised under state statute.

Cons:

- Reduces the flexibility and opportunity for establishing new housing for a protected class of citizens.

City staff recommends that City Council adopt the ordinance adding a separation requirement along with the other adjustments to the existing standards.

The following individuals spoke in support of the ordinance amendment, particularly the separation requirement, primarily due to the saturation of group homes in the area of Broad Street and Madison and parking:

Ms. Lisa Lore
Mr. Heath Moody
Ms. Jennifer Lapidus
Mr. James Fisher

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Mr. Alan Ditmore

Mayor Bellamy closed the public hearing at 6:57 p.m.

There was a brief discussion, initiated by Councilman Mumpower, regarding whether a 600 feet separation is adequate.

City Attorney Oast pointed out that one of the responsibilities that we have as a community is to ensure the availability of housing for people who don't have the same options as everyone else does. Although there are separation requirements as far as ½ mile, one of the things that 600 feet separation does is to ensure they are not adjacent uses, but yet the houses do remain relatively available for accommodations for people with disabilities.

In response to Councilwoman Cape regarding parking, Ms. Tuch explained that for family care homes we can only require what we would normally require for a single-family home or any other residential unit.

Ms. Tuch explained to Councilwoman Cape what would happen if a group home is sold.

In response to Councilman Miller, Ms. Tuch said that any sale or pending sale would fall under this new ordinance, if adopted.

Mayor Bellamy asked that staff provide Council with a memorandum or e-mail, not on the agenda, on this issue in six months to see the number of applications or violations.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3793. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 7:07 p.m., Mayor Bellamy announced a short recess.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ADDITIONAL USES TO THE INDUSTRIAL AND LIGHT INDUSTRIAL ZONING DISTRICTS

ORDINANCE NO. 3794 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ADDITIONAL USES TO THE INDUSTRIAL AND LIGHT INDUSTRIAL ZONING DISTRICTS

Mayor Bellamy opened the public hearing at 7:28 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to add additional uses to the Industrial and Light Industrial Zoning Districts. This public hearing was advertised on September 11 and 18, 2009.

Since 2005 there have been five separate rezonings of industrially zoned land in the City's zoning jurisdiction. These rezonings led to conversations with the Council, and the Council's Planning and Economic Development (PED) Committee regarding the status of the City's industrially zoned land. The PED members asked the staff to evaluate these rezoning and make recommendations regarding these zones if warranted. An evaluation of these rezonings

revealed that the circumstances of the requests were distinct and unique. The following is a brief summary of the five separate rezonings:

- On October 12, 2005, City Council voted to approve a rezoning of roughly 31 acres off of Dogwood Road in Candler from Industrial to RS4 requested by the property owner in order to sell the property to a prospective residential developer. In this instance, staff didn't see a compelling case for the rezoning and had recommended denial.

- On May 23, 2006, City Council voted to approve a rezoning of approximately 1.5 acres of land at 1301 Sand Hill Road from Industrial to Community Business II. This small rezoning was to allow a credit union that had existed at the American Enka/BASF/Colbond plant for many years to upgraded and be brought into compliance.

- On July 10, 2007, City Council approved a rezoning of approximately 37 acres from Industrial to RM16 for an area on the eastern edge of the Biltmore Lake community. Analysis of this area showed that the challenging terrain, presence of streams, power lines, and limited access made it poorly suited for an industrial tenant.

- On January 13, 2009, City Council approved a rezoning of approximately 178 acres on the American Enka/BASF/Colbond site from Industrial to Commercial Industrial (a zone with a broader mix of uses allowed). The collective decision was that this large former industrial site stood a better chance at rehabilitation and reuse if a mix of industrial, office, retail, and medical uses was made available to developers.

- On June 23, 2009, City Council approved a rezoning of approximately 23 acres from Industrial to Commercial Industrial at the former Square D site to accommodate a series of new tenants. In this case, an adjustment of the Industrial zoning district to allow larger fractions of a site to be used for office or retail, or adding call centers as a permitted use might have prevented the request for a rezoning, although this site is no longer ideally located for heavy industry given its location removed from a major highway.

In all of these instances, the staff report noted that the City's Comprehensive plan and the Lockewood-Green economic report recommend preserving industrially zoned property for industrial uses and to resist rezoning (downzoning) efforts; however, all five requests were ultimately granted for the rational reasons noted. But the zoning changes have raised questions about the land use goal of preserving industrially zoned properties. These concerns were discussed by the Council during the hearing on June 23rd and were examined in more detail at the meeting of the Planning & Economic Development Committee (PED) on August 12, 2009.

In answer to the expressed concerns, both during the hearing and again during the PED Committee meeting, the staff recommended preserving the land use goal of retaining industrially zoned land but adding some additional flexibility to the uses allowed in the Industrial and Commercial Industrial zoning districts. The staff believes that adding this flexibility will reduce the need for similar requests in the future.

In summary, this amendment proposes to add a limited amount of office and retail uses to both Industrial and Light Industrial Districts. The proposal, if adopted, would allow up to 20% of a building in the Industrial zoning district to be used for office and up to 10% of the building for retail. The allowances are higher in the Light Industrial zoning districts with up to 20% to be used for retail and up to 50% for office.

The staff recommends adding some office and service uses (to support the employees of the industrial sites) along with other limited office uses; limited retail; call centers and concrete plants. She then explained in detail the thought process that staff used to recommend the additional of concrete plants.

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This action complies with the City Council Strategic Operating Plan in that it supports the goal of *sustainability* by preserving opportunities (land inventory) for new industrial uses while encouraging some adaptive re-use by offering additional flexibility in uses not formerly available. In addition, this action complies with the Asheville City Development Plan 2025 (Comprehensive Plan) by retaining the land use goal of preserving industrially zoned properties.

This proposal was reviewed by the Planning & Zoning Commission at their September 2, 2009, meeting where the item was supported unanimously by a vote of 6-0.
Pros:

- Preserves the opportunity for new (cleaner, green) industrial uses
- Allows for more flexibility within the current zoning classifications to encourage adaptive re-use and a range or mix of uses

Con:

- --Does not address all the circumstances and trends identified in the five recent rezonings

There is no direct fiscal impact, however, preserving manufacturing and other industrial opportunities supports a sound local economy.

City staff recommends City Council adopt the amendment to the UDO to add uses to the Industrial and Light Industrial zoning classifications.

The following individuals spoke in support of adding concrete plants to the proposed ordinance:

Mr. Tony Hauser, Civil Engineer
Mr. Dan March, representing Environmental Services Inc. (presented Council with information developed by the WNC Alliance with responses by American Concrete)

Mr. Alan Ditmore suggested there be no limit on the percentages for retail and office uses.

At 7:43 p.m., Mayor Bellamy closed the public hearing.

Vice-Mayor Davis said that Buncombe County has a local responsible agency of the WNC Regional Air Quality Agency that permits and monitors facilities such as this.

Ms. Tuch responded to Councilwoman Cape regarding the locations of the Industrial and Light Industrial districts are located in the City.

Councilwoman Cape said that we need a balance of property and opportunities for people in the community.

Councilman Miller supported products like concrete plants being more accessible within the City of Asheville for economic reasons.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3794. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3795 - ORDINANCE PROHIBITING THE TETHERING OF DOGS WITHIN THE CITY LIMITS

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance prohibiting the tethering of dogs within the City limits.

On Tuesday April 28, 2009, the City Council adopted a revised animal control ordinance. On May 26, 2009, the City Council held further hearing regarding the prohibition of tethering dogs within the City Limits. At the May 26, 2009, hearing, Council directed staff to work with ChainFree Asheville develop an ordinance for consideration.

Tethering is the practice of securing a dog by chain, rope or other material to a tree, house, stake, garage or other structure. Tethering by definition does not include walking a dog on a leash. Many communities in North Carolina have recently adopted ordinances which limit or prohibit a person from leaving a dog unattended and tethered on private property. Many experts have stated that the practice of tethering dogs create dogs with behavioral problems which in turn generate public safety issues for the local government. None of the recognized animal welfare organizations recommend the practice of tethering.

Based on Council's direction from the May 26, 2009, meeting, staff met with Chain Free Asheville, as well as researched ordinances from other jurisdictions within North Carolina, and developed a proposed ordinance which prohibits the tethering of dogs within the City limits. The current animal control ordinance prohibits the tethering of dogs on public property. The proposed ordinance prohibits unattended tethering of dogs on private property within the City limits. The ordinance does allow an owner to tether their dog if the owner is within visual range of the dog.

ChainFree Asheville, a local non-profit, has a program in place whereby Asheville residents with chained dogs can apply to have a fence built for them. This program provides fencing materials and/or labor to persons based on need. Currently, ChainFree Asheville has financial resources of $30,000 to be used to help build fences and educate citizens during the educational period.

This action complies with the City Council Strategic Operating Plan in the focus area of "Safe."

Pros:

- Eliminates the risk of a dog being injured by getting tangled in its tether.
- The City will be promoting a preferred practice in animal care.
- The prohibition may discourage persons from getting a dog when the persons are not prepared for the responsibilities associated with securing the dog on one's property.
- Improved quality of life for the dog.
- Improved public safety.

Cons:

- Adopting a tethering ban would increase calls for service and need for additional staffing.
- The prohibition of tethering may adversely effect low income citizens and place financial burden on citizens to erect fences to confine their dogs.
- A person may allow his or her dog to roam freely on the person's property as opposed to building a fence thereby creating more at large dog calls for service.

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- Persons may surrender their dogs to the animal shelter because of the increase costs of securing one's dog on his or her property through fencing or purchasing an invisible fence system.

If City Council decides to adopt an ordinance prohibiting the tethering of dogs on private property, from an operational standpoint, staff recommends the following: (1) Do not begin issuing citations for violations until January 1, 2011, in order to properly educate the public and give persons an opportunity to prepare for the new restrictions; (2) Adopt a total prohibition on unattended tethering at all times on private property. Allowing a dog to be tethered unattended for a certain number of hours per twenty-four hours period would be virtually impossible to enforce in that staff has no adequate way to determine when a dog was first placed on a tether; and (3) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property).

Ms. Peggy Irwin, Founder of ChainFree Asheville, recapped the reasons for law in that the chained dog in any city represents (1) A threat to the public safety, esp. children; (2) A public nuisance – diminishing property values and tourism; (3) Visual evidence of irresponsible pet ownership; and (4) Tolerance of inhumane treatment.

Advantages of the new ordinance include (1) The ordinance addresses all the reasons for the law; (2) The ordinance represents the combined input of Staff and concerned citizens; (3) Logic based on experiences of tethering laws in 26 jurisdictions in the South; (4) Attended tethering is allowed and defined as "a responsible party outside with the dog."' And (5) Allows for a 15 month educational period.

She addressed Councilman Newman's motion on May 26: (1) "To move forward with a policy of the prohibition of 24/7 unattended tethering (with perhaps a secondary motion on the other period of time when the person responsible for the dog is present)" - The ordinance before you moves Asheville forward with a policy of prohibiting 24/7 tethering; (2) . . ."That there is a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component." - We have been working with Atlanta's anti-chaining program administrator. Elements of their plan would work here. We would be assisting in whatever way possible to effect this education; (3) ". . .To support creating a fund using private dollars raised by people in the community who care about this issue to be used once we move into Phase Two (enforcement phase) to assist people to comply with the law achieve compliance with the ordinance." - The fund already exists and is being used, and will continue to be used, to assist low-income individuals and families with removing their dog from the chain and fence building; (4) ". . .To make execution entering into Phase Two contingent upon the creation of this community fund. - We are actively fundraising in a variety of ways including obtaining grants, online donations, special events, and have an experienced fund-raising team in place; and (5) ". . .To direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund. " - In a meeting with Councilman Newman over the summer, we agreed that we need to build about 100 fences at $300 each. So a fund of $30,000 is the goal. We are giving you every assurance that this is achievable.

Mr. Alan Ditmore expressed concern over people who visit with their dog and can't allow them to be tethered while the owner is visiting. He also was concerned about when the ChainFree Asheville fence money runs out the law will still be in effect.

The Director of Operations for the Asheville Humane Society supported prohibiting unattended tethering.

When Councilwoman Cape questioned if the ChainFree fences are allowed in all zoning districts, City Attorney Oast felt there were no restrictions on fences other than barbed wire fences, but there may be some neighborhoods that have restrictive covenants. Councilman Russell noted that chain link fences are not allowed in several subdivisions, particularly in North

Asheville, and there are several other neighborhoods that have very strict fencing requirements, not only size, but how far they have to set, etc.

Councilman Mumpower understood the concern but we keep adding more and more rules to regulate behavior. He felt that this ordinance represents a distraction of efforts to eliminate the open air drug market. He also felt this is an incremental intrusion on the civil liberties of our people.

Councilman Newman struggled with the total prohibition of unattended tethering as we don't want to allow animal cruelty; however, he didn't feel that tethering a dog for a short period of time was unacceptable, understanding the unenforceability of the short tethering.

Upon inquiry of Mayor Bellamy, Mr. Euler said that we do not have anyway to mandate that the non-profit be able to fund and build fences. We struggled with how to make the ordinance contingent on a non-profit's ability to pay for fences. We basically concluded that they have raised enough money to get through the period where people need help. We are basically recommending passage of this ordinance but not based on ChainFree Asheville's ability to pay and build the fences.

After Mayor Bellamy stressed that the City must be the leader in education, she asked about funds for the educational component. Mr. Euler explained that during the grace period animal control officers will be talking with residents one on one to let them know they will need an alternate way to secure their dogs. Staff, along with ChainFree Asheville, will do public service announcements on the City's channel, along with distribution of educational brochures. Police Chief Hogan explained how the Police Department will gear up for a complete education process. Mayor Bellamy suggested placing information on the City's website. Councilwoman Cape suggested putting a flyer with the information sent out for renewal of dog licenses.

It was the consensus of Council to have staff develop an educational program and present it to the Public Safety Committee for review.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Miller moved for the adoption of Ordinance No. 3795, an ordinance prohibiting the tethering of dogs on private property, with the following conditions: (1) Do not begin issuing citations for violations until January 1, 2011, in order to properly educate the public and give persons an opportunity to prepare for the new restrictions; (2) Adopt a total prohibition on unattended tethering at all times on private property; and (3) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property). This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no".

ORDINANCE BOOK NO. 25 - PAGE 447

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-212 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY FOR THE OPERATION OF A CONSOLIDATED 911 COMMUNICATIONS CENTER

Assistant City Attorney Curt Euler said that this is the consideration of a resolution authorizing the Mayor to enter into an interlocal agreement with Buncombe County for the operation of a Consolidated 911 Communications Center.

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On September 2, 2003, the City and County entered into an interlocal agreement regarding the construction of a consolidated 911 communication center (herein "Communication Center"). The purpose of the Communication Center was to have all public safety agencies in Buncombe County under one roof in order to improve response times for calls for service. In exchange for the City forgoing its ability to become a Public Safety Answering Point (herein "PSAP"), the County was to construct a Communications Center for the City, County and Sheriff's Department to receive calls and dispatch public safety services within Buncombe County and pay for all associated equipment necessary for receiving and dispatching calls for service. Buncombe County has completed the construction of the Communications Center and purchased the necessary equipment. Prior to the City moving into the Communication Center, pursuant to Section II.M and Section III.E of the 2003 Agreement, both the City and County are to execute a joint agreement for the operation of the Communications Center.

Mr. Euler provided Council with the following historical timeline regarding this agreement: 2001 – APD investigates becoming its own Public Safety Answering Point ("PSAP"); 2003 – (1) APD presents recommendation/plan to City Council at Annual Retreat; (2) Buncombe County proposes an Interlocal Agreement to co-locate a joint communications center at the County's expense; and (3) City/County Interlocal Agreement executed September 2, 2003; 2005 - City Council extends completion date of joint center to January, 2007 to avoid breach of contract; 2007 - June: NC General Assembly revises Public Safety Telephone Service & Wireless Telephone Service Act; 2008 - City & County continue negotiations regarding joint operating agreement; 2008 (July) - Center construction completed; county functions brought on-line 2009 – (1) City/County Operational Agreement negotiations continue; (2) June 2, 2009 - County Commissioners disapprove joint operational agreement: Ask to reconsider Termination Clause; (3) July 7, 2009 – City Council members and County Commissions plus staff meet to discuss the proposed agreement; (4) August 2009 - The Staff of both parties reach a tentative agreement subject to approval by both governing bodies; (5) September, 2009 – Buncombe County submits an application for City to become the backup PSAP for Buncombe County; (6) September 15, 2009 – Buncombe County approves the execution of the operational agreement; and (7) September 22, 2009 – Issue before Council.

Highlights of the agreement consist of (1) Establishing the City as the backup PSAP for Buncombe County; (2) The creation of an advisory board to develop procedures and practices for the Communication Center, make capital expenditure recommendations and to handle disputes; and (3) A termination clause which insures the City a revenue stream to fund the costs associated with the receiving of 911 calls for service should the arrangement with Buncombe County end.

Highlights of the Agreement include:

- The creation of an advisory board consisting of the Sheriff, Emergency Management Director, Fire Chief and Police Chief of the City of Asheville and the President of the Buncombe County Fire Chief's Association to develop procedures and practices for the operation, make capital expenditure recommendations and to handle disputes.

- Establishing the City of Asheville's call center located in the Municipal Building and the Backup PSAP for Buncombe County.

- A termination clause which insures the City a revenue stream to fund the costs associated with the receiving of 911 calls for service should the arrangement with Buncombe County end.

On September 15, 2009, the Buncombe County Board of Commissioners approved the execution of the proposed operating agreement for the Communication Center and Buncombe

County has submitted its application to make the City's call center in the Municipal Building the backup PSAP for Buncombe County.

This action complies with the City Council Strategic Operating Plan in the focus area of "Safe."

Pros:

- Having all the Asheville Police Department, Asheville Fire and Rescue, the Buncombe County Emergency Medical Service, and the Buncombe County Sheriff's Department under one roof to receive and dispatch calls for service.
- Having an advisor body consisting of all stakeholders to meet and discuss issues facing the Consolidated Call Center.
- The ability to have an orderly termination of the agreement in the event that either party determines that the agreement is not meeting the needs of the citizens that it serves.
- A continued revenue source for the funding of receiving 911 calls for service by the Police and Fire Departments should the agreement be terminated.

Cons:

- None noted.

Starting July 1, 2009, the City will reimburse the County for the salaries of three (3) telecommunicator positions for the County's continued dispatching of Asheville Fire and Rescue. The City will not have to pay for infrastructure and equipment used for dispatching public safety, except for radio systems outside the Communications Center.

City staff recommends City Council adopt this resolution giving the Mayor authority to enter into an agreement for the operation of the Consolidated 911 Communications Center with Buncombe County.

On behalf of Council, Mayor Bellamy thanked former Councilman Joe Dunn, Councilman Mumpower, City Attorney Curt Euler, City Manager Gary Jackson, Assistant City Manager Jeff Richardson, Police Chief Hogan, former Fire Chief Greg Grayson, Interim Fire Chief Scott Burnette, Information Technologies Director Jonathan Feldman, Police Capt. Darryl Fisher, Woodfin Mayor Jerry Vehaun, and Buncombe County personnel of Wanda Greene, the County's technical staff, the County Attorney's Office, and former County Commissioner Nathan Ramsey for their work on this real success story of intergovernmental collaboration.

Mr. Euler responded to Councilwoman Cape and Councilman Miller in how the existing call center is the back-up.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-212. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 230

B. DISCUSSION OF CITY STANDARDS REGULATING SIGNS ON VEHICLES

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Assistant Planning & Development Director Shannon Tuch said that City Council was recently contacted by business owners expressing concern over the City's application and enforcement of standards regulating signs on vehicles. This occurred while the City Attorney's office was in the process of seeking resolution to an on-going enforcement matter involving signs on vehicles and was asked to suspend any further action until Council had the opportunity to publicly review and discuss those standards.

On September 9, 2009, staff reviewed the current ordinance and enforcement program with the Planning & Economic Development Committee. The Planning Department is charged with enforcing these standards and generally takes a conservative approach to their application to allow for an appropriate level of business identification. Enforcement of egregious violations is taken when other businesses are adversely impacted or other city goals are compromised. The presentation and accompanying staff commentary will attempt to:

- Demonstrate when and under what circumstances enforcement actions are necessary,
- Explain the relationship between signs on vehicles and other sign standards, and
- Identify options available to businesses requiring additional identification

Ms. Tuch then provided background on the existing regulations and how they are enforced. She said that the Sign Code has 4 categories for signage: (1) Signs exempt from regulation; (2) Signs exempt from permit requirements; (3) Prohibited signs; and (4) Signs requiring permits (on –premise, off-premise).

Signs on vehicles use to be listed as "prohibited" but provided an exception for signs used to identify businesses. Staff moved this standard to being "exempt from permit requirements" during a housekeeping amendment in 2008.

She said that the application of the standard can be challenging. Staff had asked to qualify the time period during which a vehicle could remain stationary but Council expressed concern so the language remained unchanged.

Section 7-13-2(d)(12) reads: *Business signs on vehicles.* Signs displaying a business name, trademark, or other identifier shall be allowed provided they are moved periodically during the normal course of business and maintain a current and valid registration and inspection. When not in use, said vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties.

There are areas of subjectivity: (1) "provided they are moved periodically during the normal course of business", and (2) "vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties"

How To Address the Subjectivity – develop basic guidelines: (1) Check to see that business is being conducted on the property. Monitor to see that vehicle moves within a reasonable time frame; (2) Check to see whether the vehicle is located on the business property itself; (3) Verify that vehicle is operable and has a valid license and registration; and (4) Speak to business owner to understand whether there are opportunities to move the vehicle to an appropriate, yet convenient location.

What this generally means is: (1) Signs on vehicles are not a high priority enforcement matter and enforcement is generally reserved for the most egregious violations or chronic problem areas; (2) Most notices issued are the result of complaints and most complaints are from competing businesses; (3) Most matters are resolved with a basic contact without notices being issued; and (4) Some violations include numerous violations and signs on vehicles may be listed as one.

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This has resulted in some general guidelines: (1) Signs on vehicles are not a high priority enforcement matter and enforcement is generally reserved for the most egregious violations or chronic problem areas; (2) Most notices issued are the result of complaints and most complaints are from competing businesses; (3) Most matters are resolved with a basic contact without notices being issued; and (4) Some violations include numerous violations and signs on vehicles may be listed as one.

She then showed a variety of photos showing signs that are permitted and those that are prohibited.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: why would there be a violation if the truck has authority to park on the property by the property owner; how are promotional events handled; need to be clear (no subjectivity) on "vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties"; and suggestion for language that trucks don't obstruct other signs.

Mr. Tuch said that she would look at all the points raised by Council.

C. RESOLUTION NO. 09-213 – RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY A UTILITY EASEMENT TO PROGRESS ENERGY FOR THE RELOCATION OF THE OAKVIEW BRIDGE PROJECT

Mr. Greg Shuler, Engineering Services Manager said that this is the consideration of a resolution authorizing the City Manager to convey a utility easement to Progress Energy to facilitate the construction and replacement of the East Oakview Bridge.

Several years ago, the East Oakview Bridge located in West Asheville on E. Oakview Road collapsed. The City requested and the N.C. Dept. of Transportation (NCDOT) agreed to loan to the City a temporary replacement bridge until the City could replace the bridge. Since that time, the City has secured the needed funding, approximately $1.18 Million, to replace the bridge. The Federal Highway Administration will fund 80% of the replacement and the City is responsible for the remaining 20%.

The temporary bridge is one of only two within the State of North Carolina and NCDOT has requested that the City expedite its replacement project and return the temporary bridge. The City has acquired most of the needed right of way to replace the bridge. In order to replace the bridge, Progress Energy will first need to relocate and install certain utility lines across the City's right of way.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by addressing the City's aging infrastructure.

Pros:

- Allows for the relocation of utility poles and lines that are required to construct the new bridge.
- Expedites the return of the temporary bridge to the NCDOT.

Con:

- A utility easement will now be on City-owned property.

There is no direct fiscal impact for the utility easement; however, the City will be responsible for 20% of the amount to actually relocate the utility pole and lines. The total estimated amount is $10,200.16. The City will pay this amount initially, then request reimbursement from the NCDOT for 80%. The total amount that the City will be responsible for is estimated to be $2,040.03.

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City staff recommends City Council adopt a resolution authorizing the City Manager to convey an easement across public right-of-way to Progress Energy.

In response to Mayor Bellamy, Mr. Shuler said that we have executed a municipal agreement with NCDOT and feel confident they will reimburse the City the 80%.

In response to Mayor Bellamy, Director of Public Works Cathy Ball said that we have a project budget for this project which has been approved.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-213. This motion was seconded by Councilman Mumpower and carried unanimously.

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D. PEOPLE FRIENDLY DRUG DOG PROGRAM IN PUBLIC PARKS AND DOWNTOWN AREAS

Councilman Mumpower said that his proposal was considered by the Public Safety Committee and wanted to make sure that Council was aware of his proposal. He proposed the use of people friendly drug dogs in our parks, parking garages, and other downtown areas where drugs are sold and abused in public spaces. The proposal could be titled "Bennie the Beagle" Drug Dog Program.

The problem is that our downtown is a concentrated area for drug distribution and use in public spaces – including our parks and garages. There is a new Pack Square public park coming that has the potential to be an additional large scale incubator for drug activity and related crimes.

His proposal is instruct our Police Department to intensify enforcement/education efforts in our downtown through the routine use of a people friendly drug intervention dog in public spaces.

Methods include (1) High visibility routine patrol utilizing an officer and canine with good people skills; (2) Use a seasonal sign on "Bennie the Beagle" with an anti-drug message – i.e. "Asheville is a Drug Free Zone" or "There's a New Dog in Town"; and (3) Deterrence and public education will be the priorities of this effort.

He provided links for additional information on the how and why of using people friendly drug intervention dogs. He was sure our police officers have the necessary know how and creativity.

Vice-Mayor Davis, Chair of the Public Safety Committee, said that the Public Safety Committee reviewed this proposal and determined that this program is not feasible because of the possibility of violating the 4th Amendment. Therefore, the Committee did not recommend moving the idea forward.

It was the consensus of Council to instruct the City Clerk to attach the minutes of the particular City Council committee meeting when a Council member brings the action forward to the full Council.

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In response to Councilman Miller, a Police Department Officer said that he believed the City has five drug dogs.

E. CALENDARS

Remainder of the Year City Council Meeting Schedule

Mayor Bellamy instituted discussion of the remainder of the year calendar of City Council. After that discussion, it was the consensus of Council to (1) hold the City Council's organizational only on December 8, 2009; (2) hold a regular formal meeting on December 15, 2009; and (3) hold the City Council annual retreat on January 8-9, 2010. The City Clerk was instructed to prepare the proper paperwork and place this item on the October 13, 2009, agenda.

Upon inquiry of Councilman Mumpower, Mayor Bellamy said that there will be a facilitator at the Council retreat and we will do it as economically as possible.

Business Calendar for Fiscal Year 2009-10

City Manager Jackson asked for Council's consideration of adoption of the Business Calendar for Fiscal Year 2009-10. Because there will be an amendment to the calendar due to City Council's retreat, the City Clerk was instructed to place this item on the October 13, 2009, agenda for action.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:32 p.m.

Magdalen Bouleson
CITY CLERK

MAYOR

Tuesday – October 13, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 2009 AS "SISTER CITIES MONTH"

PROCLAMATION PROCLAIMING OCTOBER 13, 2009, AS "ASHEVILLE-SAUMUR ROTARY FRIENDSHIP EXCHANGE DAY"

Mayor Bellamy read the proclamation proclaiming October, 2009, as "Sister Cities Month" in the City of Asheville. She presented the proclamation to Dr. Andrew Craig, President of Asheville Sister Cities Inc., and other Asheville Sister Cities members, who briefed City Council on some activities taking place during the month.

She also read the proclamation proclaiming October 13, 2009, as "Asheville-Saumur Rotary Friendship Exchange Day" in the City of Asheville. She explained that this is a Friendship Exchange visit from the Rotary Club of Saumur, France to the Rotary Club of Asheville. The Rotary Friendship Exchange Program advances international understanding and peace through personal contact across the borders while developing inter-club relationships that lead to fellowship and service projects. The Friendship Exchange Team consisted of Christian and Genevieve Cambo; Guy and Maguy Morand; Richard and Isabelle Devy; Helene Reynouard; Sylviane and Jacques Cailleux; and Alain and Bernadette Le Quellec. She presented this proclamation also to Dr. Craig.

B. PROCLAMATION PROCLAIMING OCTOBER 2009 AS "NATIONAL ARTS & HUMANITIES MONTH"

Councilman Newman read the proclamation proclaiming October, 2009, as "National Arts & Humanities Month" in the City of Asheville. He presented the proclamation to Mr. Charlie Flynn-McIver, Artistic Director at NC State Company, and Mr. Jim Julian, Board member for Arts 2 People and local artist/performer, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING OCTOBER 12-16, 2009, AS "INDUSTRY APPRECIATION WEEK"

Vice-Mayor Davis read the proclamation proclaiming October 12-16, 2009, as "Industry Appreciation Week" in the City of Asheville. He presented the proclamation to Mr. Clark Duncan and Mr. Ben Teague who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 22, 2009

B. RESOLUTION NO. 09-214 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SUNGARD HTE FOR ONGOING MAINTENANCE OF SOFTWARE SYSTEMS

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with SUNGARD, Inc. formally HTE, to provide maintenance coverage for the City's HTE Software.

SunGard/HTE, located in Lake Mary, Florida, has provided maintenance services for the City's HTE Software since installation of the system in 1997. Since this company received the bid for this software in 1997 and its proprietary software, we must contract our maintenance though this company and they have no subsidiaries in North Carolina. The service agreements are renewed annually. This maintenance covers currently used critical applications such as payroll, banking, and other core financial services during the transition to the BTIP project. The maintenance cost of this software for the renewal period of July 1, 2009, through June 3, 2010, has increased by approximately three percent.

Pros:

- By keeping the HTE Software in optimal condition, the City is able to provide service that is more efficient to our city employee users, giving them the ability to do their jobs in a timely manner.
- This allows the City to provide excellent service to the customer of the City of Asheville and to the vendors who conduct business with the City of Asheville.

Con:

- None noted.

The renewal agreement reflects an annual charge of $129,548. Funds have been appropriated in the Information Technology Services Contracted Service and the Parking Services Interfund accounts.

City staff recommends City Council adopt the resolution for HTE software maintenance coverage for the term of July 1, 2009, through June 30, 2010.

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C. RESOLUTION NO. 09-215 - RESOLUTION AMENDING THE 2009 CITY COUNCIL MEETING SCHEDULE TO CHANGE THE DECEMBER 8, 2009, MEETING TO AN ORGANIZATIONAL MEETING ONLY; AND ADDING A FORMAL MEETING ON DECEMBER 15, 2009

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D. MOTION APPROVING THE BUSINESS CALENDAR FOR FISCAL YEAR 2009-10

E. BUDGET AMENDMENT IN THE GRANT FUND FROM THE U.S. DEPT. OF JUSTICE FOR YEAR 4 WEED & SEED FUNDING, AND AMENDMENT IN THE GENERAL FUND TO REFLECT A TRANSFER FROM THE GRANT FUND TO SUPPORT PERSONNEL COSTS ASSOCIATED WITH THE GRANT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 09-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF HIGHWAY/RAILWAY GRADE CROSSING CANTILEVER SIGNALS AT THE INTERSECTION OF RIVERSIDE DRIVE AND NORFOLK SOUTHERN RAILWAY TRACKS

Summary: The consideration of a resolution to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) regarding the installation of highway/railway grade crossing cantilever signals at the intersection of Riverside Drive and Norfolk Southern railway tracks (Crossing # 720-409S) in Asheville.

The "Transportation Equity Act for the 21st Century" provides funding for correcting safety hazards that are located on streets *not* on the Federal-Aid Highway System as selected by the North Carolina Department of Transportation (NCDOT) and approved by the Federal Highway Administration (FHWA). The subject railway crossing has been selected for this funding. Typically, these types of projects are funded at a 90%/10% ratio but in this specific case, the construction is completely funded with Federal monies. The total estimated cost for the subject project is $200,000 and it would take about six months to complete the project. The project will be released for construction about one month after the municipal agreement is approved.

The City is responsible for all improvements to the approaches of the subject railway crossing including pavement markings, signs, drainage, sidewalk relocation and/or repair, fill materials, and pipe extensions. And, the NCDOT will reimburse the City 100% of the approved allowable project costs incurred by the City for the approach work. At this time, we anticipate the only approach work needed will include pavement markings and signs at an estimated cost of $1,500.

The City is responsible for one-half of the annual maintenance cost and that cost is estimated to be about $1,500 per year. The City currently pays one-half of the annual maintenance cost through the Traffic Engineering operating budget for 10 railway crossings within the City at an annual cost of about $12,000.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by maintaining and managing street infra-structure to improve traffic flow and efficiency to help support the healthy growth of the City.

Pros:

- Improves overall safety at an existing railway crossing.
- Minimizes the crash potential.
- Improves traffic flow and efficiency.

Con:

- Cost to the City is estimated to be $1,500 per year.

There is no fiscal impact to the City for the construction of the subject project. The project is 100% funded with Federal monies. The City is responsible to pay one-half of the annual maintenance cost, which is estimated to be about $1,500. The necessary funds will come from the current Traffic Engineering operating budget.

Staff recommends that City Council enter into an agreement with the NCDOT for installing highway/railway grade crossing cantilever signals at the intersection of Riverside Drive and Norfolk Southern railway tracks (Crossing # 720-409S) in Asheville.

RESOLUTION BOOK NO. 32 – PAGE 234

G. RESULTS OF THE SEPTEMBER 24, 2009, CIVIL SERVICE BOARD EMPLOYEE ELECTION

Summary: One copy of the results of the Civil Service Board employee election held on September 24, 2009, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. Secretary to the Civil Service Board Jessica Dunlap and City Clerk Burleson provided the following certified certificate on September 24, 2009: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 24, 2009, noting the name of each person voted for and the number of votes cast for each person as follows: Sidney M. Bach - 192; Jacquelyn Hallum – 196; Virginia Robinson – 227; and Charlotte Tell – 216.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. ORDINANCE NO. 3796 - BUDGET AMENDMENT IN THE GRANT FUND FROM THE U.S. DEPT. OF JUSTICE FOR YEAR 4 WEED & SEED FUNDING, AND AMENDMENT IN THE GENERAL FUND TO REFLECT A TRANSFER FROM THE GRANT FUND TO SUPPORT PERSONNEL COSTS ASSOCIATED WITH THE GRANT

Summary: The consideration of a budget amendment in the Grant Fund, in the amount of $142,000, from the U.S. Department of Justice for Year 4 Weed & Seed funding; and an amendment in the General Fund of $84,068 to reflect a transfer from the Grant Fund to support personnel costs associated with the grant.

In October 2004, elected officials, City staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The strategy was introduced to the community, via a series of public meetings, to determine the concerns of residents of the targeted area. The strategy was favorably received with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed and Seed funds once a year over a five year period. The first funding application was approved and awarded in August 2006.

On August 27, 2009, Acting Assistant Attorney General, Laurie Robinson, announced the City of Asheville's application for fourth year continuation funding was approved in the amount of $142,000. 50% of the funds will be used to support law enforcement and community police programs and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean-ups, housing services, and the salary of the Weed & Seed site coordinator. No additional City funding will be required to support this fourth-year grant.

The West Riverside Operation Weed and Seed steering committee, residents and several agencies such as the Housing Authority of the City of Asheville, Asheville City Schools, Children First/ Communities in Schools of Buncombe County, OnTrack Financial Education and Counseling, Asheville Greenworks, GO Asheville, LEAF in Schools and Streets and others continue to collaborate to improve quality of life for the residents of the West Riverside area of Asheville.

Data collected over the last 2.5 years suggests the initiative is having an impact in the targeted area. When comparing the averages from 2 years before strategy implementation to the 2.5 years since implementation, the following changes have been recorded: a 44% decrease in drug calls for service, a 12% decrease in violent crime and a 28% decrease in weapons offenses. An independent evaluator completed a survey of residents in 2009 and made the following assessment, "data shows that the areas where the Weed and Seed program have dedicated resources are improving, but that there is justification for the continued dedication of resources. Efforts should be continued, as many residents see gains being made in public safety and community appearance in the past two years. However, the respondents [residents of the Weed and Seed area] also provide evidence that there is more room for improvement."

This action complies with the City Council Strategic Operating Plan in that it supports small business development (Affordable Focus Area). It also complies with the following goals in the "Safe Focus Area": continue community policing initiatives, reaffirm commitment to eliminate open air drug market in Asheville, partner with intergovernmental agencies including the judicial system to comprehensively address drug-related crime, support recreation and employment alternatives for youth at risk of gang exposure. Finally, it complies with the "Sustainable Focus Area" in that it expands partnerships with UNCA, AB Tech and other institutions to achieve goals in health and wellness, workforce development, and economic development.

Pros:

- Significantly reduce violent crime and drug activity in a high crime area
- Provide a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs with the residents of the targeted area
- Mobilize community residents to collectively improve the conditions in the targeted area
- Provide resources for residents as a means of personal growth and development
- Address the social, educational, economic and cultural issues in the targeted area through multi-agency collaborations
- Leverage resources to sustain the program and replicate the strategies in other challenged areas in the city

Con:

- Some resistance to change by the residents who live in the target area.

The fiscal impact is grant revenue of $142,000 in Fiscal Year 2010 to implement the comprehensive Weed and Seed strategy which funds police overtime, police equipment, a coordinator position, and community-based resource provider contracts among other things at no additional cost to the city. The City anticipates that the U.S. Dept of Justice will fund the Weed and Seed initiative through June 2012.

City staff recommends City Council adopt a budget amendment in the Grant Fund, in the amount of $142,000, from the U.S. Department of Justice for Year 4 Weed & Seed funding; and an amendment in the General Fund of $84,068 to reflect a transfer from the Grant Fund to support personnel costs associated with the grant.

Councilman Mumpower was concerned that the City is further aggravating the existing trillion dollar deficit. He felt we need help from the federal government, but not in this area and not with borrowed dollars that our children will have to pay back.

Councilman Miller moved for the adoption of Ordinance No. 3796. This motion was seconded by Vice-Mayor Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the City's American Recovery & Reinvestment Act (ARRA) reporting, funding and upcoming event announcements for vendors.

Federal Reporting

Reporting for ARRA began on October 1, 2009, through the FederalReporting.gov website. City staff were trained and assisted in completing reports that were submitted via this web portal on Monday, October 5, 2009, for grants in which the City of Asheville was a prime recipient. The reporting cycle will be quarterly so the next cycle will be January 1-10, 2010, to submit reports with progress on funding expenditures. Funding for grants from the State of North Carolina are reported as sub-recipient reports to the corresponding state agencies for reporting to the federal government.

Reporting will be reviewed by federal agencies, comments on revisions made for local and state agencies to update and then the public will have access to all data on Recovery.gov thirty (30) days following initial submission to FederalReporting.gov.

Prime Recipient Awards	Sub-recipient Awards
CDBG-R	NCDOT Surface Transportation
Homeless Prevention	NCDENR SRF Drinking Water
Energy Efficiency & Conservation Block Grant	NCDENR SRF Clean Water
Edward J. Byrne JAG Solicitation Grant	NCDAQ Mobile Emissions Reduction
Transit Capital	Clean Cities Grant

Clean Cities Grant: Carolina Blue Skies Green Jobs (Department of Energy)

The City of Asheville will be receiving ARRA funds as part of a state-wide Department of Energy (DOE) Clean Cities grant application that we participated in through Land-of-Sky Regional Council.

Through this application, DOE has awarded $300 million to 23 groups. The Triangle J Council of Governments in Raleigh is one of the prime recipients, and Asheville will be a sub-recipient under their contract. The total award to the Triangle J COG is just under $13 Million. This total is $1.7 million less than requested in the grant application, and so in the next month the sub-recipients (about 10) will shave off dollars from the original proposals.

The City of Asheville's original request was for $749,015, which would fund the incremental cost of purchasing 11 new CNG pick up trucks, the retrofit cost to convert 11 existing pickups in our fleet to CNG, and a CNG station upgrade to be able to support the increased demand. As we are asked to trim our request, we plan to do so by pursuing less retrofits.

We will share the final amount with once we work through this process, but we are hoping it will be approximately $500,000+. This would be a significant investment in our fleet and CNG station.

Upcoming Events & Information Sessions

Locally, an outreach session is planned for all local vendors on ARRA update funding areas and doing business along with a session on capital access options. The session is scheduled for October 15, 2009, from 9:30 a.m. to 3:30 p.m. at the A-B Tech Enka Campus Haynes Room. No RSVP required. Presenters include the City of Asheville, Buncombe County, regional business service providers and local financial institutions.

The City of Asheville will host another session open to all vendors on November 18, 2009, from 9:30 a.m. to 12:30 p.m. at the City's Municipal Building Training Room. We will review the City's ARRA status and contracting opportunities and continue in our efforts to get vendors registered for notification of contracting opportunities.

Councilman Mumpower voiced his concern about the City's participation in the ARRA program.

When Councilman Mumpower asked if we have information about how many jobs the ARRA funding has created in Asheville, Ms. Mills said that we are still receiving approvals for the funding and we will be tracking those statistics for reporting purposes.

Councilman Newman was pleased to see that we will be retrofitting vehicles to CNG in that we are trying to manage our utility costs and reduce our environmental impact as well.

IV. PUBLIC HEARINGS: None

V. UNFINISHED BUSINESS:

A. W.C. REID CENTER

Livingston Park/W.C. Reid Center Master Site Plan

Ms. Jane Mathews, Principal of Mathews Architecture, P.A., updated Council on the Master Site Plan and what is currently proposed for Phase I of that Plan. Using illustrations, she said that the site is planned to have up to 3-4 phases, depending on funding. It is also planned to create a new site that still allows for connectivity to a greenway, to outdoor fields and play areas for children, a secure outdoor splash park, community garden, outdoor market and the adjacent needs of parking. She then described in detailed the entire building. One component is the community cultural arts component – Phase I. Phase I currently includes an auditorium, theatre, three classrooms, adjacent restrooms, office space, storage and mechanical, splash park area, including all of the parking on-site. The center component is the physical activity component. That would be the replacement for the existing gym facility at the W.C. Reid Center, adjacent locker rooms, showers, a therapy pool, wellness rooms for training and consultation, adjacent offices and restrooms. The third component is the community education component which includes community kitchen and teaching areas, other outreach class areas for community services, as well as a greenhouse (which is a separate component).

Phase I Project Timeline and Funding Recommendations for W.C. Reid Center Phase I

Chief Financial Officer Ben Durant said that this is the consideration of a financing plan the Reid Center Capital Project.

The WC Reid Center Capital Project currently has an authorized budget of $600,000. Approximately $448,000 of this budget has already been spent or committed to be spent for design-related services, including the development of a site master plan and associated construction documents. A balance of approximately $152,000 remains in the project budget that can be used for construction, upon approval of an updated WC Reid Center capital improvement and financing plan.

Plans for constructing a new WC Reid Center have been divided into two phases. Phase I involves construction of the community center building, which will accommodate a community theatre,

classrooms, office space, restrooms and storage facilities. Phase I also includes plans for parking, landscaping and other amenities. Based on current cost estimates, an additional $1.8 million will need to be added to the remaining balance of the existing project budget, which will provide approximately $2.0 in construction and contingency funds to complete Phase I of the project.

Phase II of the WC Reid Center project calls for construction of a new gymnasium. Based on current estimates, an additional $2.9 million would be needed for completion of this phase.

Funding Plan

Per City Council direction, staff has been asked to develop a funding plan for the completion of Phase I and Phase II construction of the WC Reid Center project. Staff's recommended plan is outlined below.

Phase I. The recommended funding plan for Phase I is as follows a) amend the project budget to add a total of $732,400 in secured and confirmed donations from various donor sources b) add the balance of approximately $152,000 from the project budget; and c) secure private bank financing in the amount of $1.07 million to cover the balance of funds needed for Phase I. The total of donations and bank proceeds is equivalent to approximately $2 million needed for Phase I.

The following is a list of donations totaling 732,400 that have been secured and confirmed to date:

Funder:	Raise the Roof at the Reid Community Campaign	Amount: $57,400
Funder:	Janirve Foundation	Amount: $600,000
Funder:	Eaton Charitable Fund	Amount: $25,000
Funder:	Glass Foundation	Amount: $50,000
	Total	$732,400

Also in the current budget there is $45,000 that was pledged by the Junior League and that is already included in the $600,000 budget. There is also the potential for additional funding in the amount of $300,000 from the Eckerd Foundation. Although a firm commitment is not in place for that yet, if that comes through that could be used for subsequent phases of the project.

Phase II. As previously stated, Phase II involves constructing a new gymnasium and other amenities at an estimated cost of $2.9 million. Given the significant amount of funding required to complete Phase II, staff recommends developing a funding plan for this phase as part of the of Fiscal Year 2010-11 Annual Budget and Capital Improvement Planning (CIP) process, which will be underway beginning in January. Staff feels that this phase of the project should be reviewed comprehensively and weighed against other capital improvement priorities that will have to compete for limited CIP resources.

Pros:

- Interest rates are currently favorable, making this a good time to finance capital projects. Based on favorable interest rates, the City is likely to secure an interest rate lower than the estimated 6%.
- The City's debt service costs will decline in the next two years, enabling the city to absorb this new debt service cost in year two without increasing the base budget for debt service expenses

Cons:

- The City will be committing its resources for capital planning and debt service in advance of a full and comprehensive review of departmental capital improvement requests.
- Additional debt service expenses for any new capital project will add stress to a budget that is already "tight" due to current economic conditions.

The financial impact of moving forward with a financing plan for Phase I construction of the community center is to increase in the city's annual debt service cost by approximately $110,000. This is based on a financing term of 15 years and a conservative interest rate of 6%. Due to timing issues related to issuing the debt, the City is only likely to incur a half a year's debt service payment in the current year, which would reduce the Fiscal Year 2009-10 financial impact to $55,000. Funding for this half-year payment can be covered by un-programmed funds currently available in the City's capital reserve account.

Staff is recommending proceeding with the financing plan for Phase I and reviewing Phase II as part of the annual budget review process.

Councilman Newman moved to proceed with the financing plan for Phase as follows a) amend the project budget to add a total of $732,400 in secured and confirmed donations from various donor sources b) add the balance of approximately $152,000 from the project budget; and c) secure private bank financing in the amount of $1.07 million to cover the balance of funds needed for Phase I. This motion was seconded by Councilman Miller.

In response to Councilman Mumpower about the sewer line through the middle of the property, Ms. Mathews said that Metropolitan Sewerage District has a proposal to abandon that line and replace it, at their expense, to a different location on the site adjacent to the stream. We do have a commitment from Metropolitan Sewerage District that we can build a connector over the existing line, which is very deep.

When Councilman Mumpower asked about staffing requirements, Parks, Recreation and Cultural Arts Director Roderick Simmons said that the new facility will be operated with our existing staff of 2 full-time employees and 2 part-time employees.

In response to Councilman Mumpower, Ms. Mathews said that she was unable to provide the square footage numbers for all the phases at this time; however, a ballpark for the entire new facility would be approximately 21-22,000 square feet.

Councilman Mumpower was concerned (1) that we have facilities all over town that need upgrade and this is for one neighborhood; (2) about staffing for that kind of a facility; (3) about swapping the existing 37,000 sq. ft. facility for one roughly half that size; and (4) that we will end up with two facilities (existing and new) that we will have to staff at a significant debt load in a time our economy is in major jeopardy. He felt we should renovate the existing center.

In response to Councilman Mumpower, Mr. Simmons said that they will have community dialogue for what to do with the existing facility as they have no current plan.

Councilman Russell noted that he originally supported this plan. However, after all phases are completed this will put it back at the original $8 Million Plan and he could not support it at this time. He hoped that in the future, staff would include in the fiscal impact statements what the borrowed amounts are, not what the annual debt service would be.

In response to Vice-Mayor Davis, Mr. Simmons said that the Phase I development can stand alone and we do have funding in place for Phase I.

Vice-Mayor Davis was excited about the other phases, but he didn't want to raise the expectation of the community that the future phases will happen, especially in this economy. He was particularly excited about the greenhouse, especially since it has a great opportunity of partnership. He felt the sale of the property that the existing Reid Center sits on go should go towards the purchase of these later phases. He felt comfortable in guaranteeing the community a $2 Million state of the art community cultural arts component – Phase I. And, the existing facility can serve as the gym until future phases are built out.

Councilman Miller noted that kids that are affected the most in making right choices are during the after school hours and those after-school programs are full. Putting kids in a gym isn't the sort of program that will affect change. He is personally excited about Phase I and in the near future kids will have an alternative to not being home alone but to go to a facility like this and being in an environment that changes how they make choices in their life.

Mayor Bellamy said that the existing Reid Center is the City's property and we have to improve all our facilities sooner or later. The price tag for the overall project is approximately $8 Million and as she makes this decision, she is thinking about the entire project. She felt we need to look at the next funding for the entire project immediately. Council adopted the Parks & Recreation Master Plan and one of the highest priorities was the W.C. Reid Center – not Phase I, but the entire center. She finds it difficult to make investments in other parks and greenways without completing this as we need to finish what we start. She supported Phase I and looked forward to continuing discussion in January about Phases 2 and 3. She also supported looking at selling the existing facility and using those funds to go toward the existing phases. We must look at the safety of our children and this facility is a safe haven for a lot of children in that neighborhood. We need to complete the entire project and not rely on the community – we already know the Housing Authority would like to have office space there. She also supported looking at federal funds that could assist us.

Ms. Sophie Dixon, resident on Brooklyn Road, supported completing the project in its entirety.

Rev. Christopher Chiaronmonte supported using the community centers for more than just children. He suggested posting a police officer in the facility in the evenings and opening the doors for the homeless to sleep, especially since the centers will have heat.

Mr. Alan Ditmore, Leicester resident, explained why he felt Asheville wouldn't have a problem with child care on such a high proportion if Asheville had a more gay friendly image and was able to attract a higher proportion of gay residents.

Mr. Christopher Sean Hollifield suggested the project be completed in one entire phase which would cost less and would be done at a quicker pace.

In response to Mayor Bellamy, Ms. Mathews said that the project is designed as a one level accessible facility, explaining how the gym should be on grade. The project is not designed to be multi-floors and they have not designed elevators, stairs or towers. However, if they had the design time, they could look at a multi-story building; however, they were asked by City Council to do a master plan and asked to accommodate a lot of things. The configuration addresses a lot of elements, in addition to architecture. This is a well thought out plan by the entire team, but that doesn't mean that they can't, if given direction from Council, to look at consolidating it into a two-story building. But, they were also directed to look at ways that it could be broken into construction phases.

When Mayor Bellamy asked if it would be helpful to let Ms. Mathews a number up-front for the future phases, Ms. Mathews said that different elements have different costs per square foot and if they were given a funding amount they could tell Council what they can build.

When Mayor Bellamy asked if it would help staff with financing options if Council said how much they wanted to budget for Phases 2 and 3, Mr. Durant didn't believe there are estimates or construction documents for Phases 2 or 3. He felt the first step would be knowing what we want to build, put some estimates together, and then let that be the beginning process. Then we would look at what funding options are available. Staff would be happy to proceed in any path Council chooses, but he did explain what typically happens with the Capital Improvement Plan process, which he would recommend.

Councilman Miller did not advocating going back and re-designing the facility as it would be very expensive. He noted that the completion date of Phase I is anticipated to be December of 2010. He felt it

would be appropriate to look at Phases 2 and 3 and see if they rise to the top of the Capital Improvement Plan.

Councilman Newman agreed that as we move on in the project we should use the proceeds from the sale of the existing facility for Phases 2 and 3. If he thought we were only voting on Phase I only and then not moving forward, he would not vote in support of this. But when we pull all of our resources together, there will be opportunities to make a great community facility happen on this site. We are moving the first piece forward and then making future phases of this build-out happen too. He was confident we can find a financially responsible way to do that.

Mayor Bellamy asked for a friendly amendment that staff provide Council a status report on the Reid Center on a quarterly basis at a Council meeting, which can be part of the Quarterly Strategic Operating Plan update. Councilman Newman and Councilman Miller accepted the friendly amendment.

The following amended motion made by Councilman Newman and seconded by Councilman Miller carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no" – Motion to proceed with the financing plan for Phase as follows a) amend the project budget to add a total of $732,400 in secured and confirmed donations from various donor sources b) add the balance of approximately $152,000 from the project budget; and c) secure private bank financing in the amount of $1.07 million to cover the balance of funds needed for Phase I; and to have staff provide Council a status report on the Reid Center on a quarterly basis at a Council meeting, which can be part of the Quarterly Strategic Operating Plan update.

B. RESOLUTION NO. 09-217 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL TO ALLOW FOR DISCOUNTS FOR PARKING FEES FOR INDIVIDUALS OR AGENCIES THAT HOLD FIVE OR MORE MONTHLY PARKING SPACES IN THE CIVIC CENTER GARAGE OR PURCHASE 300 OR MORE HOURLY PARKING PASSES FOR ANY GARAGE

Director of Public Works Cathy Ball said that this is the consideration of a resolution modifying the City of Asheville Fees and Charges Manual to include the following: (1) Fifteen percent (15%) discount for ten or more monthly parking spaces owned by one individual or agency in Civic Center Garage; (2) Ten percent (10%) discount for five to nine monthly parking spaces owned by one individual or agency in the Civic Center Garage; and (3) Fifteen percent (15%) discount for 300 or more bulk vouchers purchased at one time by the same individual or agency for hourly parking in any City operated parking garage.

In May 2009, the Downtown Commission requested that the City evaluate the potential for allowing discounts for volume purchases of monthly parking spaces as well as hourly vouchers. The purpose of the request was to provide incentives for employers to buy monthly parking passes for employees thus freeing up on-street parking spaces.

Staff developed a recommended discount based on these guiding principles:

- providing a meaningful discount;
- minimizing the impact to future financial stability of the parking enterprise fund; and,
- balancing proposed volume discounts with other parking rates such as surface parking lot rates.

Based on these principles staff recommends the following parking rate changes:

(1) Fifteen percent (15%) discount for ten or more monthly parking spaces owned by one individual or agency in Civic Center Garage; and

(2) Ten percent (10%) discount for five to nine monthly parking spaces owned by one individual or agency in the Civic Center Garage; and

(3) Fifteen percent (15%) discount for 300 or more bulk vouchers purchased at one time by the same individual or agency for hourly parking in any City operated parking garage.

This action complies with Council's Strategic Goals by supporting diversified job growth and small business development. The City Council Finance Committee has reviewed and support this recommendation unanimously.

Pros:

- Provides incentives for employers to purchase multiply monthly parking spaces in the Civic Center Garage where the greatest availability for monthly parking exists.
- Provides incentive for businesses to purchase bulk hourly vouchers for customers.
- Increase availability of hourly on-street parking.

Con:

- The proposal will have a financial impact on the parking fund as described below.

The estimated fiscal impacts for each of the discounts are outlined in the table below. The total negative impact to the Parking Enterprise Fund is estimated to be no more than $35,000.

	Type of Discount	Current Number of Customers that Qualify	Annual Discount (based on current use)
(1)	15% - for more than 10 monthly parking spaces in the Civic Center Garage	8 @ 187 spaces	$23,562
(2)	10% - for more than 10 monthly parking spaces in the Civic Center Garage	5 @ 27 spaces	$2,268
(3)	15% - 300 or more bulk hourly vouchers	Unknown	$5,000 estimated
	TOTAL		$30,830

The consideration of a resolution modifying the City of Asheville Fees and Charges Manual to include the following: (1) Fifteen percent (15%) discount for ten or more monthly parking spaces owned by one individual or agency in Civic Center Garage; (2) Ten percent (10%) discount for five to nine monthly parking spaces owned by one individual or agency in the Civic Center Garage; and (3) Fifteen percent (15%) discount for 300 or more bulk vouchers purchased at one time by the same individual or agency for hourly parking in any City operated parking garage.

When Mayor Bellamy asked for public comments, none were received.

When Vice-Mayor Davis said that the Downtown Commission felt this may not been enough of an offset, Ms. Ball said the way they set the 15% threshold is that they wanted it to be significant but they didn't want to undercut some of the other parking, since we have some surface parking lots at $55.00. We didn't want the covered parking to be less than the surface parking unless we reduced that also because the value of the covered parking is higher. To her knowledge there has not been any test from the downtown merchants to see if that is enough of a discount that would cause them to purchase them in bulk.

At the suggestion of Vice-Mayor Davis, Mayor Bellamy asked for a 6-month update on how these discount rates are working; the meter services; how the new parking garage equipment is working; gathering of data on how much on-street parking is being affected by people coming out of the garages and parking on-street; staff look at the difficultly of getting out of the automated parking garage

equipment, especially on special event evenings; and, that we monitor if the discounted price is working and if not we might need to lower the price even further to make it successful.

Councilman Mumpower spoke against giving some people a discount, but not everyone.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-217. This motion was seconded by Councilman Miller and carried on a 5-1 vote with Councilman Mumpower voting "no".

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C. RESOLUTION NO. 09-218 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL FOR A NEW FARE STRUCTURE FOR THE BLACK MOUNTAIN INTERCITY SERVICE – ROUTE 28

Transportation Director Ken Putnam said that this is the consideration of a resolution amending the Fees and Charges Manual for a new fare structure for the Black Mountain Intercity Service - Route 28.

The North Carolina Department of Transportation (NCDOT) informed the City in December 2008 that the Intercity funding for Routes 28 and 54 (Black Mountain and Weaverville, respectively) would be discontinued effective November 1, 2009 because a recent assessment of the routes determined that they were not compliant with the requirements of Circular 5311 (f).

This assessment was prepared by the Institute for Transportation Research and Education (ITRE) at the request of the NCDOT and included all of the intercity routes throughout the state.

The main concerns included publishing the scheduled stops at the Greyhound station, partnering with Greyhound, and making meaningful temporal connections to the Greyhound routes arriving and departing from the Asheville Greyhound bus terminal.

These routes are currently fully funded with state funds approved by the NCDOT Board of Transportation until October 31, 2009. Total current funding for Route 28 (Black Mountain) including the funding for Mountain Mobility's Black Mountain Trailblazer is $287,398 plus a local match of $37,500 for a total of $324,898. The City's contribution is only the farebox revenue.

The City worked closely with ITRE to develop service options and presented a proposal to NCDOT on July 10, 2009. NCDOT decided to only fund Route 28 (Black Mountain) because of the regional significance of the route. The proposal is pending NCDOT Board of Transportation approval. If approved, the route would be funded through June 30, 2010.

The proposed route would start and end at the Asheville Transit Center and turn into the Greyhound Bus station, inbound and outbound on Tunnel Road. The route would begin by using Tunnel Rd, to I-240 to I-40 and then use Exit 55/Porter Cove Road to US-70 to serve Warren Wilson College. Then the route would continue out US-70 to the towns of Swannanoa and then Black Mountain. The route would return inbound using the same route as it did on the outbound trip. This route would serve a total of six stops and provide a strong intercity connection between limited points east of Asheville and the Asheville Greyhound station. Six trips will be offered to and from Black Mountain. The headway will be 1 hour 45 minutes.

As part of the requirements to consider funding for this route, NCDOT requested the City to reevaluate and increase the revenues. Three options were considered: increase partnerships, increase current partner's participation, and increase fares. Staff approached the Town of Black Mountain, Warren Wilson College, and Ingles. At this time only Black Mountain has committed to increase its participation;

staff continues negotiations with Warren Wilson College and Ingles. Route 28 proposed budget is as follows:

Proposed Eight Month Operating Budget		
Cost	Revenue	
$281,661		Route #28 (Intercity) Operations
$55,000		Trailblazer (Feeder) Operations
$16,833		Marketing (Intercity & Feeder)
	$10,000	Warren Wilson College contribution
	$18,500	Town of Black Mountain contribution
	$5,500	Buncombe County contribution (including fare revenue from the Black Mountain Trailblazer $2,513)
	$13,348	Fare box revenue (Route #28, using TMP demand elasticity)
$353,494		Total Cost
	$47,348	Total Revenue
$306,146		**Operations Request**

The farebox revenue was calculated based on ridership the route will lose as a result of the fare increase (approximately 24%). The Transit Master Plan assumes that 0.43% of ridership will be lost for any 1% of fare increase. The contributions are based on what the partners expressed they will be willing to contribute, though Warren Wilson is still pending approval.

Please note that there would ***not*** be a direct fiscal impact to the City of Asheville for the anticipated operations budget. The City would ***not*** be responsible for any of the anticipated funds and the contribution will be limited to the farebox revenue.

The new fare structure is based on industry standards for Intercity routes and compares with Greyhound fares. The fare proposed for Route 28 is based on $.10 per mile, which determines two different tiers according to the destination. In addition, City staff is aware of the impact this fare increase will have on commuters and has developed an Intercity monthly pass to offset some of these costs; this source of revenue has to be approved by the North Carolina Board of Transportation:

Recommended Fare Changes in Red			
CASH FARE	**Adult**	Intercity from Asheville to Swannanoa	$1.50
		Intercity from Asheville to Black Mountain	$1.75
		Within City	$1.00
	Discount Pass**	Intercity from Asheville to Swannanoa	$0.75
		Intercity from Asheville to Black Mountain	$1.00
		Within City	$0.50
Monthly	**Adult**	Intercity	$55.00
		Within City	$15.00
	Discount Pass**	Intercity	$27.50
		Within City	$7.50

** Discount Passes apply to all seniors 65+, individuals with disabilities, Medicare recipients and students in elementary, middle and high school, ages 6-19

The growth in ridership observed on Route 28 (64% 2006-2009), as well as on the Black Mountain Trailblazer (27% 2006-2009) since their inception, is a clear indication of the invaluable service these routes are providing to the community. The routes, now in their eighth year of operation, are carrying over 60,000 passengers a year.

Year	Total Ridership	Percent increase
Route 28		
FY2009	**55038**	31%
FY2008	**38216**	8%
FY2007	**35140**	44%
FY2006	**19727**	
Trailblazer		
FY2009	**7815**	-1%
FY2008	**7892**	6%
FY2007	**7392**	23%
FY2006	**5688**	

Although there is not now and there would not be a future direct fiscal impact to the City of Asheville, if the NCDOT chose not to fund the subject route, one position would be eliminated.

This action complies with the City Council Strategic Operating Plan in the green and sustainable focus areas by seeking ways to fully leverage funding from the State and other funding sources for regional transportation improvements and to establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements.

City Council passed a resolution on June 23, 2009, affirming the importance of Intercity Transit Service. The Transit Commission has also supported the continuation of the intercity routes.

The subject item was reviewed by the City Council's Finance Committee on September 29, 2009, and it was agreed that the item should move forward to City Council.

Pros:

- This action is a step toward retaining the service and funding for the subject route.
- This action does not commit the City of Asheville to disburse any funds for the operation of the subject route.

Con:

- None

City staff recommends that City Council approve a resolution amending the Fees & Charges Manual for the fare structure in order to keep the Black Mountain Intercity Service - Route 28 in operation.

Councilman Mumpower said that he was approached by a person who explained the necessity of continuing the Asheville - Weaverville route. He asked for Council to re-consider the route which will end on October 31. He provided Council with copies of a petition containing 30 names of individuals which use the bus for mainly work and school. The petitioners also suggest a revised plan for bus service just in the morning and in the evening, leaving out three middle trips, which will save money.

Mayor Bellamy said that the adoption of the Transit Master Plan will be coming to Council on October 27 at which time all routes will be evaluated. Staff was instructed to evaluate that particular route

to see what options would be available, along with the budget figures. A suggestion was made to see what type of transportation Buncombe County has started in that direction as well.

Mr. Christopher Sean Hollifield stressed to Council the need to re-consider a revised Weaverville route with one in the morning and one in the evening. People need the bus for transportation to work and to school.

Councilman Newman suggested Mr. Hollifield and those who signed the petition talk with the Buncombe County Commissioners as well as the Weaverville Town Council, especially since the Town of Weaverville said they didn't want that service. He felt the City taxpayers shouldn't be financially responsible carry a transit service outside the City limits and we need some partners to make that happen. He hoped we can provide some assistance, but others need to step forward.

Councilman Mumpower felt that transportation is one of our best social services and what might be a small increase to us is dramatic to others.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-218. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Newman voting "no".

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D. RESOLUTION NO. 09-219 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL TO ALLOW ADJUSTING OF GOLF COURSE RATES TO MEET MARKET CONDITIONS

Parks, Recreation and Public Facilities Director Roderick Simmons said that this is the consideration of a resolution amending the Fees & Charges Manual to allow for a fee adjustment policy for the Municipal Golf Course.

In the fall 2008, the Recreation Board recommended to City Council the full slate of proposed Fiscal Year 2009-10 fees charged for services of the Asheville Parks, Recreation and Cultural Arts Department. The fees included fees charged at the Asheville Municipal Golf Course. The fees were then approved by City Council. Since then, change in the local golf market, economy and changes to the structure and expectations of the golf course budget has occurred.

The golf course is an enterprise fund and is expected to operate within a balanced budget with no subsidy from the City of Asheville general fund. To accomplish that, the golf course revenue and expenses must balance, and managers need the tools to make adjustments to both during the course of the fiscal year as changes in the local golf market, economy and golf conditions vary. This has been increasingly apparent in the last fiscal year as local golf courses have adjusted golf fees down and offered golf incentives during a particularly difficult economic period.

Staff is recommending the following fee adjustment policy

Proposed Fee Adjustment Policy

- The setting of the seasonal fees within the fee ranges would be proposed by staff and then reviewed by the Director of the Parks, Recreation and Cultural Arts Department and The Finance Director prior to implementation.

- If it is deemed necessary to change fees during a season there would be a minimum two week public posting at the golf course prior to fees being changed.

- Golf Course fees will be set with sensitivity to the surrounding market. Prior to fee being adjusted, staff will produce a competitive analysis of specific fees in the market, and fees will be set to optimize total revenues and balance the budget.

- Golf Course fees will never be adjusted higher than fees adopted by City Council during the annual fees & charges process.

In July 2009 the Recreation Advisory Board reviewed and approved the fee adjustment proposal which included (1) establishing green fees within a fee range that will allow managers to make adjustments as needed but stay within the approved fee range, (2) adjust the fixed fee for the senior weekday pass and the 30-day pass, and (3) adjust fixed golf cart fees. The fee adjustments are projected to generate additional revenue in Fiscal Year 2009-10.

This action complies with the City's Council Strategic Operating Plan in that it to offers a standard of living that is affordable and attainable for people of all income levels. This action also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides a pricing philosophy conveying the value of the experience through an equitable fee structure that encourages participation.

Pros:
- Respond to year-round weather conditions and still attract a sustainable volume of customers
- Remain competitive with other area golf courses
- Assist in making the golf course an appealing golf destination

Con:
- We do not have experience with a flexible fee schedule.

The exact impact that this flexible pricing strategy will have on total golf course revenue is unknown at this time; however, the proposed fee adjustment policy is expected to contribute to a balanced golf course enterprise fund. Staff will measure at regular intervals the impact of seasonal adjustments on total revenues and will ensure that appropriate price points are established accordingly.

Staff is recommending City Council approve a resolution amending the Fees & Charges Manual allowing a fee adjustment policy for implementation at the Municipal Golf Course.

After a brief discussion initiated by Mayor Bellamy about the feasibility of privatizing the golf course, it was the consensus of Council to instruct Mr. Simmons to send a question to his List Serve of all his counterparts in the county to see what percentage of their golf courses are privatized, if they have saved money, what were the cost savings were and what were the antidotals. After that is reported back to Council, then Council can determine if they want staff to spend the time for a true analysis of privatization.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-219. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 7:05 p.m., Mayor Bellamy announced a short recess.

E. URTV INC. ACTION PLAN

City Attorney Oast said that Council has heard a number of issues regarding URTV Inc. and has asked for more information from the URTV Board. We have received some additional information on September 30 amplifying the information we had received previously, along with a request from URTV requesting renewal of the management agreement with the City. The current management agreement with URTV expires on November 23, 2009. Pursuant to the terms of the agreement, the city is obligated to respond to URTV's request to renew the agreement within 60 days of receiving the request.

Staff recommends a 90-day delay in renewing the management agreement with URTV to allow for staff time to review the package of information submitted by URTV with its request to renew the agreement and to research and develop terms for a new agreement for City Council consideration. During the 90-day extension, staff would develop proposed terms for a new management agreement, including clauses that (1) address compliance with open meetings and public records law and (2) specify the funding amount and payment terms for the duration of the agreement. The additional time would also allow staff to determine what impact, if any, the expiration of the local franchise agreement with Charter Communications will have on public access. The additional time could also be used by the Boards and Commissions Committee and the URTV board to work through any unresolved concerns expressed in the July 20 letter. Per the current management agreement, the terms of the existing agreement would continue until a new agreement is reached.

Staff met with the Boards & Commissions Committee earlier in the day and their consensus was to recommend to City Council that staff draft a new management agreement covering a period of 90 days, including clauses that address compliance with open meetings and public records laws. The Committee also specified prorating URTV's payment by granting them one quarter of the total annual amount until a longer term agreement could be executed. In addition, the Committee reaffirmed their request of the original Board structure.

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, noted that Council is still receiving letters indicating transparency problems with URTV. The City has the ability to appoint two Board members and to fund it and this 90 day delay is our sincere way to say that we want URTV to be a success, but we want to make sure the initial intent is being accomplished.

Rev. Christopher Chiaronmonte spoke in support of URTV and felt that they had no problems except for those who are not part of URTV.

Mr. John Blackwell suggested Council entertain proposals from other individuals or groups to manage URTV and that Council retain the right to reject any and all proposals.

Ms. Davyne Dial also suggested Council entertain proposals from others in the community to manage URTV Inc. She said that there are five or six completely built out television stations in the County and given the economy, she suggested combining some of those facilities.

Mr. Alan Ditmore felt the URTV membership dues should be cut, along with the expense of the facility fee.

Mayor Bellamy said that staff will be bringing back a revised management agreement in the near future.

VI. NEW BUSINESS:

A. DISCUSSION OF 24/7 ENERGY CONSERVATION IN CITY BUILDINGS AND THE POTENTIALS OF ENERGY SAVINGS PERFORMANCE CONTRACTING

Exploring the Potentials of 24-7 Climate Control Systems for All City Buildings

Councilman Mumpower said that the problem, from observation, is that city buildings have wide fluctuations in temperature at differing times of day – with an assumption that our HVAC and other energy

use systems such as lighting are not programmed or managed on a consistent basis. In view of the number of city government buildings, there seem to be strong potentials for savings and environmental impact through more intentional energy management practices.

His proposal is that the Council majority instruct the city administration to assess potentials for incrementally establishing 24/7 energy management programs for all city buildings.

Suggested methods include (1) We can use our own staff, knowledgeable community resources, and city funding resources to act; (2) We can explore the Energy Savings Performance Contracting (ESPC) approach that provides consultation, facility upgrades, and funding without impact on city resources; see paragraph below; (3) Staff can initiate immediate common sense policies and audit compliance on an informal basis; and (4) We can establish an "Energy Conservation Award" for employees who flag opportunities for success.

Potentials of Energy Savings Performance Contracting

Councilman Mumpower said that the following is Information on ESPC (Energy Savings Performance Contracting): (1) Guaranteed Energy Savings Performance Contracting (ESPC) is an innovative method for purchasing energy-saving improvements in buildings. Many State agencies face increasing energy costs and the need to replace worn-out equipment, but lack the funds to make building improvements. Energy performance contracting has four distinguishing features that address this and other common problems: (a) A *single procurement* is used to purchase a complete package of services in which one contractor is accountable for design, purchase, installation, maintenance, and operation of the equipment to ensure optimum performance; (b) The package of services includes financing of all the project costs, so *no up-front money is needed;* (c) An energy performance contract is structured so that payments to the performance contractor are contingent on the actual level of savings achieved (or energy produced). The savings produced by the project are greater than its cost; thus, a performance contract pays for itself. Since payments to the contractor are contingent on the savings achieved, it is in the contractor's interest to maximize the energy savings. This translates into increased dollar savings for State agencies. In other words, the program is supported by *utility bill savings which are used to pay for the improvements;* and (d) All utility savings are *guaranteed* by the performance contractor; (2) NC General Statute G.S. 143-64.17b encourages any public agency, municipality, county, state college or university and school districts to improve energy efficiency and technology infrastructure through a guaranteed Energy Savings Performance Contract; (3) Benefits include: (a) Replace aging equipment with new equipment; (b) Access to 3rd party financing for needed capital energy improvements; (c) Improved facility energy efficiency and reduced energy costs; (d) Reliable and persistent long-term energy saving project performance; (e) Enhanced local economies through the ESCO's use of local subcontractors; (f) Decreased equipment repairs and lower maintenance costs; (g) Freed-up budget dollars to fund other activities; and (h) Reduced Greenhouse Gas (GHG) Emissions; and (4) Increasing use in Southeast; UNC-Asheville, City of Knoxville, Mecklenburg County.

Models include (1) The Federal Government has noted from audits that they waste dramatic revenue through poor energy management in a majority of Federal facilities. They are in the process of addressing this issue; and (2) Additional models and information for consideration can be found at the several sites.

Councilman Mumpower moved to instruct City staff to explore in greater detail the near and long term potential for energy savings performance contracting for reducing energy costs for city buildings, equipment and other aspects of local government. This motion was seconded by Councilman Russell.

City Manager Jackson said that this is covered in the Sustainability Management Plan and we have considerable experience with energy audits for our buildings.

Councilman Mumpower said that two instances have been brought to his attention that the City is not as intentional about this as we could be, nor are we moving on a timely basis.

Councilman Newman said that we have established a citizens committee of Sustainable Advisory Committee on Energy & the Environment (SACEE) and have dedicated very talented staff to these specific goals. The idea of using a company to work with us on our organizational goals to reduce energy use is not an original idea. There are some advantages for that approach and some disadvantages. If you believe you have good people in-house to do these things, then oftentimes it makes sense to do them yourself than letting another company capture that economic value. He encouraged Councilman Mumpower to take these ideas to SACEE and talk to them because many of these things are already underway.

When Councilman Russell withdrew his second, Councilman Mumpower's motion died for lack of a second.

B. EVALUATION OF MONTFORD COMMONS GAP FINANCING REQUEST

Chief Financial Officer Ben Durant said that this is the consideration of policy direction for a proposed Montford Commons Public/Private Partnership.

In September 2007, City Council adopted a Conceptual Master Plan for the Montford Commons Urban Village. City Council approved an amendment to the plan in June of 2009 which increased the plan's development density and changed the proposed mix of uses by increasing the plan's residential space and decreasing the commercial space.

The $60.6 million development project, located near the historic Montford neighborhood, will be built out in three phases and will combine multi-family and single-family housing, commercial business, and traffic and pedestrian improvements. A key aspect of this project is its potential for addressing urban blight.

Proposed Partnership

Frontier Syndicate, the developer of this project, has subsequently requested establishment of a public/private partnership with the City that would involve public financing of approximately $9 million of public infrastructure improvements through Project Development Financing (or project development financing, based on North Carolina General Statute nomenclature). A public investment of $9 million will bring the total value of the project to approximately $70 million. Frontier Syndicate's request for a partnership is based on the assumption that the additional property taxes and public purpose benefits generated by the project will offset the cost of any city and county public investment.

Policy Questions

Frontier Syndicates' proposed public-private partnership involves two policy questions:

1. Should staff proceed with exploring a public-private partnership that uses Project Development Financing to support the public infrastructure improvements?

It is staff's recommendation not to pursue Project Development Financing (also known as Tax Increment Financing) as a means of supporting the public infrastructure improvements associated with the Montford Commons project. Based on preliminary analysis, this project does not appear to be suitable for Project Development Financing (PDF). Discussions with underwriters, as well as the Local Government Commission reveal that there is currently no market for PDF's at a reasonable interest rate. Additionally, staff believes the level of complexity and cost of issuance expenses associated with PDF's cannot be justified based on the size and scope of the requested public investment. Further, based on information we have received to date from Frontier Syndicate, the estimated city and county property tax revenue ($575,000) that will be produced by the development is insufficient to cover the projected debt service costs ($900k) associated with a PDF for $9 million in public infrastructure improvements.

2. *Does the Montford Commons Urban Village project have sufficient merits to justify further due diligence and negotiations with the developer regarding the exploration of a public private partnership and other means of support?*

Staff believes that the answer to this question is yes and that it has been previously answered through the normal planning and zoning process. The Montford Commons project appears to be consistent with the City's 2025 Plan, Smart Growth Policies, Strategic Operating plan and other official plans of the City, offering the following merits:

- The project encourages infill redevelopment.
- The Urban Village projects proposes a mixture of housing types and an efficient use of land through their promotion of density;
- The project provides a walkable community within the development, into the adjacent neighborhood and to downtown;
- The project is located on an existing bus line which supports and encourages alternative transportation options and preserves the capacity of area roadways

Though this project does not appear to be suitable for PDF, there may be other financing mechanisms by which the City and County can provide financial support for the related public infrastructure improvements. This support would have to be provided at a level that is affordable and makes economic sense for the size and scope of the project. In order to determine what level of public financial support, if any, should be provided, staff recommends that additional due diligence is provided. Specifically, Frontier Associates should produce a financial feasibility analysis of their project at the developer's expense, using an independent financial advisor to be selected by the City and County.

The central question in the financial feasibility analysis is "what is the true financial gap associated with this project, and is the request for public financial support reasonable based on anticipated costs, revenues, acceptable rates of return for the developer, and the projected value of the public purpose benefits". Such an analysis would be similar to processes we've used with other major development projects in which public financial investment was requested.

On September 29, 2009, the Finance Committee reviewed this report and recommended forwarding it to City Council for full review and consideration.

There is no financial impact to the City and County. The cost of the financial feasibility analysis will be borne by Frontier Syndicate.

City staff recommends proceeding with a financial feasibility analysis, the results of which will be presented to City Council for further policy consideration.

Councilman Russell, Chair of the Finance Committee, supported this action and approved it moving onto the full Council for consideration.

A representative of Frontier Associates explained how their project has become fairly complex from a financial standpoint. He said they need the money for the infrastructure piece (roads, waterline, sewer lines, etc.), noting that the project will not succeed without City or County assistance.

Rev. Christopher Chiaronmonte spoke in support of the study since the developer will be paying for it.

Mr. Durant responded to Councilman Mumpower in that the City has not done any Product Development Financing and explained the public/private partnership with Biltmore Park. With this project, after the analysis is done staff will review it and then look at what options might be available.

Councilman Mumpower felt the City should not be giving anyone special deals, but if we are giving special deals to some people we should give consideration to others.

In response to Mayor Bellamy, Mr. Durant said that the analysis will determine the gap and then staff will make a recommendation as to whether it's reasonable for the City to offer some kind of options.

In response to Mayor Bellamy, Mr. Durant said that the Local Government Commission (LGC) will require a lot more information than what we are attempting to provide in this first phase of analysis. The first phase of the analysis is broadly looking at the pro formas and determining the gap. But if we decide to move forward with a development agreement and do Product Development Financing, there is a lot more information the LGC would require before they would approve a project of this type. The analysis would be a lot more complex and rigorous at that point. Part of the LGC's responsibility would be help us minimize our risk and there would be provisions in any type of agreement that would help us minimize that risk and give us assurances that the tax value that is projected would actually come to fruition.

Mayor Bellamy noted that the City and others will be looking at this issue on a regular basis, as the LGC has experience with projects across the state.

Councilman Russell moved to produce a financial feasibility analysis of Montford Commons project, at the developer's expense, using an independent financial advisor to be selected by the City and County. This motion was seconded by Councilman Miller and carried unanimously.

C. MAYOR UPDATE ON N.C. METROPOLITAN MAYORS COALITION

Mayor Bellamy briefly updated Council on some of the activities of the N.C. Metropolitan Mayors Coalition. They recently had a conference which addressed the issues of transportation needs in North Carolina and solutions to urban crime. They will be additional follow-up and she will keep Council updated.

Mayor Bellamy also noted that she is serving on the September 23-24, 2010, Fall Retreat of the N.C. Metropolitan Mayors Coalition Planning Committee. The Coalition has asked for a point of contact from City staff. It was the consensus of Council to have a representative of the City Manager's Office serve on the Planning Committee with Mayor Bellamy to assist in necessary tasks associated with this retreat.

D. APPOINTMENT OF A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Davis said that the term of Herman Turk (owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) expired on August 30, 2009.

On September 8, 2009, it was the consensus of Council to interview Bob Patel. That interview occurred on October 13, 2009.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to appoint Mr. Bob Patel as a member of the Buncombe County Tourism Development Authority (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) to serve a three-year term, term to expire August 30, 2012, or until his successor has been appointed. The formal action will be placed on the October 27, 2009, agenda.

E. APPOINTMENT OF A MEMBER TO THE URTV INC. BOARD OF DIRECTORS

Vice-Mayor Davis said that the term of Sandra Bradbury, as a member of the URTV Inc. Board of Directors, expired on June 30, 2009.

On September 8, 2009, it was the consensus of Council to interview Stephanie Weil. That interview occurred on October 13, 2009.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to appoint Ms. Stephanie Weil as a member of the URTV Inc. Board of Directors to serve a two-year term, term to expire June 30, 2011, or until her successor has been appointed. The formal action will be placed on the October 27, 2009, agenda.

F. BOARDS & COMMISSIONS

It was the consensus of Council to interview the following people for a vacancy on the Asheville-Buncombe Historic Resources Commission: Susan Eggerton, Susan West and John King Dean.

It was the consensus of Council postpone interviews for the vacancy on the Recreation Board until it was determined if there is a recommendation from the Board.

It was the consensus of Council to interview the following people for a vacancy on the Sustainable Advisory Committee on Energy & the Environment: Duncan McPherson, David Brown and Claude Chandler.

It was the consensus of Council to interview the following people for a vacancy on the Tree Commission: Josh O'Conner, Kathleen Zeren and Amy Kemp.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alan Ditmore urged Council to consider domestic partner benefits.

Rev. Christopher Chiaronmonte asked for clarification if people are prohibited from sitting on sidewalks. He also expressed his disappointment in prohibiting smoking on public property when people in downtown Asheville must breath the fumes from cars, buses, motorcycles, etc. Mayor Bellamy asked that Rev. Chiaronmonte work with the City Manager Jackson regarding his concerns.

The following claims were received by the City of Asheville during the period of September 1-24, 2009: Paul E. Vliek (Police), Robert Earwood (Water), Christopher Wallin (Police), Jeffrey Harwood (Water), Progress Energy (Water), Diana Harmon (Police), Diana Harmon (Police), AT&T (Water), Charter Communications (Water), Davon Embler (Water), Christie Abeling (Water), Mary D. McQuaide (Streets), AT&T (Water) and AT&T (Water). These claims have been referred to Asheville Claims Corporation for investigation.

The following claims were received by the City of Asheville during the period of September 25 – October 8, 2009: Brandon G. Wienkle (Fire), David Masrie (Parks & Recreation), Mike Budd (Water), Guy Caserta (Water), Kathy Watson (Streets), Kathleen Eiselt (Water) and Randy Rogers (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

The City has received a Petition on September 28, 2009, from Quality Properties, L.P. vs. the Board of Adjustment of the City of Asheville. This lawsuit involves the Board of Adjustment denying a sign permit to change the sign panels on a billboard sign. This will be handled in-house.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:19 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – October 27, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. INTERNATIONAL CITY MANAGER ASSOCIATION

Mayor Bellamy was pleased to present City Manager Jackson with a plaque from the International City Manager Association recognizing Mr. Jackson for 30 years of local government service. She then recognized City Manager Jackson's wife Kathy and their son Mark.

All Council members thanked him for his leadership.

B. RECOGNITION OF BB&T FOR THEIR DONATION TO SUPPORT A VOLUNTEER PROJECT AT THE SHILOH COMMUNITY CENTER

Mayor Bellamy said that we have invited representatives of BB&T to join us today so we can show our appreciation for their recent partnership with the City of Asheville on a volunteer project at the Shiloh Community Center. For 3 days, BB&T staff donated their time, energy, and expertise to making our Shiloh Community Center a more attractive place for citizens to gather. Fifty volunteers painted the community room and halls of the Center and the out buildings near the ball field, refurbished the stage floor, replaced outdoor bleacher seating and installed plants to make the front and entrance of the building more inviting. The materials for the improvements were paid for with a donation of $10,600 that the local BB&T branches designated for this project. In addition to the work completed during the workday, the donation will allow the Center to purchase new tables and chairs for the community room and a new recycling center for the facility. We also want to take this opportunity to thank Kathy Connor and her Parks and Public Facilities crew members for their outstanding support for this project and the BB&T volunteers.

This project is a great example of the community partnerships we are in the process of building through the creation of a comprehensive City of Asheville volunteer program. By facilitating a greater level of coordination among staff on these projects, we make it easier for members of our community to identify volunteer opportunities and take part with a high level of success.

She then introduced Mr. Mike Willet, BB&T's Regional President, who then introduced members of his team, explained the BB&T Lighthouse initiative and shared a brief slide show on the project.

C. PROCLAMATION PROCLAIMING OCTOBER 2009 AS "BREAST CANCER AWARENESS MONTH"

Councilwoman Cape read the proclamation proclaiming October 2009 as "Breast Cancer Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Earleen Bennett, representing Beauty Through Cancer, who thanked City Council for their support.

D. PROCLAMATION PROCLAIMING NOVEMBER 2009 AS "ADOPTION AWARENESS MONTH"

Vice-Mayor Davis read the proclamation proclaiming November 2009 as "Adoption Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Alisha Davis, from the Buncombe County Department of Social Services, who briefed City Council on some activities taking place during the month and thanked City Council for their support.

E. PROCLAMATION PROCLAIMING NOVEMBER 2009 AS "NATIVE AMERICAN INDIAN HERITAGE MONTH"

Mayor Bellamy read the proclamation proclaiming November 2009 as "Native American Indian Heritage Month" in the City of Asheville. She presented the proclamation to Ms. Renissa Walker, Manager Kituwah Preservation & Education Program for the Eastern Band of Cherokee Indians, and her mother Ms. Myrtle Driver. Ms. Driver is a tribal elder and a fluent speaker. She was named Beloved Woman in 2007 – the highest honor a female member of the tribe can hold. She also worked with Charles Frasier to translate his novel 13 Moons. The only occurrence in history that a contemporary novel was translated into an indigenous language. Ms. Walter thanked City Council for their support.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "C" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Councilman Miller, Consent Agenda Item "H" was removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 13, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY IN ORDER TO RECEIVE A GRANT FOR A MEDICAL AMBULANCE BUS

BUDGET AMENDMENT TO RECEIVE A GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR A MEDICAL AMBULANCE BUS

These items were removed from the Consent Agenda for discussion and/or individual votes.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY IN ORDER TO RECEIVE A GRANT TO CONTINUE THE BUILD OUT OF THE STATEWIDE VIPER INTEROPERABLE COMMUNICATION SYSTEM

BUDGET AMENDMENT TO RECEIVE A GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY IN ORDER TO RECEIVE A GRANT TO CONTINUE THE BUILD OUT OF THE STATEWIDE VIPER INTEROPERABLE COMMUNICATION SYSTEM

These items were removed from the Consent Agenda for discussion and/or individual votes.

D. RESOLUTION NO. 09-222 - RESOLUTION ADOPTING THE FIRE DEPARTMENT'S STANDARDS OF RESPONSE COVERAGE

Summary: The consideration of a resolution adopting improved standards of response coverage for the City of Asheville for fire and rescue emergencies.

The Commission on Fire Accreditation International (CFAI) has established minimum emergency response performance objectives for accredited fire departments. CFAI requires these minimum response standards to be adopted by City Council. These requirements are:

Service Level Objectives for Distribution

For all incidents in the coverage area with a population density classification of Metropolitan or Urban, the first due unit shall arrive with 5 minutes and 12 seconds travel time, 90 percent of the time.

For all incidents in the coverage area with a population density classification of Suburban, the first due unit shall arrive within 6 minutes and 30 seconds travel time, 90 percent of the time.

For all incidents in the coverage area with a population density classification of Rural, the first due unit shall arrive within 13 minutes travel time, 90 percent of the time.

Service Level Objectives for Concentration

For all incidents in the coverage area with a population density classification of Metropolitan or Urban, the second due unit shall arrive within 10 minutes and 24 seconds travel time, and the remaining total effective response force shall arrive within 10 minutes and 24 seconds travel time, 90 percent of the time.

For all incidents in the coverage area with a population density classification of Suburban, the second due unit shall arrive within 10 minutes and 24 seconds travel time, and the remaining total effective response force shall arrive within 13 minutes travel time, 90 percent of the time.

For all incidents in fire management zones with a population density classification of Rural, the second due unit shall arrive within 18 minutes and 12 seconds travel time, and the remaining total effective response force shall arrive within 18 minutes and 12 seconds travel time, 90 percent of the time.

This was reviewed by the Public Safety Committee on October 20, 2009, and was recommended for approval.

This action complies with the Strategic Operating Plan by making Asheville a safer city, based on approved metrics for similarly sized cities.

Pros:

- Adoption of these standards of response coverage will allow the fire department to be in compliance of the minimum requirements to be an accredited agency.
- Firefighter and citizen safety will be enhanced by ensuring quick response and

operational effectiveness during emergencies.
- The fire department is currently meeting these minimum standards.

Con:
- None identified.

There is no fiscal impact associated with the adoption of these minimum standards.

City staff recommends that City Council adopt the standards of response coverage described in this report.

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E. RESOLUTION NO. 09-223 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY ON DR. MARTIN LUTHER KING JR. DRIVE TO SIMON WESTERN PROPERTIES LLC

Summary: The consideration of a resolution authorizing the sale of property off of Martin Luther King Jr. Drive to Simon Western Properties, LLC.

This vacant tract of land off of Martin Luther King Jr. Drive (PIN # 9648-58-8911-00000) was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a sloping to steep parcel measuring approximately 0.67 acre±. The parcel has frontage on Martin Luther King Jr. Drive and is appropriate for sale as a residential lot with current zoning RM8.

An appraisal prepared by Dry Ridge Appraisal Service, LLC dated August 28, 2009 estimates the fair market value of the property to be at $115,000. Simon Western Properties LLC submitted a bid to purchase the parcel in the amount of $115,000. This bid was advertised in the Asheville Citizen-Times on September 25, 2009. No upset bids have been received.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville. The Streets Division of the Public Works Department has indicated that the parcel is not needed for street/right-of-way purposes at Martin Luther King Jr. Drive or Dundee Street. Staff has determined that the highest and best use of the parcel is infill development.

The sale of this parcel complies with the Strategic Operating Plan in that income from the sale of this property will directly benefit the Community Development Block Grant Program (CDBG), thus providing funding towards affordable housing.

Pros:
- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:
- There is no negative impact.

The proceeds from the sale of this parcel will be CDBG Program Income in the amount of $115,000.

Economic Development staff recommends adoption of the resolution which will authorize conveyance of the property in conclusion of the sale by upset bid.

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F. RESOLUTION NO. 09-224 - AUTHORIZING THE CITY MANAGER TO APPROVE THE PURCHASE OF AN AREARAE RAPID DEPLOYMENT KIT SYSTEM PACKAGE FOR HAZARDOUS ENVIRONMENT DETECTION FOR THE IDENTIFICATION OF UNKNOWN CHEMICAL GAS AND RADIATION FOR HAZARDOUS MATERIAL RESPONSE UTILIZING STATE HOMELAND SECURITY GRANT MONEY THAT HAS ALREADY BEEN RECEIVED

Summary: The consideration of a resolution authorizing the City Manager to approve the purchase of an AreaRAE Rapid Deployment Kit System Package in the amount of $116,092.00 for Hazardous Environment Detection for the identification of unknown chemical gas and radiation for hazardous material response utilizing State Homeland Security Grant Money that has already been received.

This item will be procured through a previously Council approved grant (Resolution 08-92) through the U.S. Dept. of Homeland Security and the Office of Domestic Preparedness State Homeland Security Grant Number: Fiscal Year (FY) 2007-GE-T7-0048-1016 to implement the State Homeland Security Strategy. This grant approved the NC Hazardous Materials Response Team Asheville (RRT-6) to procure equipment to be better prepared and respond to manmade and natural emergencies and disasters. The equipment to be procured through this grant will be used in the field to detect and identify unknown and potentially hazardous chemical gases and radiation during a hazardous material response.

Five other RRT's have procured this specific piece of equipment from RAE or a distributor of RAE for the purchase of the AreaRAE. Due to compatibility of existing equipment on RRT-6, there are no other comparable pieces of equipment that will be able to identify specific hazardous gases and radiation.

The equipment consist of a one-to five sensor gas detector equipped with a wireless radio frequency modem which allows the unit to communicate and transmit readings and other information on a real-time basis with a remote located base controller. This will enable the Asheville Fire Department Personnel to establish an emergency perimeter by setting out multiple monitors at strategic locations, then backing off to a position of safety to monitor readings over the wireless link.

This equipment will become the property of the City of Asheville.

This was reviewed by the Public Safety Committee on October 20, 2009, and was recommended for approval.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided the funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.

- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

This equipment allows the City to enhance services without an increase in capital expenditures.

City staff recommends that City Council approves the resolution for the purchase of the AreaRAE through funds made available from State Homeland Security Grant Number: Fiscal Year (FY) 2007-GE-T7-0048-1016 to protect Asheville and Western North Carolina.

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G. RESOLUTION NO. 09-225 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation (NCDOT) on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. The program is funded 80% through federal funds and 20% through City funds and administered by the NCDOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983 the City has elected to execute an agreement with NCDOT to accomplish the required inspection thorough their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. It is anticipated the inspections cost to be $2,600 per bridge for the upcoming inspections. The City has 31 bridges requiring inspection this year, which brings the cost to $80,600. The City's share of 20% is $16,120. Funds for the City's share are budgeted in the Public Work's Contracted Services budget line.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe

Pros:

- Lower cost of bridge inspection due to high volume.
- Use of qualified engineering firms through NCDOT.
- Fulfills requirement for bi-yearly bridge inspections.
- Indicates areas for repair for Public Works staff.

Cons:

- None identified

The fiscal impact is that the expenditure of $16,120 is budgeted in Public Work's Contracted Services.

City staff recommends adoption of the resolution authorizing the Mayor to execute a

municipal agreement with the NCDOT for inspection of bridges.

RESOLUTION BOOK NO. 32 – PAGE 252

H. RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

This item was removed from the Consent Agenda due to a conflict of interest.

I. RESOLUTION NO. 09-227 - RESOLUTION APPOINTING A MEMBER TO THE URTV INC. BOARD OF DIRECTORS

Summary: The term of Sandra Bradbury, as a member of the URTV Inc. Board of Directors, expired on June 30, 2009.

On September 8, 2009, it was the consensus of Council to interview Stephanie Weil.

On October 13, 2009, it was the consensus of Council to appoint Ms. Stephanie Weil as a member of the URTV Inc. Board of Directors to serve a two-year term, term to expire June 30, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 254

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM THROUGH THE U.S. DEPT. OF JUSTICE

BUDGET AMENDMENT TO ACCEPT GRANT FUNDS THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM THROUGH THE U.S. DEPT. OF JUSTICE

These items were removed from the Consent Agenda for discussion and/or individual votes.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-220 RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR A NON-MATCHING GRANT FOR A MEDICAL AMBULANCE BUS

ORDINANCE NO. 3797 - BUDGET AMENDMENT TO RECEIVE A NON-MATCHING GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR A NON-MATCHING GRANT FOR A MEDICAL AMBULANCE BUS

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of $357,000 from the U.S. Dept. of Homeland Security Fiscal

Year 2009 Homeland Security Grant Program; and the associated budget amendment in the amount of $357,000.

The U.S. Dept. of Homeland Security (DHS) has made funds available to increase emergency preparedness and response through the Fiscal year 2009 Homeland Security Grant Program. The N.C. Dept. of Crime Control and Public Safety, Division of Emergency Preparedness, has been charged with distributing these funds through Disaster Preparedness Regions (DPR) throughout North Carolina. The City of Asheville was a member of DPR 6 when these funds were applied for. Geographically located Medical Ambulance Buses which have the capability of transporting large numbers of patients in major incidents has been identified as a prevailing need in which the Fiscal Year 2009 Grant Funds should be expended. This need was identified utilizing NC Emergency Management's Annual Capabilities Assessment Program. The City of Asheville has been identified as the prime location to locate this Medical Ambulance Bus within our DPR. This grant provides for the City of Asheville to receive this Medical Ambulance Bus.

The grant is a non-matching grant.

This was reviewed by the Public Safety Committee on October 20, 2009, and was recommended for approval.

This action complies with the Strategic Operating Plan by better preparing the Hazardous Materials Team to assist in making Asheville a safer city, based on approved metrics for similarly sized cities.

Pros:

- DHS will provide $357,000 in non-matching funds for the purpose of purchasing a Medical Ambulance Bus for Asheville and Western North Carolina to improve major incident emergency response capability.
- Firefighter and citizen safety will be enhanced.
- The City of Asheville will have an excellent resource to shelter displaced citizens during inclement weather or emergency incidents.

Con:

- The City of Asheville will be responsible for operation and maintenance of this vehicle.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from DHS, to enhance the fire department's capabilities to serve Asheville and Western North Carolina, and the associated budget amendment.

Interim Fire Chief Scott Burnett responded to various questions from Councilman Mumpower regarding the critical nature of this investment.

Councilman Mumpower felt we will be using borrowed money that will need to be paid back by our children and grandchildren.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-220. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Vice-Mayor Davis moved for the adoption of Ordinance No. 3797. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 451

C. RESOLUTION NO. 09-221 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR A NON-MATCHING GRANT TO CONTINUE THE BUILD OUT OF THE STATEWIDE VIPER INTEROPERABLE COMMUNICATION SYSTEM

ORDINANCE NO. 3798 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF HOMELAND SECURITY GRANT FOR A NON-MATCHING GRANT TO CONTINUE THE BUILD OUT OF THE STATEWIDE VIPER INTEROPERABLE COMMUNICATION SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of $250,000 from the US Department of Homeland Security FY 2009 State Homeland Security Grant Program, and the associated budget amendment in the amount of $250,000.

The U.S. Dept. of Homeland Security (DHS) has made funds available to increase emergency preparedness and response through the Fiscal Year 2009 State Homeland Security Grant Program. The N.C. Dept. of Crime Control and Public Safety, Division of Emergency Preparedness, has been charged with distributing these funds through Disaster Preparedness Regions (DPR) throughout North Carolina. The City of Asheville was a member of DPR 6 when these funds were applied for. Communication interoperability equipment has been identified as a prevailing need in which the Fiscal Year 2009 Grant Funds should be expended. This need was identified utilizing NC Emergency Management's Annual Capabilities Assessment Program. The City of Asheville has been identified as the prime location to locate this equipment within our DPR. This grant provides for the City of Asheville to receive this interoperability communications equipment. The equipment that will be purchased will be communications gateways that allow the statewide VIPER system functionality for responding jurisdictions on differing radio frequencies to communicate in emergencies.

The grant is a non-matching grant.

This was reviewed by the Public Safety Committee on October 20, 2009, and was recommended for approval.

This action complies with the Strategic Operating Plan by better preparing the Hazardous Materials Team to assist in making Asheville a safer city, based on approved metrics for similarly sized cities.

Pros:

- DHS will provide $250,000 in non-matching funds for the purpose of purchasing VIPER Interoperable Communications Gateways for Asheville and Western North Carolina to improve major incident emergency response capability.
- Firefighter and citizen safety will be enhanced.

Con:

- None identified.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from DHS, to enhance the fire department's capabilities to serve Asheville and Western North Carolina, and the associated budget amendment.

Councilman Mumpower supported improving our communications, but could not support the motion as it is using borrowed federal dollars.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-221. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 239

Councilman Newman moved for the adoption of Ordinance No. 3798. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 453

H. RESOLUTION NO. 09-226 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Summary: The term of Herman Turk (owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) expired on August 30, 2009.

On September 8, 2009, it was the consensus of Council to interview Bob Patel.

On October 13, 2009, it was the consensus of Council to appoint Mr. Bob Patel as a member of the Buncombe County Tourism Development Authority (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) to serve a three-year term, term to expire August 30, 2012, or until his successor has been appointed.

Councilman Mumpower moved to excuse Councilman Miller from participating in this vote due to a conflict of interest. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Russell moved for the adoption of Resolution No. 09-226. This motion was seconded by Councilman Newman and carried unanimously (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 253

J. RESOLUTION NO. 09-228 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM THROUGH THE U.S. DEPT. OF JUSTICE

ORDINANCE NO. 3799 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM THROUGH THE U.S. DEPT. OF JUSTICE

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant funds through the Bulletproof Vest Partnership (BVP) Program; and (2) the associated budget amendment, in the amount of $6,453, to cover partial costs of bulletproof vest for officers.

The City of Asheville Police Department currently participates in the U.S. Dept. of Justice BPV program. The funds allocated through this program are designed to offset departmental cost

associated with purchasing bulletproof vests. The City of Asheville is allocated $6,453. The acceptance of these funds and allocating to Patrol's safety equipment line will enable the purchase of 25 plus bulletproof vests.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Reduction in cost to the City of Asheville for the purchase of bulletproof vest
- Increase in officer safety by providing crucial safety equipment

Con:

- None

There is no fiscal impact to the City of Asheville by accepting these funds.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager accept funds through U.S. Dept. of Justice for grant monies; and (2) the associated budget amendment, in the amount of $6,453.

Councilman Mumpower believed that we should be taking care of our own officers and not contributing to the extraordinary federal debt picture with our intra-city needs.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-228. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 255

Councilman Miller moved for the adoption of Ordinance No. 3799. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 456

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the City's American Recovery & Reinvestment Act (ARRA) contracting opportunities and upcoming event announcements for vendors.

STP-DA (North Carolina Department of Transportation)

We were notified through N.C. Dept. of Transportation that we could proceed with advertisements for two improvement projects funded by economic stimulus allocations. The projects include landscaping services for gateways and corridors in the downtown area and traffic signal upgrades.

The landscaping project includes the installation of decorative plant material and irrigation systems in the median islands, round about, and parking bulb outs along College Street from Spruce Street to Charlotte Street which was funded as an enhancement to the downtown transportation network. The project was originally developed as part of City Council's efforts to address the cleanliness and beautification of downtown Asheville.

The traffic signal upgrade project includes the replacement of signal lights and control panel boxes with the installation of pedestrian crossing signals on Fairview Road at the intersections of Onteora Boulevard and Cedar Street. This work will takes place next to Oakley Elementary School which will provide pedestrian safety, especially for school children.

Information about these projects and other ARRA bidding opportunities can be found at www.ashevillenc.gov/economicrecovery and/or the department's webpage.

Dingle Creek Watershed Improvements (NCDENR)

Plans are awaiting final approval from the N.C. Dept. of Environmental and National Resources to begin advertisement for ARRA funding under the State Revolving Loan fund for Dingle Creek Watershed improvements. We expect to begin advertisement by the end of October. These improvements will continue to work on the watershed by way of the Stormwater Master Plan by stopping impairments to the watershed via the urban runoff and reduction of the increased pollutant concentration in the area.

Pumping Station Improvements (NCDENR)

Water Resources has prepared and provided a compliance package to submit to NCDENR's Public Water Supply (PWS) Section on DBE outreach on the project and awaiting review of that documentation to proceed. Hickory Construction Company, the lowest bidder, will be recommended to PWS for the award of the construction contract in the amount of $328,474. Water Resources must receive written PWS approval prior to City Council awarding the contract to Hickory which we hope to bring for approval at your regular meeting on November 10th. This project will replace pumps that will increase production efficiency, save energy and improve water service for fire coverage.

Edward J. Byrne JAG Local Solicitation Grant (Department of Justice)

Request for proposals for this funding went out on Monday, October 19, 2009, to online vendors and posted on the State's Interactive Purchasing System (IPS). Asheville Police and Buncombe County Sheriff were allocated $372,630 with Asheville receiving $265,466 and Buncombe receiving $107,164. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes.

The improvements will update the video security system within the Municipal Building, update and add key card access to doors as needed, and integrate an alarm system that makes internal notification of unauthorized entries to secure areas. Additionally, APD plans to purchase a SPEX AFIS system that will enable APD to scan and enter fingerprints and palm prints into a local system that will analyze the prints and compare with previous sets.

Upcoming Events & Information Sessions

Over 65 local vendors, non profits and citizens attended the October 15, 2009, local outreach seminar on ARRA update funding and doing business.

The next session will be hosted by the City of Asheville on November 18th from 9:30 a.m. to 12:30 p.m. at the City's Municipal Building Training Room. Notification has been provided to online vendors, community and minority businesses.

Councilman Mumpower was concerned that these are borrowed dollars that our children and grandchildren will have to repay which will have a significant impact on their future.

In response to Councilwoman Cape, City Manager Jackson said that the International City Manager Association is developing a model on the economic impacts of the stimulus dollars. We would also want to partner with the Chamber of Commerce on the tracking of job creation, the amount of money going to local contractors and the total economic impact on our local community.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant's request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant's request in that it became necessary, due to the recent economic conditions, the ownership group is currently exhausting opportunities and trying to secure financing and/or additional partners to help with the project economics. On October 28, 2008, at the applicant's request, this motion was continued to this date.

Mayor Bellamy said that on September 1, 2009, Mr. Chris Peterson requested this matter be removed from City Council consideration.

On October 23, 2009, the following letter was received from Mr. Marty Kocot, PE, from LandDesign Inc.: "The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed "Horizons" Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. We realize this request to extend this project again is a bit unusual but the economic conditions we are all experiencing are bit unusual as well. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City and an extension of time on the Urban Village Rezoning request for this project gives us the best chance to succeed. To date thousands of dollars have been spent crafting and guiding the project through TRC and P&Z only to have the economy delay us from obtaining the needed financing. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for consideration by City Council. This project has the ability to create local jobs and help with the economic recovery."

After Mayor Bellamy asked for a two week extension to provide residents additional information, Councilman Mumpower moved to reschedule the consideration of this matter until November 10, 2009. This motion was seconded by Councilman Russell and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE INTERMEDIATE SCHOOL SOUTH, LOCATED AT 305 OVERLOOK ROAD

ORDINANCE NO. 3800 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE INTERMEDIATE SCHOOL SOUTH, LOCATED AT 305 OVERLOOK ROAD

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:50 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Buncombe Intermediate School South, located at 305 Overlook Road, for a new 106,646 sq. ft. school building (Location and Aerial Maps – Attachments to City Exhibit 3).

The applicant is requesting review of site plans for the construction of a new intermediate school building and associated site improvements. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for institutional developments with a gross floor area of more than 100,000 square feet. The existing school campus on the parcel contains approximately 247,000 square feet and the total new construction is proposed at 106,646 square feet. Level III projects are reviewed as Conditional Use Permits in the Institutional District.

The project site consists of a 58.11 acre parcel located at Long Shoals and Overlook Roads in South Asheville. The parcel is zoned Institutional and surrounding properties are zoned RS-2, RS-4, RS-8, RM-6, RM16 and CBII. This site is currently the location of the Buncombe County – Roberson District campus which includes Valley Springs Middle School and Estes Elementary School.

The applicant is proposing to construct a new building on the southeastern corner of the parcel for an Intermediate School which will accommodate 5th and 6th grades in 47 classrooms. The structure is 106,646 square feet and two-stories in height (26'2" to the ceiling – 44'4" to the top of the highest architectural element) (Master Plan – Attachment to City Exhibit 3).

An existing access point from Long Shoals Road will be closed as a part of this proposal and all vehicular traffic will be routed to an entry and exit on Overlook Road. These new driveways provide access to the student drop-off area as well as a number of small vehicular use areas. This project review also includes improvements to an existing driveway from Long Shoals Road up to the Valley Springs Middle School building, as well as reconfiguration of the existing

vehicular use area and the construction of a new bus parking area. In total, there are 138 vehicular parking spaces as a part of this proposal (47 adjacent to Valley Springs Middle School and 91 for the new Intermediate School). There are also 20 bus parking spaces, located in between the existing middle school and the new facility.

Landscaping is required on this site and includes street trees, building impact landscaping, street buffer, parking lot landscaping and a Type A (20') property line buffer along a portion of the western property line that is adjacent to residential zoning districts. The plans include 18.56 acres of open space, which significantly exceeds the required amount (15% of lot area – 8.72). Some of this area includes playing fields.

Sidewalks will be extended along the project area, including Overlook Road and the existing driveway from Long Shoals Road to Valley Springs Middle School. There is already an existing sidewalk along Long Shoals Road (Internal Pathway – Attachment to City Exhibit 3). The plans include an accessible pathway located internal to the site, linking the three school buildings and playing fields. The applicant is hoping that school children walking from adjacent neighborhoods will enter the site for access on this pathway to the school buildings rather than walking along Overlook Road. There is also an internal pedestrian connector between the new Intermediate School parking area and the church's parking area along Living Savior Way. The school lot will be made available to church patrons for overflow parking needs.

There are several retaining walls proposed (located on the northern and southern ends of the new building). The maximum height of the walls is indicated at 16 feet. Any retaining walls over eight feet in height shall be faced with natural or artificial stone, brick, form-liner art or patterns or vegetation in order to avoid a stark appearance.

This project was approved with conditions by the Technical Review Committee (TRC) on September 21, 2009. Several members of the community were present and expressed concerns over the current heavy volume of traffic on Overlook Road and the potential danger for schoolchildren walking along Pinchot and Overlook Roads where there are presently no sidewalks. Several emails have been received expressing similar concerns, requesting that sidewalks be installed along the entire length of Overlook Road on both the west and east sides to accommodate pedestrian activity not only from the adjacent neighborhoods to the three schools and back but also to and from the Skyland Library, located on the east side of Overlook Road. The applicant expressed that they have designed an accessible pathway throughout the interior of the site, linking all three schools as well as the ball fields and open space areas. Concern was expressed by the community members in attendance that students may still attempt to walk along the roadway, regardless of the interior pathway, and that sidewalks are needed. Staff explained the potential difficulty in requiring installation of sidewalks on property under private control, not owned by the Buncombe County School Board, and that any requirement to pursue this option would have to be a condition placed upon the project City Council.

A representative from the Lutheran Church attended the meeting to speak in favor of the project and expressed some concerns about site work that will affect their property. The applicant addressed the concerns and will continue to work closely with the church. The church will be able to use school parking for overflow on Sundays and an accessible walkway from the school's parking lot to the church has been included in the plans.

The Planning & Zoning Commission voted unanimously (4-0) to recommend approval of this project at their meeting on October 7, 2009. A representative from the Biltmore Park Neighborhood Association's board was present to offer similar concerns as were expressed at the TRC meeting regarding the need for sidewalks along both sides of Overlook Road and the potential hazard towards pedestrians because of heavy and fast traffic volumes. Ken Putnam, Interim Transportation Director, presented information about the insufficiency of the existing right-of-way along the portions of the west side of Overlook Road where a cemetery currently exists. He explained that there may be the ability to install sidewalk there but it could involve significant

engineering, possible moving of plots and cooperation from the church. Planning & Zoning Commissioners expressed understanding of the community representative's comments and agreed that sidewalks would be best, but felt that the school is doing a more than adequate job addressing this issue by including the internal walkway. They included a condition of their approval that the applicant will continue to explore the feasibility of sidewalk installation along the west side of Overlook Road.

Ms. Bernstein noted that a letter has been received from Pastor Cecil Robinson, Mt. Zion Baptist Church, stating that a sidewalk on the west side of Overlook Road would conflict with their cemetery.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural and topographic features on the site in that the area intended for construction of the Intermediate School is where playing fields were previously located. This area is reasonably flat and any areas of topographic challenge will be appropriately managed through retaining walls.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The parcel containing the Buncombe County Roberson District schools is quite large (over 58 acres) and already contains two other school buildings (Valley Springs Middle School and Estes Elementary) so the use as a school campus has been established in this location. Schools are a complementary use to have in proximity to residential neighborhoods (located to the west and north) and should enhance the value of these abutting properties. The church, library and other various uses to the east and south are also compatible with this type of development and are not expected to see a decline in value (especially given that the other school buildings have been occupying this site for some time.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The new Intermediate School will be located in the southeastern corner of this large parcel, which already contains two school buildings and associated open space and playing fields. As mentioned in #3, this is an appropriate location for an educational use and this use has been established on the site for some time.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The Asheville City Development Plan 2025 proposes a Smart Growth development pattern by encouraging infill development, promoting walkability and furthering sustainability and green building through LEED certification). This project meets these objectives by locating the new school building on an existing school campus with significant infrastructure; installing an accessible pedestrian pathway internal to the site, linking all three school buildings, open space and ball fields to the surrounding neighborhood sidewalks; and seeking LEED certification. The Plan also recommends facilitating the effective functioning of public schools and to support the construction of new schools in areas that lend themselves to good neighborhood and community access. Multiple locations throughout the Buncombe County School system are integrating this Intermediate school concept, placing 5th and 6th grades in a separate facility.

This proposal works to achieve City Council's goals on being green by seeking LEED certification on the facility and safe by incorporating an accessible pedestrian pathway internal to the site, linking all three school buildings and playing fields while seeking to remove pedestrian activity from the roadway where infrastructure may not be adequate.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This proposed development is located near major road facilities and interstate connections. In addition, the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The traffic impact study has been received and reviewed by staff. The two roadways that border this project (Overlook Road and Long Shoals Road) are maintained by NCDOT. Therefore, any proposed recommendations will ultimately need the approval of NCDOT. The review by City staff indicates that there will not be an adverse impact that is atypical to normal school ingress/egress scenarios assuming that the recommended mitigation factors are incorporated.

   The need for sidewalk installation along both sides of Overlook Road from Long Shoals Road up to Pinchot Drive has been raised by neighbors and members of the public due to a potential hazard between pedestrians and vehicles along Overlook. This project proposes an internal pathway to remove pedestrians from the street and safely accommodate travel between the three schools on this parcel, as well as new sidewalk along the west side of Overlook Road from Long Shoals Road up to Living Savior Way. Following the recommendation from the Planning & Zoning Commission, the applicant will continue evaluating the existing right-of-way along Overlook Road to determine feasibility of future sidewalk installation with existing uses on parcels under separate ownership.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal satisfies a need to provide a new facility for 5th and 6th grade students on an existing school campus site.
- The applicant will be seeking LEED certification, meeting key "green building" goals of the City.
- The accessible pathway internal to the site links all three school buildings and playing fields, allowing for safe connectivity while removing pedestrians from the roadways where there may be conflict with inadequate sidewalk infrastructure on adjacent parcels.

- The parking area proposed with this project will be shared with the Living Savior Lutheran Church (adjacent to the north) for overflow parking on Sundays and there is an accessible walkway from the school property to the Church.

Con:

- Neighbors have expressed concern over existing traffic congestion and hazardous speeds along Overlook Road, where the primary ingress/egress to the Intermediate School is proposed.

Staff recommends approval of the Level 3 development proposal for a new Buncombe County Intermediate School - South.

Mr. Dean Shatley, representing the Buncombe County Board of Education, gave Council background information on the project. He explained the internal sidewalk route through the campus from Pinchot to Long Shoals Road which will eliminate any pedestrian conflict with vehicular activity on Overlook Road. They did make contact with the Mt. Zion Baptist Church and received a letter stating that a sidewalk on the west side of Overlook Road would disturb the graves. Lastly, any delay in approval will delay school opening for one entire school year due to their financing and construction schedules.

Mr. Chris Day, with Civil Design Concepts representing the applicant, briefed the Commission on how this innovative and green project began. After looking at the site, they felt they could eliminate one of the access points along Long Shoals Road which would help them create a route that would start at Long Shoals, come through the site and go to Estes Elementary, with an accessible pedestrian route that has no conflict with vehicles. The City, the N.C. Dept. of Transportation and the Buncombe County School Board have been working to install pedestrian heads at the crossing of Pinchot, across Overlook, over to Springside. They feel like with the internal connection and the new crosswalk they have provided the safest route they can to get students through the area and off Overlook Road. This will be a LEED certified project with many learning opportunities for the students. He urged the Commission to support this project.

Rev. Christopher Chiaronmonte felt that we should not segregate the children by age in that they not only learn from teachers, but fellow students. He also suggested the schools be used to house the homeless after hours.

After rebuttal, Mayor Bellamy closed the public hearing at 6:06 p.m.

When Councilman Mumpower suggested a smaller sidewalk through the church's property on the west side of Overlook Road, Mr. Day showed a picture of the area in question (Applicant Exhibit 1) and said they have evaluated a sidewalk on that property and explained that the most appropriate place to safely cross the road is at the intersection of Springside and Pinchot. When you bring the students on campus, we are able to keep an eye on them.

In response to Councilman Mumpower, Transportation Director Ken Putnam felt the County Schools have a good alternative of moving the sidewalks in internally. However, long term, we still need to actively pursue sidewalks along Overlook Road as they are identified on the Pedestrian Plan as one of the main areas to do this. He explained there has been some headway made on the east side of Overlook Road in terms of sidewalks.

When Mayor Bellamy voiced concern of the students who park in Mt. Zion Baptist Church's parking lot and cross the street to the high school and those who come from the Biltmore Park area and cross Overlook Road to the high school, Mr. Putnam said that they are working with the N.C. Dept. of Transportation (NCDOT) and the County Schools to identify a problem to solve that concern. Using a map (City Exhibit 4), he showed where the NCDOT is going to build 400 feet of sidewalk at the intersection of Pinchot Drive and Overlook Road, add

pedestrian signals and a cross-walk, and then the City will extend the sidewalk to the first entrance of the High School.

Mayor Bellamy asked that City staff update the Biltmore Park Homeowners Association with the NCDOT intersection project.

When Mayor Bellamy asked if there are any improvements planned for the entrance to the library, Mr. Putnam said there was not. He did say another project might be to bring the sidewalk from Pinchot Drive down to that area, but we still need to work with the Church. He said the City will contact the Church and see what can be worked out.

In response to Councilwoman Cape about signs, Mr. Putnam said that traffic counts were taken on Overlook Road in two locations. He noted that in both cases, the speed limit is 35 mph with an 85 percentile around 40 mph.

Councilman Mumpower moved for the adoption of Ordinance No. 3800, granting a conditional use permit adopting the proposed plan for the Buncombe County Intermediate School – South, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 457

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE DAVIS ARENA RENOVATION AND ADDITION, LOCATED AT THE WNC AGRICULTURAL CENTER FOR THE RENOVATION AND ADDITION TO THE EXISTING BUILDING AND THE RECONFIGURATION OF VEHICULAR USE AREAS AND UPGRADES TO SITE LANDSCAPING

ORDINANCE NO. 3801 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE DAVIS ARENA RENOVATION AND ADDITION, LOCATED AT THE WNC AGRICULTURAL CENTER FOR THE RENOVATION AND ADDITION TO THE EXISTING BUILDING AND THE RECONFIGURATION OF VEHICULAR USE AREAS AND UPGRADES TO SITE LANDSCAPING

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:22 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as the Davis Arena Renovation and Addition, located at the WNC Agricultural Center for the renovation and a 14,706 sq. ft. addition to the existing 54,461 sq. ft. building; and the reconfiguration of vehicular use areas and upgrades to site landscaping (Aerial Map – Attachment to City Exhibit 3).

The applicant is seeking a Level III site plan review for the renovation and addition of the existing Davis Arena located on the grounds of the Western North Carolina Agriculture Center. The property is zoned Commercial Industrial (CI) and is located at 765 New Airport Road across from the Asheville Regional Airport and within the City's corporate limits.

The project proposes to renovate and expand the existing Davis Arena located on the western perimeter of the main midway. The facility is currently 54,461 square feet and the proposed renovation and addition will add another 14,706 square feet for a total of 69,167 square feet (Site Plan – Attachment to City Exhibit 3). The cumulative square footage of the previous Level I and II reviews coupled with the square footage of the proposed addition met the threshold for a Level III site plan review.

The addition to the existing building will include new bathrooms, offices, meeting rooms and a main lobby. Other improvements to the site include the reconfiguration of vehicular use areas along the midway and upgrades to site landscaping. There is an existing outdoor rink used for livestock shows and similar events that is currently located to the south of the Davis arena but is proposed to be relocated to the northeast of the arena (Landscaping Plan – Attachment to City Exhibit 3).

The majority of the site is currently developed with numerous buildings, outdoor rinks, accessory structures and parking lots. The site is host to the yearly Mountain State Fair and numerous other indoor and outdoor events. Open space is interspersed throughout the site as well as existing parking areas and stormwater detention facilities. The UDO requires that the site surrounding the area proposed for expansion be brought into compliance with landscaping standards. In this case, the majority of the main midway which runs the length of the property in a north to south configuration and terminates in a central round about is affected. The midway is home to the majority of rides and other attractions for the Mountain State Fair. Other events held onsite utilize the midway for parking. For these reasons, the applicant has requested and received approval of an alternative compliance request from the Tree Commission to the parking lot landscaping standards for the area surrounding the arena. The majority of required

landscaping will be shifted from the parking areas in the midway to the south and east of the arena. Access to the site is provided via multiple existing entrances along New Airport Road.

The subject site is bounded to the north by property owned by the State used in conjunction with the WNC Agriculture Center and located outside of the City's jurisdiction, to the east by I-26 and associated ROW, to the south by property located in the Town of Fletcher, and to the west by the Asheville Regional Airport Road and zoned Industrial.

The Commercial Industrial District is established to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development.

At their September 21, 2009, and October 7, 2009, meetings the Technical Review Committee (TRC) and Planning and Zoning Commission (P&Z) approved this project subject to the conditions outlined in the staff report.

At the time of this writing, staff has received no communications from adjacent property owners or citizens regarding this project. There was no public comment regarding this project at the TRC and P&Z meetings.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural and topographic features on the site. The entirety of the subject parcel is relatively flat with only about a 20 foot change in topography distributed across the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The few surrounding properties are being utilized for high intensity uses similar to the Agriculture Center, and the proposed development is not expected to have any negative impacts on adjacent properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The Agriculture Center is located between the heavily traveled corridors of I-26 and New Airport Road. The proposed addition to the arena is located in the center of the largely developed Agriculture Center site. The scale and coverage of this site is consistent with the pattern of development evident on surrounding parcels like the airport.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of compatible infill growth supports several goals and objectives as described in both ***The Asheville City Development Plan 2025*** *and the* ***Strategic Operating Plan.***

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposed development is located near major road facilities and interstate connections. In addition, the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard. The proposed development did not trigger the need for a traffic impact study.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The renovation and addition provides for upgrades to an aging facility that hosts a number of local and regional events.
- The project is consistent with several City goals and strategies related to economic and infill development.
- The property will be further improved by additional plantings on a site that is largely devoid of landscaping.

Con:
- None noted

Staff recommends approval of the Level III development proposal for the renovation and addition to the Davis Arena at the Western North Carolina Agricultural Center.

Mr. Christopher Sean Hollifield spoke in support of improving the Agricultural Center.

After rebuttal, Mayor Bellamy closed the public hearing at 6:27 p.m.

In response to Councilwoman Cape, Mr. Brian Moffitt, representing the applicant, said that Asheville is the lease holder of this property and the improvements will be funded by the N.C. Dept. of Agriculture state appropriations.

Councilman Mumpower spoke in support of the City negotiating the lease in favor of keeping this gem alive and making it more special.

Councilman Mumpower moved for the adoption of Ordinance No. 3801, granting a conditional use permit adopting the proposed plan for the Davis Arena Renovation and Addition, and the reconfiguration of vehicular use areas and upgrades to site landscaping, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with

cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 463

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-229 - RESOLUTION ACCEPTING THE TRANSIT MASTER PLAN REPORT FOR THE CITY OF ASHEVILLE PREPARED BY HDR INC.

Mr. Robert E. Bush, AICP, Transit Principal of HDR Engineering, reviewed the agenda as follows: (1) Major study findings; (2) Public input; (3) Service design & scheduling guidelines; (4) Short-term service concept; (5) Longer term additions; and (6) Cost impacts

He explained the major findings: (1) 5,371 average daily riders; (2) Most active routes – 1 Haywood & 11 Montford; (3) Least active daytime routes – 54 Weaverville & 5 Charlotte; and (4) Most active locations – Transit Center, Central Business District, Pisgah View Apartments, Hillcrest Apartments, Walmart.

Service attributes include (1) Riders are satisfied or very satisfied with all service aspects except hours of operation; (2) Best attributes: (a) Safety; and (b) Fare; and (3) Worst attributes: (a) Hours of operation; (b) Frequency; and (c) On-time.

When asked to name one improvement, the most needed improvements include: (1) Sunday service; (2) More frequent service; (3) More sidewalks; (4) Evening service; and (5) Service to more areas.

Most requested new services include: (1) Long Shoals area; (2) Haw Creek area; (3) New Leicester Highway; (4) Enka/Candler area; (5) Asheville Airport; and (6) Fairview.

Master Plan goals: (1) More frequent service on main corridors; (2) Marketing to choice riders; (3) Improve service for captive riders; (4) More environmental consciousness; (5) Target tourism market; (6) Emphasize health and wellness aspects; and (7) Make transit part of the community lifestyle.

Service design principles include: (1) Cost effective service; (2) More frequent service; (3) Establish focal points outside of Central Business District; (4) Minimize Route Deviations – (a) Reduce travel time penalty for through riders; (b) Exceptions made for major destinations; and (c) Sidewalk connections preferable to deviations; and (5) Dial-a-ride zones converted to fixed route or eliminated.

Scheduling improvements include (1) Weekdays (a) All routes should offer at least 12-hour service from 6 a.m. to 6 p.m.; (b) All routes offer 60-minute; and (c) headways, except for express/intercity; and (c) Evening service combined with daytime; (2) Saturdays (a) Same schedule as weekdays; and (b) No service offered on lower ridership routes; and (3) Sundays (a) Sunday service added, with at least 1 route on all trunk corridors; and (b) Initial span from 10 a.m. to 7 p.m..

He showed a picture of ATS recommended concept routes and the overall route map.

Short-term capital (Year 1) improvements include: (1) Replacement vehicles for buses past their useful life; (2) Automatic Vehicle Locators (AVL); (3) ADA-compliant shelters, signage, other amenities; (4) Additional sidewalks; and (5) Maintenance facility repairs and expansion.

Short-term cost considerations are (1) ATS Annual Operations costs $6.1 million, ~$700,000 increase; (2) Route rationalization ~$500,000; (3) Sunday service ~$200,000; (4) Marketing ~$300,000; and (5) Decrease in intercity ~$300,000.

City share increase (Year 1) is (1) Increase in City Share ~$1.2 million; and (2) Without any service changes, City Share increases ~$400,000.

Causes of Cost increase are (1) Network Redesign - $500,000; (2) Sunday Service - $200,000; (3) Marketing - $300,000 – Less Additional Fare Revenue - $200,000 – Plus Loss of FTA Funds - $400,000 Equals City Increase of $1.2 Million.

Potential issues include (1) Coordination with Housing Authority of the City of Asheville; (2) Discontinuation of some Saturday service; (3) Ticket and pass increase; and (4) Local funding increase

Near-term (Years 2-5) enhancements for operating changes (1) More crosstown frequency (30 minutes); (2) Increase frequency on one trunk corridor; (3) Two shuttle routes; (4) More Sunday service; and (5) New Long Shoals Express.

Near-term capital improvements are (1) Two new neighborhood transit centers; (2) Improvements/expansion of operating facility; (3) More shelters, sidewalks, amenities; (4) Expansion & replacement buses; and (5) AVL enhancements.

Long-term (Years 6-10) enhancements are (1) Improved frequency on two trunk routes; (2) More Sunday service; (3) Four additional shuttles; and (4) Two additional express routes.

Long-term capital improvements would be (1) Replace maintenance facility; (2) Replace downtown transit center; (3) Two neighborhood transit centers; (4) Expansion and replacement buses; and (5) Continued ITS expansion.

Transit Master Plan Detailed Information from Staff Report

"The City of Asheville, in an effort to make the service provided by the transit system more efficient, hired HDR Engineering, Inc. of the Carolinas (HDR) and its partners in August 2008 to develop the Transit Master Plan (TMP) for public transportation in Asheville and neighboring areas of Buncombe County.

As part of the process a steering committee was established to review the process and provide stakeholder guidance.

The purpose of the plan is to evaluate the current operations of Asheville Transit, collect input from stakeholders and make recommendations to improve the efficiency of the system.

The overall goals for the Transit Master Plan, as established with the Steering Committee included the following items:

- More frequent service on the main travel corridors
- Marketing to choice riders
- Improving service for captive riders
- More environmental consciousness

- Target tourism market
- Emphasize the health and welfare aspects
- Make transit part of the community lifestyle

To accomplish this purpose, several tasks are included in a three-phased approach:

- Evaluation of existing demographic and transit conditions
- Development of an overall vision for transit services in Asheville and surrounding communities
- Creation of a five-year implementation plan and 10-year vision plan

The results of the Transit Master Plan will chart the course for ATS for the next 10 years and beyond.

The public involvement portion of the Transit Master Plan was extensive and well attended. The consultants applied an on-board rider survey to determine service attributes and improvements the riders would like to see. This survey was to target mostly transit riders.

A second survey was applied targeting the non-rider population to determine what is needed to bring them to ride the system.

Two public meetings were held (January and April); the first one was to collect information among the population, riders and non-riders, about the most important attributes for the transit system and their requests. This meeting was attended for almost 200 persons.

The second meeting was to present the recommendations and receive feedback from the citizens (about 120 persons attended this meeting). Additionally the final draft report was published to receive public comment. About 200 comments were received during the period.

As mentioned earlier, this process was overseen by the Steering Committee which was composed by the all the stakeholders that represent transit riders, including residents. Among them were City Departments, Buncombe County, N.C. Dept. of Transportation, Land of Sky Metropolitan Planning Organization, Transit Commission, Chamber of Commerce, Housing Authority, etc.

The major requests made by the citizens that participated in the public involvement process are:

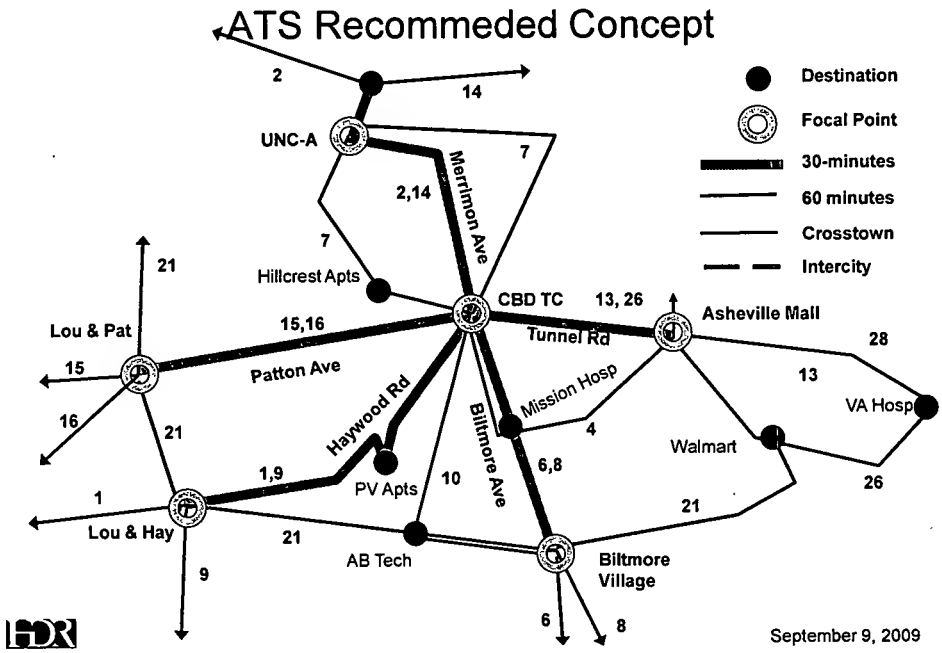
- Sunday service (most requested)
- More frequent service (second most requested) [major reason for non-riding]
- Sidewalks and shelters [also issue for non-riders]
- More evening service until midnight
- Additional transfer points without having to come downtown
- New routes, including express [also issue for non-riders]

Based on the analysis of the data and public input, HDR developed a concept that will restructure the whole system. The principle is to concentrate service on the main trunk corridors and to create additional routes to intersect with the trunk routes. The routes are connected through hubs to facilitate transfers. The whole concept seeks to increase mobility options for transit riders through and interconnected network. The recommended service changes are summarized below.

<u>Short-term recommendations:</u>

For routing changes, the principals are:

- More frequent service on heaviest corridors
- Additional transfer locations outside of downtown
- Improve on-time performance
- Reduce the number of deviations on a route; build sidewalks instead
- Eliminate dial-a-ride or convert to a fixed route
- Speed up longer routes
- Keep it simple for new users



For schedules, the guiding principals are:

- All routes should offer 12-hour service from 6 AM to 6 PM
- Additional trips added based upon demand
- Every route should have at least hourly service
- Evening route should be combined with its daytime route
- Sunday service added for 8 hours on the most productive routes
- Saturday service eliminated on less productive routes

Capital improvements

- Replacement vehicles for buses past their useful life
- Automatic Vehicle Locators (AVL)
- Shelters, signage, other amenities
- Additional sidewalks

<u>Short-term cost considerations (2011 - 1st year)</u>

- ATS Annual Operations costs $5.4 million
  - ✓ Route rationalization ~$500,000
  - ✓ Sunday service ~$200,000
  - ✓ Marketing ~$300,000
  - ✓ Loss of FTA funds ~$480,000

- Increase in fare revenue from smaller discounts (~$200,000)

- City share increase $1.2 million
- Capital costs
  - ✓ ~$5.1 million – 80% Federal, 10% State

Near-term recommendations (2012 – 2015).

Near-term enhancements:

- Operating Changes
  - ✓ More crosstown frequency (30 minutes)
  - ✓ Increase frequency on one trunk corridor
  - ✓ Two shuttle routes
  - ✓ More Sunday service
  - ✓ New Long Shoals Express

Capital Improvements

- Two new transit centers
- Improvements/expansion of operating facility
- More shelters, sidewalks, amenities
- Expansion & replacement buses
- ITS enhancements

Near-term cost considerations (2nd - 5th year)

- ATS Annual Operations costs $6.5 to $9.5 million
  - ✓ Route rationalization ~$500,000 - $550,000
  - ✓ Marketing ~$250,000 - $275,000
- Increase in fare revenue from smaller discounts
- City share increase $700,000 to $2.3 million (based on first year)
- Capital costs
  - ✓ ~$4.7 to $7.7million – 80% Federal, 10% State

Long-term recommendations (2016 – 2020)

Long-term enhancements

- Improved frequency on two trunk routes
- More Sunday service
- Four additional shuttles
- Two additional express routes

Capital Improvements

- Replace maintenance facility
- Replace downtown transit center
- Two neighborhood transit centers
- Expansion and replacement buses
- Continued ITS expansion

Long-term cost considerations (6th - 10th year)

- ATS Annual Operations costs $6.5 to $9.5 million
  - ✓ Route rationalization ~$560,000 - $620,000
  - ✓ Marketing ~$300,000 - $450,000

- Increase in fare revenue from smaller discounts
- City share increase $2.7 to $3.5 million (based on fifth year)
- Capital costs
  - ✓ ~$16.5 to $2 million – 80% Federal, 10% State

This project is in alignment with the Strategic Plan adopted by City Council in that the TMP supports the areas of environmental sustainability, promoting emission reductions through transit and identifying a sustainable funding structure for transit. The project also project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: (1) Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region; and (2) Goal X: Develop a comprehensive set of implementation strategies intended to reduce local vehicle miles traveled in accordance with the State of North Carolina transportation policies.

Pros

- The adoption of the TMP and further implementation will allow the City to operate the transit system in a more efficient way, rationalizing the routes and proposing new service.
- The TMP will improve reliability and performance, therefore improving quality of life.
- The new routing and service will increase mobility options for the community, potentially attracting more riders and reducing vehicle miles travelled, therefore reducing pollution and congestion.
- The TMP identifies capital improvements to respond appropriately to the City's growth.
- The TMP identifies funding opportunities to reduce the City's contribution from the General Fund.

Con:

- The proposed changes require an initial investment of $1.2 M and successive investments that are detailed in the financial impact section.

There are significant financial impacts associated with the implementation of the Transit Master Plan. Staff recommends that the funding of the recommendations in the plan come back to Council as part of the budget process and be considered along with other City Council priorities. Staff will also recommend revenue options for Council's consideration at that time.

City staff has reviewed the Transit Master Plan Report prepared by HDR, Inc., and *recommends that City Council accept this Report.* The Report has been developed with significant public and stakeholder input and based on sound transportation planning practices."

The following individuals spoke in support of City Council accepting the Transit Master Plan and acknowledged the inclusiveness of the public in development said Plan:

Ms. Edna Johnson, General Manager with Asheville Transit
Mr. Gene Bell, Executive Director of the Housing Authority (opposed to eliminating service to Klondyke Apartments on Saturdays and Sundays)
Ms. Hanna Raskin, Chair of the Asheville Transit Commission
Rev. Christopher Chiaronmonte
Mr. Tom Tomlin (opposed to elimination of Routes 5 and 11 on Saturdays)
Mr. Paul Van Heden, former City of Asheville Transit Systems Marketing Coordinator

Mr. Christopher Sean Hollifield explained to Council why he urged Council to not support this Transit Master Plan, mainly do to the impending deficit of up to $38 Million in the 6-10 year time span.

Ms. Michelle Johnson, Weaverville resident, explained how she has purchased two 40-passenger buses and started a bus service to Sonopress, amongst other places, to help her community.

Councilman Newman moved to adopt Resolution No. 09-229, with a statement that the City Council will still have overview and review of any proposed fee changes or fare changes or other taxes that would be used to implement the plan. This motion was seconded by Councilwoman Cape.

Vice-Mayor Davis was concerned that the public's expectations will be that the Plan will be implemented after adoption, but without the financial part, we can't implement it.

Councilman Newman said that the intent of his motion is that we like the concepts outlined in the Plan and we will look at it, along with other priorities of Council, as part of our budget process. Other than adjustments to the fare boxes, which is a relatively small piece of the funding formula, there are several different potential revenues options identified, some which we don't have in our control. If Council supports the concepts outlined in the Plan, we need to make it clear that we do and that we will address the funding piece over time and figure out what we can afford and where those revenues would come from.

In response to Councilman Russell, City Manager Jackson said that the next step will be for Council to consider this during the operating and budget capital process. Staff's preference is always that budget decisions not be made out of context of the larger and capital budget. Mr. Putnam added that we are already working with a deficit of roughly $500,000 because of some special money that we had available to us for the last two years. He agreed with the City Manager in that he envisioned that staff will put together an action plan that will follow the normal budgetary process.

Councilman Russell felt we could work on items that can be done quickly and inexpensively, similar to the Downtown Master Plan, and review the other issues through the budget process.

In response to Councilman Mumpower, Mr. Mariate Echeverry from the Transportation Department, said the City paid $100,000 for this study.

When Councilman Mumpower asked what the average subsidy is across the state of North Carolina for city transit services for every dollar of fare, Mr. Putnam felt it was about $4-5.

In response to Councilman Mumpower, Mr. Putnam felt that Chapel Hill might be a model of a city that is comparable to Asheville that has a strong impressive mass transit system.

Councilman Mumpower believed that transit, like jobs and education, is one of our best social services and we should invest in it as a city. He explained why he felt the subsidy for transit is rising and we are creating unreasonable expectations that we all want, but can't afford.

Councilman Newman noted that since 2003 the annual increase in ridership is over 10% when our population is growing maybe 1% per year. Many things with transit is going well. It will be difficult to find funding for service level improvements, but as we continue to add density, this is the kind of service that makes sense for our future.

Vice-Mayor Davis found it difficult to eliminate Route 5, but overall he felt the Transit Master Plan was good. He hoped we use the Plan as a guideline and implement it as we can afford to. He did support implementing the "low-hanging fruit."

In response to Mayor Bellamy, Councilman Newman said that he would be happy to have some additional dialogue with City staff about the elimination of Route 5.

Mayor Bellamy wanted to make sure that the opportunity for dialogue about route structures, etc. is still open. She felt it would be good to have a comprehensive implementation committee, similar to the Downtown Master Plan, that would be composed of transit, downtown residents, Warren Wilson representatives, etc. and have them report back to Council on a regular basis.

Councilwoman Cape reaffirmed that we are accepting the plan and we expect to have regular updates on what we can start doing, how we can start doing it, when changes start to affect funding, etc. She felt that before any changes were made to existing routes, we would know about it and have the opportunity to engage the community to let them know what is going on.

Councilman Miller suggested staff put together a comprehensive implementation committee to prioritize the Plan and bring it back to the City Council Annual Retreat on January 8-9, 2010.

Councilman Newman felt we have an existing Transit Commission and there are many people who are not on the Commission that worked on creating the Plan. He felt we should build the implementation committee off the existing Transit Commission in terms of carrying this forward.

In response to Councilwoman Cape if we needed a committee process, City Manager Jackson said that he did not have readily available the role of the Transit Commission, but we would look to see if this is within their scope. He felt it's a policy decision whether Council wants to use them, modify them or create two separate bodies. He did say it would be extra work for staff to work with multiple bodies to accomplish that end.

Councilman Mumpower felt that we have an existing model of the Civic Center Commission. Staff works with the existing Commission and holds public hearings as necessary to flesh out the details. He felt we would be disrespectful of the Transit Commission if we didn't use them.

Mayor Bellamy said that there is a steering committee that has been working on this for awhile which includes some Transit Commission members. It was pointed out that Warren Wilson College should have representation, representation from the NAACP, Housing Authority, etc.

Councilman Newman suggested asking the steering committee that has been working on the Plan and the Transit Commission if they feel they would like to give us any further recommendations or if they feel they have done their job and let it default back to the Transit Commission. Mayor Bellamy agreed and asked that staff make that inquiry and let Council know.

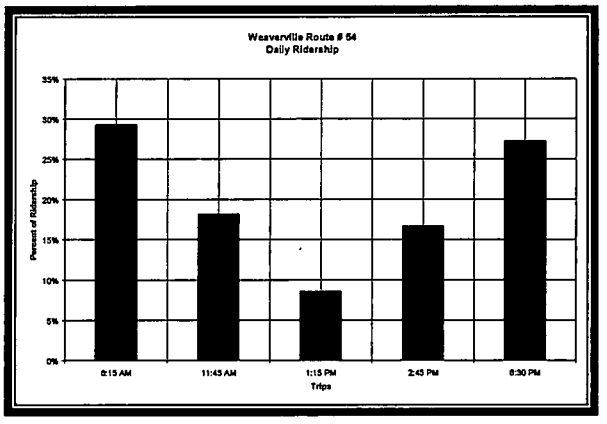
The motion made by Councilman Newman to adopt Resolution No. 09-229 and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

Weaverville Route # 54 Data from Staff Report

"At the City Council meeting on October 13, 2009, a Council member presented information including a petition to keep Weaverville Route # 54 funded and in service after October 31, 2009. A concerned citizen, who uses the service, had prepared the information and submitted it to the Council member prior to the meeting. City Council asked staff to review the information and provide a response at the October 27, 2009, meeting.

Currently, Route # 54 provides 5 daily trips, one at the beginning and end of each day and 3 trips during the middle part of the day. As shown in the following chart, 56% of the typical

daily ridership uses the trips at the beginning and end of each day and 44% of the typical daily ridership uses the trips during the middle part of the day.



The N.C. Dept. of Transportation (NCDOT) informed the City in December 2008 that the intercity funding for Route # 54 would be discontinued effective November 1, 2009, because a recent assessment of the route determined that it was not compliant with Federal regulations. In addition, The Town of Weaverville indicated that they no longer wanted to partner with the City of Asheville in providing the route. Total ridership during Fiscal Year 2008-09 was more than 27,000 riders which average about 90 riders per service day including weekdays and Saturdays.

Provided to Council is a breakdown of the estimated costs to continue the funding of Route # 54 from November 1, 2009, through June 30, 2009. This breakdown also includes the costs from Fiscal Year 2008-09 for 12-month and 8-month timeframes for comparison purposes. In order to provide the most realistic operating cost estimate, the methodology of the Cost Allocation Model that is described in the Transit Master Plan was used. The total net cost to provide the same service that is provided currently until June 30, 2010, is about $169,640. If only two trips per service day are provided, the total net cost would be about $68,036.

Earlier this year, Buncombe County Mountain Mobility began a North Buncombe Trailblazer route which connects to the City's Route # 2 at the Manor Ridge Apartments along Elkwood Avenue. The subject route includes an early morning trip between 6:00 a.m. and 7:15 a.m. and an evening route between 5:30 p.m. and 6:50 p.m. The current fare is $0.50 each way. City staff met with Mountain Mobility and they have indicated that they are going to change their routing to mimic the current routing making sure that all of their patterns use Main Street in downtown Weaverville."

Councilman Mumpower said that the taxpayers of Asheville are subsidizing the Weaverville route at least $50 to $1 and it's an unsustainable transit system. He didn't believe that our notice of intent to stop the Weaverville route was effective as it needed to be and so there is some concern about we are leaving people without transportation. He asked if Council would be willing to fund the continuation of the Weaverville route for at least two more weeks to allow for the transition or other options for those who are using that service.

A representative from Buncombe County Mountain Mobility said that they have a North Buncombe Trailblazer which is a smaller bus that runs in the North Buncombe county areas. They have worked to revise the routes so that in the morning and evening runs they are mirroring what Route 54 is doing. She explained the Trailblazer route, which will occur several times in the morning and several times in the afternoon. She said they have a 50-cent fare so this is an additional cost increase to the riders. They feel confident they can duplicate the same times that Route 54 is currently doing. They have put together brochures that were e-mail out today to many stakeholders at the public hearing last week and the brochure should go up on our website tomorrow. The new revised route will start on Monday, November 2.

In response to Councilman Mumpower, the estimated cost of one additional week of transit service to Weaverville would be approximately $4,800.

Councilman Mumpower moved to continue the Weaverville route for one additional transitional week. This motion was seconded by Councilman Newman.

Mr. Christopher Sean Hollifield didn't think one additional week of transition was enough. He was concerned that there would not be enough room with the Trailblazer and stressed that the public was not made aware of the cancellation with proper notice.

Mayor Bellamy asked that City and County staff actively reach out to the public on this change of bus route. She suggested each person getting on the Weaverville route receive a flyer and that the City also place on it's cable channel the change in route, with the North Buncombe Trailblazer taking the route over, along with an update about the Transit Master Plan announcing some of the proposed changes.

When Councilman Mumpower wondered if he would have Council's support to amend his motion to continue the Weaverville route for two additional weeks, Councilman Newman said that he would second the motion; however, this is not received Council support.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried unanimously.

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At 8:00 p.m., Mayor Bellamy announced a 20-minute recess at which time City Council would hold a closed session.

Closed Session

At 8:00 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Holly Oxner; Forrest Weaver; Jeff Richardson; Lisa Roth; and the City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a) (6); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 8:20 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

VI. NEW BUSINESS:

A. UPDATE ON ANNEXATION AGREEMENT DISCUSSIONS WITH THE TOWN OF WOODFIN

City Attorney Oast said that the purpose of this memo is to update Council on the status of this matter. Using maps throughout his presentation, he said that back in 2005 Asheville and

Woodfin began discussions regarding their plans for future growth. These discussions grew out of development of the Reynolds Mountain area, and annexations by both municipalities in that area, as well as growth and development in the Erwin Hills and Leicester area. These discussions included proposals to realign the boundary in the UNC-A area to address some service-delivery issues.

These discussions also involved consideration of an annexation agreement between the two municipalities. An annexation agreement is not a precursor to annexation, or a first step in the annexation process. Rather, it is a method authorized in the N.C. General Statutes, whereby two or more neighboring or (as in this case) abutting municipalities agree not to expand into certain defined areas that may be better served by the other municipality as they are developed for urban purposes. This is a way of giving some predictability to urban growth patterns, both for municipalities and residents / property owners.

In connection with these discussions, staff from Woodfin and Asheville developed a line that essentially extended Asheville's and Woodfin's common boundary to the west and east, with reference to roads, ridgelines, and other topographic features. The areas created by these boundaries are frequently referred to as "spheres of influence." That proposal was incorporated into a draft agreement provided to Woodfin in 2007. Although an agreement has not yet been adopted, interest in reaching an agreement has remained.

Since discussions began, Asheville and Woodfin have both engaged in some annexation activities; some voluntary, some involuntary. Of concern to Asheville is that Woodfin has considered several annexations, and completed some, that are on Asheville's side of the proposed boundary line discussed above (Richmond Hill annexation) or straddle it (Sherwood Heights proposal).

Also since discussions began, a group of interested persons began an effort to incorporate the Leicester area. The area proposed for incorporation included some areas close to Woodfin and Asheville. The Leicester incorporation group solicited Asheville's support for their effort, and there were several discussions and presentations about it. The Asheville City Council ultimately adopted a resolution approving of the incorporation, with some reservations as to the size of the area. The Leicester incorporation became an issue in Woodfin's attempt earlier this year to involuntarily annex a fairly large area that included Erwin Hills. This attempt has been suspended pending further discussions regarding an annexation agreement.

Informal discussions have occurred over the summer between Asheville and Woodfin. In June the Asheville City Council adopted a resolution affirming its commitment to an annexation agreement. In September, the previous annexation agreement, with the same boundary line, was transmitted to Woodfin's Town Attorney, who responded with an alternative proposal from Woodfin.

The chief matter to be resolved is the location of the line separating the future growth areas of the two municipalities. Once this is determined, the statute outlines a process, including a public hearing, for finalizing and adopting an annexation agreement.

He provided Council with (1) the draft annexation agreement recently resubmitted to Woodfin. This is essentially the same agreement prepared in 2007; (2) a map showing Woodfin's alternative proposal; and (3) a previous staff report outlining the process for adopting an annexation agreement.

In summary, the following four issues are sub-parts of the annexation agreement for the location of the line separating the future growth areas between the City of Asheville and the Town of Woodfin: (1) realignment of the boundary in the UNC-Asheville area to address some service-delivery issues, and to get the University property entirely within Asheville's jurisdiction; (2) Sherwood Heights voluntary annexation proposal; (3) appropriate jurisdiction over the

Leicester/Erwin Hills area; and (4) the location of the proposed round-about at the entrance to Reynolds Mountain in New Bridge being in two different municipalities. He noted that the round-about issue and the UNC-Asheville area will require legislative approval. City Council and staff are continuing to work with Woodfin in the hopes that we can come to some agreement.

Mayor Bellamy asked for Council discussion and direction on the following: (1) since Woodfin has made a commitment with Leicester not to annexation into Leicester Township, Woodfin is asking Asheville to make that same commitment for the next three years (in order to let the incorporation process move forward); (2) regarding the 3.54 miles that is in Asheville's extraterritorial jurisdiction area, Woodfin is asking Asheville for a good faith effort to allow Woodfin to move the boundary line into Woodfin and Woodfin would exclude that portion of the Coleman property that is being requested to be voluntarily annexed into Woodfin to be a part of Asheville; and (3) include all of the round-about in the Town of Woodfin.

After discussion, it was the consensus of Council to realign the boundary of UNC-Asheville to bring it all into the City of Asheville.

After discussion, Council felt the Sherwood Heights area should be in Asheville since it is in Asheville's extraterritorial jurisdiction area, the entire property is in Asheville's watershed and the subdivision is accessed by only two roads which are both coming through the City of Asheville. Even though the property owners have asked Woodfin to voluntarily annex them into Woodfin, it was the consensus of Council to have staff contact the property owners to perhaps negotiate with them to annex into the City of Asheville instead.

After discussion, it was the consensus of Council to locate the entire round-about in Woodfin.

Mr. Jerry Rice urged Council to deliberate this issue in open.

When Councilman Mumpower raised a concern about process, Councilman Newman said that elected officials are talking to elected officials from another town and the information is brought back to the full boards for direction.

Rev. Christopher Chiaronmonte felt all meeting should be taped and aired on the City channel.

After discussion, Councilman Newman moved to make a commitment that Asheville will not annex into Leicester Township for the next three years, contingent upon Woodfin making that same commitment. This motion was seconded by Vice-Mayor Davis and carried unanimously.

Councilman Newman felt that Asheville has a stronger argument for the 3.54 miles in our extraterritorial jurisdiction area to be in Asheville as it is commercializing and it looks more of a part of Asheville since it is far from the core of Woodfin.

Mayor Bellamy said that she will provide timely updates to Council on this matter.

B. RESOLUTION NO. 09-230 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Asheville-Buncombe Historic Resources Commission.

Ms. Beth Gillespie has resigned as a member of the Asheville-Buncombe Historic Resources Commission thus leaving an unexpired term until July 1, 2012.

On October 13, 2009, it was the consensus of Council to interview Susan Eggerton, Susan West and John King Dean. Ms. West was interested; however, she was unable to attend the interview.

After Council spoke highly of the candidates, Councilman Newman moved to appoint John Dean as a member of the Asheville-Buncombe Historic Resources Commission to fill the unexpired term of Ms. Gillespie, term to expire July 1, 2012, or until his successor has been appointed. This motion was seconded by Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 257

C. RESOLUTION NO. 09-231 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Sustainable Advisory Committee on Energy & the Environment.

Mr. David Spector has resigned as a member of the Sustainable Advisory Committee on Energy & the Environment thus leaving an unexpired term until December 31, 2010.

On October 13, 2009, it was the consensus of Council to interview Duncan McPherson, David Brown and Claude Chandler. Mr. Brown was interested; however, he was unable to attend the interview. Mr. Chandler was unable to serve at this time.

Councilwoman Cape moved to appoint Duncan McPherson as a member of the Sustainability Advisory Committee on Energy & the Environment to fill the unexpired term of Mr. Spector, term to expire December 31, 2010, or until his successor has been appointed. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 258

D. RESOLUTION NO. 09-232 - RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Tree Commission.

Ms. Starr Silvis has resigned as a member of the Tree Commission thus leaving an unexpired term until December 31, 2011.

On October 13, 2009, it was the consensus of Council to interview Josh O'Conner, Kathleen Zeren and Amy Kemp. Mr. O'Conner was unable to serve as he currently serves on the Mayor's Committee on Veterans Affairs and the Transit Commission. Ms. Zeren has moved out into the County.

Vice-Mayor Davis noted that the Tree Commission recently notified him that their recommendation is Debbie Emmons. After a brief discussion about the recommendation timing, Council said that they would consider her in their next vacancy on the Tree Commission.

Councilman Mumpower moved to appoint Amy Kemp as a member of the Tree Commission to fill the unexpired term of Ms. Silvis, term to expire December 31, 2011, or until her successor has been appointed. This motion was seconded by Councilman Russell carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 259

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Miller encouraged the public to (1) spread the word that Asheville is still open for business, despite the rock slide at the Tennessee/North Carolina border; and (2) take advantage of the early voting locations.

CTS Plant Site

Regarding the CTS Plant site groundwater contamination, Mr. Tate McQueen and Mr. Aaron Penland reviewed with Council the statistics of the toxic contamination of their groundwater and information on when the contamination was found. After their meetings with the Buncombe County Commissioners, the County adopted a resolution stating that any further wells that become contaminated the County will only bear up to 50% of the cost. They asked for City Council for a resolution to the U.S. Dept. of Agriculture asking them for earmarked money to help offset municipal water to their community. They presented Council with two petitions as follows (1) "Considering the level of TCE contamination detected at David Bradley's well on Chapel Hill Church Road, we the residents of Chapel Hill Church Road would like to receive Asheville City Water in the same manner as The Oaks development on Pinner's Cove Road."; and (2) "We, the undersigned, petition the City of Asheville to provide us with a safe source of water from the Asheville Municipal Water supply without delay. Our plea is based on the imminent threats of toxic contamination spreading to our well-water supply as detailed in the 2002 'Action Memorandum/Enforcement' document (Cerclis ID# NCSFN0406988) by James W. Webster, Ph.D., which has again been substantiated with the recent contamination of the well-water supply in the Oaks subdivision and on Chapel Hill Church Road." Mr. McQueen said that personally he would be happy to be annexed into the City of Asheville.

City Manager Jackson said that there are two manners in which water service can be extended. The standard process for water line extension for multiple properties is a letter of commitment process. For that process there is a $312 processing fee and a letter of commitment from the property owners. The property owners would need to have an engineering study performed and the City would evaluate it. The other is the process under which Buncombe County has established is where a public purpose is served and there is cost participation of up to 50%. In that process, Buncombe County would have the engineering study performed on behalf of the property owners (as they did in the Oaks area) and do the analysis and the City would identify our costs of service in serving that area. City staff would then come to Council with a partnership plan. That was under the leadership of the County. The County's position is that they are continuing to do well monitoring outside of one mile from the CTS Plant. The EPA is doing well monitoring within the one mile area surrounding the CTS site. At this time, there aren't any wells that indicate a level of contamination that renders an active well undrinkable. For every place that the wells register an unsafe level there is now water available from our system. The County's position is that they are monitoring the situation and they are calling upon EPA and N.C. Dept. of Environment and Natural Resources to continue their assessments. The County does not see an imminent need for action. He asked for Council's direction to (1) wait on Buncombe County's assessment; (2) respond to a private property owner petition; or (3) evaluate the voluntary interest in annexation and put the service level plan together over a period of time for those areas that would be interested in voluntary annexation.

It was the consensus of Council that Mr. McQueen and Mr. Penland meet with City Manager Jackson to explore the different avenues available including the costs. If annexation is a part of that process, Council would be supportive of staff looking at that as a tool as well.

Mayor Bellamy noted that the City has staff writing recovery dollar grants and perhaps that might be something we could pursue with the N.C. Dept. of Agriculture. Mayor Bellamy asked for a report on this matter at the November 24, 2009, agenda, if not sooner.

Rev. Christopher Chiaronmonte voiced concern over Council's rules not allowing a person to speak under informal discussion and public comment if the issue was on the agenda.

Ms. Patricia Pinner urged the City of Asheville to provide everyone within a 10 mile radius of the CTS Plant municipal water at the expense of CTS.

Mr. Jerry Rice urged Council to assist the residents around the CTS Plant.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:00 p.m.

Magdalen Bowlesson
CITY CLERK

MAYOR

Tuesday – November 10, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "D" and "E" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE ASHEVILLE-BUNCOMBE YOUTH SOCCER ASSOCIATION AND THE WESTERN NORTH CAROLINA SOCCER FOUNDATION OF FIELD LIGHTS ON THE FOUR SOCCER FIELDS AT THE JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION NO. 09-234 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET AND SETTING A PUBLIC HEARING ON DECEMBER 15, 2009

Summary: The consideration of a resolution of intent to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street, requesting a public hearing on December 15, 2009, regarding this issue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners, Mission Health System Inc. has requested the City of Asheville to permanently close a Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

The Greenway Commission is scheduled to review the closure of Hamilton Street, a portion of Brooklet Street and Hamilton Circle at their meeting on November 12, 2009.

Regarding the City Council Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Cons:

- In consideration of the location of the closures and the proposed street realignment, staff can find no potential challenges.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for December 15, 2009, to close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

RESOLUTION BOOK NO. 32 – PAGE 261

D. BUDGET AMENDMENT TO PROVIDE FUNDS FOR CIVIL SERVICE BOARD LEGAL COUNSEL AND CIVIL SERVICE SECRETARIAL SERVICES AS MANDATED IN THE NEW CIVIL SERVICE LAW

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. BUDGET AMENDMENT TO COMPLETE THE OAKLEY POLICE RESOURCE CENTER

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Miller moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-233 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE ASHEVILLE-BUNCOMBE YOUTH SOCCER ASSOCIATION AND THE WESTERN NORTH CAROLINA SOCCER FOUNDATION OF FIELD LIGHTS ON THE FOUR SOCCER FIELDS AT THE JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK

Summary: The consideration of a resolution authorizing the City Manager to accept a donation from the Asheville-Buncombe Youth Soccer Association (ABYSA) and the Western

North Carolina Soccer Foundation (WNCSF) of field lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park.

In January 2009 City Council authorized ABYSA and WNCSF to place lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park. Since then ABYSA and WNCSF has successfully met the requirements of the lights installation agreement and the work is complete. ABYSA and WNCSF are now making a gift of the soccer field lights to the City valued at $594,166.

The soccer field light system is the Musco "Structure Green", a leader in the outdoor field lighting industry in energy efficiency and glare control. The system complies with the City's lighting standards for outdoor sport fields as stated in the Unified Development Ordinance.

The soccer field lights complies with the City Council Strategic Operating Plan Focus Area: Green in that Asheville will be the southeastern leader in energy and environmental sustainability while preserving the city's natural beauty by making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

The donation of the soccer field lights complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that is maximizes the level of service available to the community by using partnerships to take advantage of existing facilities, share new facilities, and provide additional programming and services to the community.

The Recreation Board unanimously recommended the ABYSA and WNCSF proposal to City Council to install and donate soccer field lights at the John B. Lewis Soccer Complex at its meeting on November 10, 2008.

Pro:

- Further strengthens the partnership between the City, ABYSA and WNCSF to enhance facility development and programming at the John B. Lewis Soccer Complex.

Con:

- Increases the City's annual operating cost in facility maintenance and operation.

Addition of the lights at the soccer complex will increase the City's annual operating cost by $15,000 to $20,000 for facility maintenance and operation. ABYSA will make an annual contribution to the cost as part of the facility operating agreement between the City and ABYSA.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept a donation from the Asheville-Buncombe Youth Soccer Association and the Western North Carolina Soccer Foundation of field lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park.

Mayor Bellamy recognized Mr. and Mrs. Lewis and thanked them for their donation to the City of Asheville. She also thanked Councilman Miller, working through the Product Development Fund, for the donation of $1.3 Million towards this effort.

Councilman Russell moved for the adoption of Resolution No. 09-233. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 260

D. ORDINANCE NO. 3802 - BUDGET AMENDMENT TO PROVIDE FUNDS FOR CIVIL SERVICE BOARD LEGAL COUNSEL AND CIVIL SERVICE SECRETARIAL SERVICES AS MANDATED IN THE NEW CIVIL SERVICE LAW

Summary: The consideration of a budget amendment, in the amount of $71,452, from the Fund Balance to provide funds for Civil Service Board legal counsel and Civil Service secretarial services as mandated in the new Civil Service Law.

The Civil Service law was amended on August 3, 2009, by the General Assembly. This revision contained an unfunded mandate which required the City to provide outside counsel and secretarial services for the Civil Service Board. City Council was informed of this unfunded mandate and potential fiscal impact during the negotiations and deliberations regarding the revisions to the law.

This action complies with the City Council's Strategic Operating plan by promoting the City's goal of attracting and retaining quality employees through oversight of Public Safety promotional processes and overall transparency.

Pro:

- The City is complying with the newly revised Civil Service Law as mandated by the General Assembly.

Con:

- This is an unfunded mandate.

This budget amendment is funded with a $71,451 appropriation from the General Fund fund balance. Based on current estimates, the City will end fiscal year 2009-10 with a General Fund fund balance total of $14.2 million, which will equate to 15.1% of projected expenses.

City staff recommends City Council adopt the budget amendment, in the amount of $71,452, from the Fund Balance to provide funds for Civil Service Board legal counsel and Civil Service secretarial services as mandated in the new Civil Service Law.

After a brief discussion, initiated by Councilman Mumpower, about what brought the City to this point of action, Vice-Mayor Davis moved for the adoption of Ordinance No. 3802. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 25 – PAGE 472

E. ORDINANCE NO. 3803 - BUDGET AMENDMENT TO COMPLETE THE OAKLEY POLICE RESOURCE CENTER

Summary: City Council authorized staff to purchase a student built energy efficient modular home from AB Tech in April, 2009, to replace a one-hundred year old Police Resource Center in the Oakley community, and a budget amendment, in the amount of $80,000, is needed from its Capital Reserve Fund to complete this project.

During the 2007 budget planning process, City Council allocated a one-time infusion of $500,000 into the City's Capital Improvement Fund to address the most critical city building capital maintenance needs. The Oakley Resource Center was in need of significant deferred maintenance and was determined to be no longer functional as the operational headquarters for the Patrol Division's East and North Districts. In order to replace this facility, staff identified a partnership opportunity with AB Tech, who had recently completed an energy efficient student-built modular home and was preparing to auction this home off in the near future.

Projected Budget (authorized by City Council)

Site Demolition Cost	$ 10,000

Home Purchase Cost	$110,000
Site Preparation/House Transport Cost	$ 57,000
Landscaping and paving contingency	$ 15,000
Total	$192,000

Since this project's approval, City staff has purchased the home from AB Tech and demolished the existing structure. Staff has received a low bid for the site preparation/house transport, and installation finish work at $101,000, which is significantly higher than originally anticipated. It should be noted that City staff went through the formal bid process two (2) separate times in an effort to secure the lowest and most responsible bid possible. In addition, staff has budgeted an additional $15,000 for contingency to complete this project.

The City's capital reserve fund currently has an available balance of $185,000; allocating $80,000 to fund this project will reduce the available balance to $105,000.

City staff is requesting City Council adopt a budget amendment, in the amount of $80,000, from the Capital Reserve Fund for purposes of completing the Oakley Police Resource Center project.

In response to Councilman Mumpower, Assistant City Manager Jeff Richardson explained this unique project and the reason for the total amended budget of $254,000, which is detailed as follows: Home purchase - $110,000; transportation and setting contract - $23,000; construction contract cost - $78,000; site preparation/site completion - $10,000; Information Technology services (network wiring) - $8,000; furniture/fixtures - $10,000; and contingency - $15,000. The cost is also included for the temporary move to the alternative location for this division.

Mr. Richardson responded to various questions/comments from Council, some being, but are not limited to, what is the square footage cost for the upstairs and the basement; did the building need to be personalized for the needs of the Police Department; at $200 a square foot, does staff feel the construction was standard or exceptional; has the house already been purchased; and explanation of the financial component of the entire venture.

Mayor Bellamy asked for an update on the West Asheville Fire Station 6 renovation project.

Councilman Miller moved for the adoption of Ordinance No. 3803. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

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III. PRESENTATIONS & REPORTS:

A. HILLCREST APARTMENTS FIRE

Interim Fire Chief Scott Burnette updated City Council on the current explosion and fire at Building 21 at Hillcrest Apartments. There were five families displaced from Building 21 and six families displaced from Building 20. The American Red Cross and the Housing Authority are temporarily housing those families until permanent housing becomes available. Investigators are on the scene to try to determine the exact cause of the explosion. Evidence does suggest that a natural gas release is the cause of the explosion, but how that came about is still unclear. Appliances and utilities are being examined as well as consultations with personnel from Progress Energy and mechanical inspectors from Building Safety. Additional interviews with

witnesses are also being conducted. Heavy rain conditions and structural damage to the building are slowing work progress; therefore, the investigation will continue.

B. H1N1 PREPAREDNESS FOR COMMUNITY REPORT

Interim Fire Chief Scott Burnette introduced Director of Emergency Services Jerry VeHaun and Buncombe County Health Director Gibby Harris to advise Council on what the response plan is for the H1N1 flu.

Ms. Harris updated Council with the current status of the pandemic; the H1N1 vaccinations; and public health recommendations.

Mr. VeHaun explained the emergency response plans.

On behalf of City Council, Mayor Bellamy thanked Ms. Harris and Mr. VeHaun for their informative presentation and asked if Ms. Harris would be amenable to attend a Council meeting on a monthly basis to keep the community informed of the pandemic.

B. COMMUNICATION UPDATE ON I-40 ROCK SLIDE

Councilman Miller briefed the Council on the alternate routes into Asheville due to the I-40 rock slide pointing out that we need to do keep the message out that Asheville is open for business.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-235 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS FOR THE NORTH FORK WATER TREATMENT PLANT PUMPING SYSTEMS IMPROVEMENTS AND TO AWARD THE CONSTRUCTION CONTRACT TO HICKORY CONSTRUCTION COMPANY

ORDINANCE NO. 3804 - BUDGET AMENDMENT TO AWARD THE CONSTRUCTION CONTRACT TO HICKORY CONSTRUCTION COMPANY FOR THE NORTH FORK WATER TREATMENT PLANT PUMPING SYSTEMS IMPROVEMENTS

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of a resolution, and budget amendment, in the amount of $375,722, to accept funds for the North Fork Water Treatment Plant Pumping Systems Improvements and to award the construction contract to Hickory Construction Company in the amount of $328,474.

The Water Resources Department applied for and was awarded ARRA funding in the amount of $510,000 for the North Fork Water Treatment Plant Pumping Systems Improvements project through NCDENR's Drinking Water State Revolving Fund (DWSRF). This loan is a 50% grant with a 50% loan requirement. Since applying for ARRA Funding, the project scope has changed to reduce the amount of work to be done and subsequent cost. Therefore, the total project cost should be significantly less than the approved $510,000.

Water Resources issued formal bids in August 2009 for construction services relating to this project. On September 9, 2009, four (4) bids were opened from the following companies:

1. Hickory Construction Company, Hickory, NC - $328,474.00
2. J.L. Construction Company, Piedmont, SC - $389,500.00

3. Huntley Construction, Asheville, NC - $496,000.00
4. Carolina Specialties Construction Inc., Hendersonville, NC - $456,277.00

The bids have been reviewed by the Water Resources Department, Brown & Caldwell Consulting Engineers, and the City's Office of Economic Development for Minority Business Plan Compliance with all parties in agreement to award the contract to the lowest responsible bidder, Hickory Construction Company, located in Hickory, North Carolina.

On October 23, 2009, the N.C. Dept. of Environment and Natural Resources Public Water Supply Section approved the Disadvantaged Business Enterprise (DBE) Package with the next step in acquiring ARRA funds for this project is governing board approval to award the construction contract for this project.

This project is part of City Council's strategic plans to improve city infrastructure and receive ARRA Funding to aid in economic recovery and operated in a fiscally responsible manner.

Pros:

- Approval of this action will allow the city to move forward with the North Fork WTP Pumping Systems Improvements project.
- This project is 50% funded from ARRA Funding.
- This project will result in energy savings needed to pump water from the North Fork Water Treatment Plant.

Cons:

- The Water Resources Department will have to fund 50% of the project cost which will come from the Water Capital Projects fund.
- The paperwork involved in accepting ARRA funds will be time consuming for staff.

The City will be responsible to pay the loan amount not covered by ARRA Funding, which is 50% of the total project cost.

Staff recommends approval of the resolution, and budget amendment, in the amount of $375,722, to accept funds for the North Fork Water Treatment Plant Pumping Systems Improvements and award the construction contract to Hickory Construction Company in the amount of $328,474.

There was a brief discussion, initiated by Mayor Bellamy, about the City's willingness to use local contractors.

In response to Councilman Newman, Ms. Mills said that if the contractor goes over the amount budgeted for the project, it changes the scope of work and staff would have to come back to Council for approval.

In response to Mayor Bellamy, Water Resources Director Steve Shoaf said that there is a contingency built into the bidding process. He said that the City has used Hickory Construction Company on several projects and they have not exceeded the bid amount on any of those.

Councilman Mumpower felt we will be using borrowed money that will need to be paid back by our children and grandchildren. He also felt that even though the City can't require subcontractors to use the E-Verify System, he felt the City should be at least asking them to screen their new employees.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-235. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilwoman Cape moved for the adoption of Ordinance No. 3804. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE 476

D. STORMWATER & EROSION CONTROL ORDINANCE UPDATE

Mayor Bellamy said that before Council is given the update by Director of Public Works Cathy Ball, she asked the Council if they would prefer to have this ordinance amendment considered by the seated Council at a public hearing on November 24, 2009, or wait until the new Council is seated.

Ms. Ball briefly pointed out some of the recommendations made by the Planning and Zoning Commission at their October 22, 2009, meeting that will require significant evaluation to determine the City's legal and practical authority to carry out. Staff is prepared to analyze the recommendation from the Planning and Zoning Commission and to make a staff recommendations on Planning and Zoning Commission's actions at a City Council public hearing January 12, 2010. At that meeting, based on current information, staff would recommend that Council adopt the revised Stormwater and Erosion Control Ordinance as proposed.

After a brief discussion, it was the consensus of Council to set the public hearing on January 12, 2010, at which time public comment would be taken.

E. CABLE TELEVISION FRANCHISE REPORT

City Attorney Oast said that that in 1997, the City issued a franchise to Brenmor Cable Partners to operate a cable television franchise in the City of Asheville. That franchise contained provisions regarding such things as minimum service levels, repair and maintenance responsibilities, public, educational and governmental (PEG) channels, and provides the City an intranet or I-Net. The franchise fee for the franchise is 5% of gross annual revenues. The term of the franchise was set to run on July 31, 2010.

He explained the following relevant law:

A. Local franchising authority. Prior to 2005, a city's ability to regulate the provision of cable television service was pursuant to N.C.G.S. 160A-296 and 160A-76 which provide in essence that a city may control the use of its streets and rights-of-way, and may grant franchises to allow for the use of streets or rights-of-way by private businesses. Franchise is the legal mechanism that has historically been used for this purpose, and is used in North Carolina and other states. At the same time that it granted the franchise to Brenmor, the City adopted a cable regulatory ordinance, which prescribes the terms and conditions applicable to cable television operations in the City.

B. Federal law. In addition to federal law regulating television and other forms of electronic communication generally, the Telecommunications Act of 1996 had a

major influence on cable television regulation, and affected to a large extent how local franchises were structured, including such issues as the fees that could be charged, and what constitutes "video service." With the rapid development of digital technology, federal statutes, regulations, and case law have been increasingly important in this area.

C. State law: In 2005 the North Carolina General Assembly adopted a law that provided in essence that all cable television franchises would transition to a single franchise administered by the State. With respect to individual local franchises, this transition could occur either at the expiration of the current local franchise, or at the provider's election by giving notice of termination.

1. Cable television. As to cable television services, the State law makes the transition to the State franchise relatively seamless; there is no change in programming for the end users, and the City's revenue stream from franchise fees is maintained essentially at current levels. The State law also provides for the maintenance of PEG channels on essentially the same basis as the existing franchise. The State law requires that cable service be provided without charge to public buildings. The State law also specifically reserves to local governments the ability to control the use of its rights-of-way.

2. Other services / telecommunications ordinance. One thing that is not clearly addressed in the State franchise law is the non-video services that are now available through the same fiber bundles that carry television service. These services include internet service and telephone service. Another matter not clearly addressed is what happens with the I-Net.

He then explained the transition to State franchise as follows: With these issues in mind, Information Technology Director Jonathan Feldman, Media Production Manager Jeff Reble, and I began meeting earlier this year to plan for the transition to the State franchise that was anticipated to occur next July. One of the major concerns was ensuring that the I-Net, which is essential to many City services, remains operational. A number of other issues have arisen:

A. AT&T entry into Asheville market. In late August, we received notice that AT&T would begin providing cable services in the Asheville area under the State franchise. This is one of the events that can trigger a notice by a provider under an existing local franchise that it will terminate the existing franchise, and transfer to the State franchise. Until August, Charter was the only provider of cable television service in Asheville.

B. Termination by Charter. In mid-October we received notice from Charter Communications (the successor to original franchisee Brenmor Cable Partners) that it was terminating its local franchise with the City and transition to the State franchising, effective November 1, 2009. Charter also gave notice to Buncombe County that it was terminating its franchise with the County, effective the same date.

C. Charter bankruptcy. In the midst of all this, Charter initiated a bankruptcy proceeding and Council, acting at Charter's request, and after determining that Charter was in compliance with the franchise, adopted a resolution in July giving its conditional approval to this bankruptcy.

D. URTV. A peripheral issue is the public access station, URTV. As Council knows from a previous report, the management agreement with URTV is set to expire,

and we are negotiating with them for a short extension, with a longer extension contemplated once other issues are addressed, including Charter's transition to the State franchise.

After receiving Charter's notice of termination of the franchise, we worked for much of October to ensure that the I-Net would not be affected by Charter's transition to the State franchise, and that we would have the opportunity to negotiate for its continuation. On Thursday, October 29, we received a letter from Charter assuring us that the I-Net would continue. We have engaged the services of a law firm specializing in telecommunication issues to assist us with this process.

Other information that we are gathering and issues that we are researching include the following:

A. I-Net. While Charter installed much of the I-Net pursuant to the 1997 franchise, much of it was installed by the City (or at the City's direction and cost). We are checking with Charter to ensure that information regarding the location and cost of the I-Net is as complete as possible. This information will include the fees charged to subscribers to defray I-Net costs. We will also need to obtain more information as to Charter's other services.

B. AT&T. AT&T's cable TV service area is currently small As AT&T's service grows, however, the City may need to consider requesting PEG channel capacity or public building service from them, in addition to the service provided by Charter, as the law allows.

C. Local right of way ordinance. In 2003, the City adopted an ordinance that applies to the providers of telecommunication service that are not subject to regulation under the cable television ordinance. The ordinance regulates how our streets and rights of way may be used by telecommunications service providers. We think that this is part of the authority reserved to localities by the State franchise law. We are reviewing the applicability of this ordinance to Charter's other (non-cable television) operations. Charter is not the only ISP operating in Asheville. Limited service is currently being provided by ERC, and we had previously negotiated an agreement with Dukenet, although it was never finalized.

He said the summary and next steps are: The regulation of cable television and telecommunications is complicated and involves aspects of federal, State, and local laws and ordinances. The technological aspect of this work, which changes rapidly, is daunting, and the financial issues are not insubstantial.

Working to ensure a seamless transition to the State franchise while ensuring that the City and its citizens continue to receive what is now viewed as an essential service would be a challenging task in any circumstance. In this case, that task is complicated somewhat by Charter's bankruptcy, AT&T's new presence in the area, and URTV.

The chief issues at this time are to ensure the continued availability of television and telecommunications service in Asheville, protect the City's interests, and work with the service providers in a fair manner. As we get further into negotiations and staff review, we will report to Council.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR THE ASHEVILLE REGIONAL AIRPORT

ORDINANCE NO. 3805 - ORDINANCE APPROVING THE SIGNAGE PLAN FOR THE ASHEVILLE REGIONAL AIRPORT

Mayor Bellamy opened the public hearing at 6:16 p.m.

Assistant Director of Planning & Development Shannon Tuch said that that this is the consideration of an ordinance to approve the signage package for the Asheville Regional Airport. This public hearing was advertised on October 29 and November 5, 2009.

On September 31, 2009, the Asheville Regional Airport submitted an extensive application for a variety of different signs to be replaced or added to the airport property as they initiate their parking lot renovations and other site improvements. This request has followed several other replacement sign requests that had been permitted through interpretations extended to accommodate the unique needs and nature of the airport operations. The extent of the most recent request has prompted staff to work with the applicant on devising a basic sign package to specifically address the airports current and future needs. Approval of this package will allow the signs on the property to be replaced and amended as needed.

This request includes:

- Parking lot & traffic control signs (variety of)
- Wayfinding monument signs (terminal parking)
- Monument entrance signs
- Vehicular directional signs (Wright Brother's Way)

The parking lot signs and traffic control signs will be post-mounted while the monument signs will be free-standing and internally illuminated. The three largest monument signs are proposed to be located at the two main entrances to the terminals with the largest at the main entrance to the north, while the two smaller ones will be located at the entrance to the south and will be mounted on ornamental stone bases. In addition to the signs specifically directing travelers to and from the main terminals, this request also includes two free-standing directional signs to be placed along Wright Brother's Way to direct motorists to individual tenants located on the airport property.

The large majority of the proposed signage is designed to replace existing signs and most can be installed without a need for a permit under the City's current standards; however, it was decided to include this signage in the request to ensure that minor relocations resulting in new visibility would not result in non-compliant signs and would provide the airport the most flexibility to grow and adjust their signs over time.

On a related note, the Planning staff has recently initiated research into the creation of an airport overlay zoning designation that is being designed to allow significant flexibility with signage as well as development activity. Given the time needed to complete this research and analysis, this request is being submitted separately in order to avoid additional delay.

As indicated above, a significant portion of the signs requested would not require a permit under the current standards because they are not designed to be seen from the boundaries of the property (i.e. parking lot signage); however, the rest of the signage would be limited to one freestanding sign at 125 square feet and one attached sign at 125 square feet. This standard is better suited for commercial, institutional and office uses and does not adequately address the unique operations of an airport facility.

In order for the airport to adequately and safely direct travelers in and out of the airport, the following signs are being requested:

Wayfinding Signs

16 total (Parking Lot)
36 square feet each
8 feet-8inches tall
Monument signs mounted on stone bases
Internally illuminated

Entrance Signs
3 total
Monument signs mounted on ornamental stone bases & frames
North (S-A): 96 square feet total, including base & frame
8 feet-8 inches tall
Internally illuminated

South (S-P): 30 square feet total, including base & frame
5 feet tall
Internally illuminated

South (S-Q): 56 square feet (not including base)
10 feet-8 inches tall
Ornamental stone base
Internally illuminated

Off-premise Vehicular Directional Signs
2 total (replacing former "red" signs on Wright Brother's Way)
36 square feet each
8 feet-8inches tall
Mounted on brick bases
Internally illuminated

Regarding the City Council Strategic Operating Plan, this proposal most closely supports the goal of *sustainability* through improved identity and wayfinding supporting the economic viability of the overall project.

Pros:
- Better addresses the unique needs of the airport operations
- Improves safety and ease of travelers reaching the terminals and other destinations on the airport property
- Individual tenants on airport property will be free to pursue separate permits

Con:
- Some tenant signage is non-conforming and may require replacement with conforming signage over time

No direct fiscal impact to the City has been identified.

Staff recommends approval of the sign package as proposed with the following additions: (1) The total number of signs may be increased to accommodate new entrances and parking areas as needed, provided they are distributed at a rate that is consistent with the current spacing established; and (2) All signs must resemble each other in character (color, fonts, stonework, etc.) to clearly communicate arrival on the airport property.

Mayor Bellamy closed the public hearing at 6:21 p.m.

When Councilman Mumpower was concerned about the City providing the Airport a "special deal", Councilwoman Cape noted that the Airport has the opportunity to ask for a waiver, just as anyone else does and Council makes the determination if the waiver is reasonable or not.

In response to Mayor Bellamy, Mr. Kevin Howell, representing the Asheville Airport, explained the signs directing people to the Fixed Base Operators.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3805, with the following conditions: (1) The total number of signs may be increased to accommodate new entrances and parking areas as needed, provided they are distributed at a rate that is consistent with the current spacing established; and (2) All signs must resemble each other in character (color, fonts, stonework, etc.) to clearly communicate arrival on the airport property. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant's request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant's request in that it became necessary, due to the recent economic conditions, the ownership group is currently exhausting opportunities and trying to secure financing and/or additional partners to help with the project economics. On October 28, 2008, at the applicant's request, this motion was continued to October 27, 2009.

Mayor Bellamy said that on September 1, 2009, Mr. Chris Peterson requested this matter be removed from City Council consideration.

On October 23, 2009, the following letter was received from Mr. Marty Kocot, PE, from LandDesign Inc.: "The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed "Horizons" Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. We realize this request to extend this project again is a bit unusual but the economic conditions we are all experiencing are bit unusual as well. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City and an extension of time on the Urban Village Rezoning request for this project gives us the best chance to succeed. To date thousands of dollars have been spent crafting and guiding the project through TRC and P&Z only to have the economy delay us from obtaining the needed financing. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for consideration by City Council. This project has the ability to create local jobs and help with the economic recovery."

On October 27, 2009, a motion was made to continue the matter for two weeks until November 10, 2009.

Regarding the protest petition, City Attorney Oast said that if the public hearing is continued, the protest petition will remain valid. However, at the time of the public hearing, if the percentages the property owners fail to meet the requirements of the protest petition (change in ownership, etc.), the protest petition will not be valid. Another option is that Council not continue the public hearing but to allow the application to remain active, and when the developer re-

submits the application in the future, a public hearing date would be set at that time which would start the protest petition process over again.

Vice-Mayor Davis moved to continue the public hearing until October 26, 2010. This motion was seconded by Councilman Russell.

Mr. Ben Gillum, President of the Five Points Neighborhood Association, said that the neighbors are concerned with this project being continued year after year and when the public hearing date rolls around that the protest petition will be invalid due to some of the signers have moved and there are now different owners. He urged Council not continue the public hearing date in order to allow the property owners to have the opportunity to submit a new protest petition when the new public hearing date is set.

Vice-Mayor Davis withdrew his motion and Councilman Russell withdrew his second.

In response to Councilman Newman, Assistant Planning & Development Director Shannon Tuch said that the cost to re-submit the plans would be approximately $350 and it would have to go back through the Technical Review Committee, Planning & Zoning Commission and then City Council.

Mayor Bellamy felt that because there was no representative from the developer present at the meeting, she felt it would be appropriate for staff to provide Council with the different options and continue this discussion until the November 24, 2009, meeting.

Councilman Russell moved to continue the continuance request until the November 24, 2009, meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-236 - RESOLUTION TO CAP PARKS, RECREATION & CULTURAL ARTS DEPARTMENT FACILITY RENTAL FEE ADJUSTMENT

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution to cap Parks, Recreation & Cultural Arts Department facility rental fee adjustment.

Staff has completed a review of best practices for facility rental fee waivers. Staff completed summary of best practices of cities for granting facility fee waivers. As with any city policy of this magnitude it comes down to the community value and the level of expected governmental services.

Staff contacted eleven parks and recreation departments across the state with different community make-ups to get a feel for their community tolerance level for granting fee waiver requests. Reviewing the results indicates there is no straight forward best practice for handling fee waiver requests. The only constant theme is departments that allow facility fees to be waived have many different options for approving the request. The only other common theme is there is not a cap on the amount of fee waiver before it requires City Council approval.

Staff recommendations are as follows:

- Structure the facility rental fee waiver process similar to the City's outdoor special event co-sponsorship process, in that a maximum dollar value is established each budget year to award to organizations that meet the criteria for fee waivers. Once this dollar threshold is met during the budget year no more fee waivers will be granted. They recommend allocating a $3,000

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cap for the first year. The annual cap amount will be considered during the city's annual fees and charges approval process.

- The maximum amount of fee waiver that can be granted per request is $500. The cap on the maximum amount per request would insure that all organizations granted a fee waiver receive the same amount of value from the city.

- Specialized facilities and enterprise funds will not be considerate for rental fee waivers. These facilities are the following: Municipal Golf Course, Nature Center, Aston Tennis Center, Food Lion Skate Park.

- Events that request assistants above this threshold will be encouraged to apply through the City's annual co-sponsorship process.

Finance Committee reviewed the recommendation to cap facility rental fee waivers on October 27, 2009.

Pro:

- To ensure all organizations granted a rental fee waiver receive the same amount of value from the city.

Con:

- Potentially could reduce the annual revenue budget for facility rentals by $3,000 per year.

Staff recommends that Council adopt the recommendations regarding request for a facility rental fee waiver for use of Park facilities.

Mr. Simmons responded to various questions/comments from Council, some being, but are not limited to: what is the average fee waiver request; what is the purpose of the waivers; is there a list of criteria that staff looks at for considering a waiver; will this be an additional cost to the City in terms of operations or will this be a waiver for space rental only; and will this open the door for more waiver request.

Councilman Russell, Chair of the City Council Finance Committee, noted this is creating a policy for better control and will be reviewed again during the fees and charges process.

In response to Councilman Mumpower, Mr. Simmons said that once the $3,000 cap for fee waivers is reached, no more waivers will be issued.

Councilman Mumpower felt that we should have fair fees for everyone and not allow any waivers, or consider waiving fees for any requests.

Councilwoman Cape was concerned that since this is a first-come, first-served type fee waiver, events at the first of the fiscal year will have the opportunity to get a waiver; however, events near the end of the fiscal year will not have that opportunity because the cap may have already been met.

Councilman Newman would support his action; however, he agreed that the Finance Committee should review this during the fees and charges process. He supported making the fees as affordable as possible.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 09-236. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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B. RESOLUTION NO. 09-237 - RESOLUTION APPROVING THE CREATION OF THE ASHEVILLE RIVERFRONT REDEVELOPMENT COMMISSION

Urban Planner Stephanie Monson said that this is the consideration of a resolution approving the creation of the Asheville Riverfront Redevelopment Commission.

Community leaders called the Riverfront Study Group have proposed a new City of Asheville commission to support the continued development and sustainability of Asheville's riverfront. The proposed Asheville Riverfront Redevelopment Commission ("Commission") would act as an advisory board and provide policy recommendations to Asheville City Council and the Buncombe County Board of Commissioners.

In addition to reinvigorating the implementation of the Wilma Dykeman Riverway Master Plan, the Commission is envisioned to support effective management of public resources for the riverfront and assist in the pursuit of private sector investment. The Commission would also support cooperation and collaboration between property owners, merchants, residents, businesses, tenants, institutions and other members of the riverfront community.

This effort would be considered a strategic partnership and the commission as proposed includes appointees from the City, the County, RiverLink, Council of Independent Business Owners, Asheville Area Chamber of Commerce and the City's River District Design Review Committee.

A public meeting of the Study Group was convened by Mayor Terry Bellamy on October 21, 2009, to discuss the organization of the proposed commission and to receive public comment. After an hour of positive comment, the Study Group unanimously voted to recommend City Council adopt a resolution creating Asheville's Riverfront Redevelopment Commission as outlined in the draft ordinance developed by City staff.

Monthly updates on the Riverfront Redevelopment Commission proposal, including the Study Group's consideration of the draft ordinance and the stakeholder outreach process, were received by City Council's Planning & Economic Development Committee from May-September of 2009.

This action aligns with the following goals from Council's strategic operating plan: (1) Affordable: Support diversified job growth and small business development; (2) Green: Support open space preservation; (3) Sustainable: Promote sustainable, high-density, infill growth that makes efficient use of existing resources; and (4) Sustainable: Pursue a stronger riverfront redevelopment partnership and dedicated office.

Pros:

- Collaborative focus on Riverfront Redevelopment program could illuminate previously unseen opportunities to coordinate community goals in a geographic area while minimizing cost and/or maximizing public benefit.
- New Commission creation chronologically aligns with the process for the City's (funded) Wilma Dykeman Riverway Environmental Analysis, Project Development and Preliminary Design project now underway.

Con:

- Commission designed as a partnership yet will be solely dependent on City funding and staff for unknown amount of time.

Duties in the Economic Development Office were prioritized and realigned to enable an Urban Planner position to be assigned to staff the Commission and to coordinate Riverfront Redevelopment program work internally. The ordinance under consideration requires the City to create and manage an annual budget to achieve the mission and goals of the Commission. It also requires strategic partners to share in the overall cost of staffing and resource provision. If the resolution is approved, Council, along with the strategic partners, would incorporate consideration of a recommended start-up budget for the Riverfront Redevelopment Commission into their 2010-2011 budget processes.

If Council approves of the resolution, adoption of it is recommended.

Ms. Monson asked for one sentence deletion in the proposed ordinance regarding attendance as it is addressed in a different section.

Mayor Bellamy noted that she received an e-mail from Mr. Mike Plemmons, Executive Director of the Council of Independent Business Owners, and they endorse the formation of the Asheville Riverfront Redevelopment Commission as proposed.

Mayor Bellamy also noted that she received an e-mail from Mr. Richard J. Lutovsky, President and CEO of the Asheville Area Chamber of Commerce, and they adopted a resolution on October 29, 2009, endorsing the Asheville Riverfront Redevelopment Commission. He said that the Board supports the initiative taken by the City and County and acknowledges the valuable work that both have done to bring us to this point. They urged City Council and the County Commissioners to endorse the formation of the Commission and they pledged to work with us in making it a successful endeavor.

Mr. Marc Hunt, Chairman of the Greenway Commission, spoke in support of the new Commission and felt the River District is strategically the most important place in the City for development of greenways.

Ms. Pattiy Torno, Co-Chair of the River District Design Review Committee, spoke in support of this new Commission and felt that it will take the commitment of the City, County and public and private partnerships to move forward.

In response to Councilman Newman, City Manager Jackson said that funding requests will go through the normal budget process. At this time, our commitment is one full-time person (Ms. Monson) and the Economic Development Office.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-237. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 265

C. ASHEVILLE CITY MARKET FEE WAIVERS REQUEST

Mr. Mike McCreary, Market Manager for Asheville City Market, said that the Market is planning to participate in the Seasonal Sizzle celebrations in December and will be relocating to Pack Square for their final four weeks. This initiative has served the community well, supported BUY LOCAL investment in the local economy, and contributed to the sustainability of local food and local farms. It is projected by the end of this second year the market sales by farmers and

vendors will exceed $1 Million. They are looking forward to attracting visitors and customers to downtown and to contributing to the success of the holiday festivities.

Their relocation to Pack Square requires various City permit applications along with associated fees. Given the Market's need to move from their Charlotte Street location, he requested Council's assistance and ask that fees normally collected for permits, barricades, etc. be waived for the Market's four week holiday market.

Mayor Bellamy explained that the Seasonal Sizzle fireworks are shot from the Public Works parking lot and due to safety concerns, the Asheville City Market will have to be relocated. She noted that this request did not go through the City Council Finance Committee due to the timing. If Council does not grant the waiver, the Asheville City Market will have to raise money for the permits, etc.

In response to Councilman Miller, Mr. McCreary said that last year they did not move from their location; however, they closed early each Saturday. Ms. Ruggiero noted that the Fire Department has made it clear that they will not issue two permits at this location this year as it poses an unsafe condition.

In response to Councilman Miller, Ms. Ruggiero said that for all four dates, the approximate waiver cost would be $1,500-$1,700. That would include the temporary street closing permit, per metered parking spaces being closed, barricade rentals and a building and fire permit.

Mr. Fred English felt that the prices at the Asheville City Market should be reduced.

Councilman Mumpower moved to waive the fees requested by the Asheville City Market, in the amount of $1,500-$1,700. This motion was seconded by Councilman Russell and carried unanimously.

D. RESOLUTION NO. 09-239 - RESOLUTION APPROVING ENHANCED SUPPORT OF ANCHOR EVENTS FOR THE REMAINDER OF FISCAL YEAR 2009-10

Cultural Arts Superintendent Diane Ruggiero said that this is the consideration of a resolution authorizing the City Manager to approve, as needed, additional in-kind support up to 20% of the original projected costs for traffic control and police support services associated with the remaining Fiscal Year 2009-10 anchor events (Asheville Drum Circle, Asheville Holiday Parade and Downtown After 5).

The Asheville Holiday Parade organizers requested an increase in traffic control and police support services for the 2009 parade. The anticipated financial impact of the additional in-kind services for the Asheville Holiday Parade and the remaining Fiscal Year 2009-10 anchor, co-sponsorship events (Drum Circle and Downtown After 5) is $7,000. The City Council Finance Committee recommends approval of the additional in-kind services.

Councilman Russell, Chair of the Finance Committee, said that the reason for the Holiday Parade request is due to the City changing some of its public safety and traffic control issues.

In response to Councilman Mumpower, Ms. Ruggiero said that the six anchor events consist of the Asheville Drum Circle, the Asheville Greek Festival, the Asheville Holiday Parade, Downtown After 5, the Goombay Festival and Shindig on the Green.

Councilman Mumpower questioned the City's investment in festivals, parades, etc.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-239. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 271

E. BOARDS & COMMISSIONS

It was the consensus of Council to reappoint Ms. DeRothea Williams and Mr. Ken Kaplan to the Alcoholic Beverage Control Board.

It was the consensus of Council to postpone filling the vacancy left by Mr. Harry Weiss on the Downtown Commission until Council considers the four additional end of the year vacancies.

It was the consensus of Council to reappoint Mr. Richard Leatherman and Mr. Celeste Collins to the Homeless Initiative Advisory Committee. Mayor Bellamy said that City Council has been receiving several e-mails from a Mr. Young with Quality United regarding the effectiveness of the homeless services provided to the homeless community. It was the consensus of Council to instruct City Manager Jackson to investigate the allegations regarding the services and our police officers and report back to Council and to Mr. Young. She also recommended the Homeless Initiative Advisory Committee and the Asheville-Buncombe Community Relations Council review the allegations, as well as Vice-Mayor Davis' suggestion for review by the Citizens-Police Advisory Committee.

It was the consensus of Council to appoint Mr. Hutch Kerns to the Recreation Board.

It was the consensus of Council to have Assistant City Manager Jeff Richardson remain on the Pack Square Conservancy Board and when City Council makes all their member and liaison appointments in the near future to reconsider that seat.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy recognized Boy Scout Troop 91.

Mr. Fred English urged Council to attend the Veterans Day Ceremony and thanked Council for their prayers on the recent passing of his daughter-in-law Marcy Jean Rogers Stamey.

Mr. Tom Rightmyer, member on the Watershed Policy Committee, urged Council to take time to look at all the information gathered prior to their decision on the stormwater and erosion control ordinance.

Mayor Bellamy recognized Council Member Elect Cecil Bothwell in the audience.

The City received a Complaint for Declaratory Judgment on November 2, 2009, generally described as: D&J Real Estate Investments, LLC vs. City of Asheville. This lawsuit involves a dispute of a sublessee, as a hotel/motel operation, to pay rent to the City. This matter will be handled in-house.

Closed Session

At 7:34 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness,

conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving Charter Communications, Inc. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (4) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 8:40 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:40 p.m.

Magdalen Boulleson
CITY CLERK

MAYOR

Tuesday – November 24, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 09-238 - RESOLUTION OF APPRECIATION FOR KELLY M. MILLER

Mayor Bellamy noted that Councilman Miller has a previously scheduled conference out of town and would not be able to attend the organizational meeting held on December 8, 2009. Therefore, she would like to recognize him at this meeting. She then read the resolution.

Resolution No. 09-238 was adopted by acclamation.

Mayor Bellamy thanked Councilman Miller for his service to Asheville and presented him with the resolution, a plaque and a City pen.

Councilman Miller thanked City Council, the Chamber of Commerce and the Tourism Development Authority staff for their support over the last year, as well as his wife, Kate, for her patience.

RESOLUTION BOOK NO. 32 - PAGE 270

B. CITY OF ASHEVILLE ORGANIZATIONAL CHANGES

City Manager was pleased to announce the new Fire Chief Scott Burnette, the Economic Development and Civic Center Director Sam Powers, and the new Director of Administrative Services Lauren Bradley.

Mayor Bellamy said that she is looking forward to working with each of these employees in their new roles.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C" and "E" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 10, 2009

B. RESOLUTION NO. 09-240 - RESOLUTION AUTHORIZING THE EXCHANGE OF REAL PROPERTY LOCATED ON COLLEGE STREET FOR PROPERTY LOCATED ON WINDSWEPT DRIVE

Summary: The consideration of a resolution authorizing the exchange of real property located on College Street for property located on Windswept Drive.

The City of Asheville is in need of property located on Windswept Drive in order to assemble the land necessary to implement the Beaucatcher Greenway. Accordingly, the City of Asheville and Zealandia Holdings, LLC have negotiated an exchange of real property at College Street for real property on Windswept Drive. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on November 13, 2009, describing the exchange of properties on the following terms:

The property owned by Zealandia Holdings, LLC is located on Windswept Drive. Measuring approximately 3.95+/- acres, this parcel is comprised of PINs 9648-89-2982-00000 and 9649-80-4085-00000. The parcel is irregular in shape with Windswept Drive winding through the center of the property, wooded, steep in terrain, and zoned as RS-2, low-density residential. This parcel provides access to the historic bridge known as "Helen's Bridge," which was designed by Asheville architects Richard Sharp Smith and Albert Heath Carrier. In an appraisal dated August 26, 2009, the property was valued at $250,000. The appraisal was performed by Benjamin Beasley and Associates, Inc.

The City parcel considered for exchange is near the end of College Street. The property is 5 acres+/- in size and is a portion of tax PIN 9649-70-7463-00000. At one time, this property served the City's water needs, and a large concrete water reservoir exists on site, measuring over 150 feet in diameter. This reservoir is no longer in use and completely empty, and is considered to be an encumbrance to the property that will require removal. Large water distribution lines encumber the property as well. This parcel is wooded, mostly steep in terrain, and zoning for this property is RS-2. In an appraisal dated August 26, 2009, this parcel was valued at $330,000. This appraisal was performed by Benjamin Beasley and Associates, Inc.

In order to supply parking to the future greenway development, as well as retain the ability to develop modest resting areas with benches and walking trails, the City would like to retain ownership of approximately 1.2 acres of the reservoir parcel. Retaining the fee simple ownership of this portion will reconcile the difference in appraisal values, and the exchange will be full and fair.

In total, the exchange between the City of Asheville and Zealandia Holdings, LLC will entail several aspects. The City of Asheville will exchange 3.8 acres of property for Zealandia Holdings' 3.95 acres as an even exchange without any payments. In terms of the water infrastructure, the City has proposed to take care of the necessary water line closures and disconnections that are required; and Zealandia Holdings has proposed to perform the removal of the tank. Easements/right-of-way appropriate to each parcel will be developed for utilities and access. Closing costs will be split by the City of Asheville and Zealandia Holdings LLC.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Assembling land for the Beaucatcher Greenway complies with City Council's Strategic Plan in the Green Focus Area in that it advances a multi-modal transportation plan, which includes greenways, and pursues opportunities to preserve open space. This action also complies with the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

This item has been reviewed by the Greenway Commission and has received the Commission's endorsement on November 12, 2009. This item has also been reviewed the by Recreation Board and at their meeting on November 9, 2009, they recommended approval.

Pros:

- Assemblage of land necessary for the implementation of the Beaucatcher Greenway.
- Removal of abandoned water tank will improve site safety concerns.

Con:

- There is no negative impact.

The City's share of the closing costs is estimated at less than $7,000, to include the appraisals, Phase One Environmental Report, legal fees and surveys. The major expense will be the disconnections of the water lines and will be the responsibility of the Water Resources Department. The Water Resources Department intends to perform this work in-house, with an estimated value of $125,000 including labor and materials. This estimate is comparable or lesser than the estimated cost of removing the reservoir tank that will be performed by Zealandia Holdings, LLC.

City staff recommends City Council adopt a resolution authorizing the exchange of real property located on College Street for property located on Windswept Drive.

RESOLUTION BOOK NO. 32 – PAGE 272

C. BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE FISCAL YEAR 2009-10 GRASSROOTS SCIENCE MUSEUMS COLLABORATIVE FOR THE WNC NATURE CENTER

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 09-241 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR FUNDING THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM

ORDINANCE NO. 3807 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR FUNDING THE HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of $135,714 from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, for the procurement of equipment and training/exercise funds to be used by Hazardous materials Regional Response Team 6 – Asheville, and the associated budget amendment.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2009-SS-T9-0046 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters. Training and exercise funds included in this grant will be used to provide responders the opportunity to demonstrate and validate skills learned in training, as well as to identify training gaps.

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed and supported this item at their November 17, 2009, meeting

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $135,714.00 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Training and exercise for emergency responders will aid in the enhancement of awareness levels of terrorists tactics and hazardous material incidents.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFD's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

RESOLUTION BOOK NO. 32 – PAGE 274

ORDINANCE BOOK NO. 25 – PAGE 489

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR ADDITIONAL FIREFIGHTERS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 09-245 - RESOLUTION AUTHORIZING THE CITY MANAGER, HIS OR HER DESIGNEES, TO ELECTRONICALLY SIGN CONTRACTS, PURCHASE ORDERS AND OTHER ASSOCIATED DOCUMENTS ON BEHALF OF THE CITY AND THE CHIEF FINANCIAL OFFICER TO SIGN THE PRE-AUDIT STATEMENT DOCUMENTS ELECTRONICALLY OR BY ANY OTHER MEANS SPECIFIED IN N.C. GEN. STAT. SEC. 159-28.1

Summary: The consideration of a resolution authorizing the City Manager, his or her designees to electronically sign contracts, purchase orders and other associated documents on behalf of the City and the Chief Financial Officer to sign the pre audit statement documents electronically or by any other means specified in N.C. Gen. Stat. 159-28.1.

The City of Asheville processes hundreds of contracts and purchase orders in any given week. In an effort to stream line the process, the City is installing computer software which will allow for contracts and purchase orders can be approved electronically. Under North Carolina law, as delegated by City Council, the City Manager is authorized to sign contracts on behalf of the City. In addition North Carolina law requires the Chief Financial Officer to sign all pre-audit statements for all contracts and purchase orders. In order to move to a paperless system, it is necessary for the City Manager, his or her designee and the Chief Financial Officer to sign contracts, purchases orders and pre-audit statements electronically.

Regarding the City Council Strategic Operating Plan, this action complies with Affordable and Green in that the City will be reducing the amount of paper needed to process contracts and purchase orders.

Pros:

- Reduce the amount of paper used by the City
- Reduce the amount of time approval forms travel through interoffice mail
- Increase turn around times for contract and purchase order approvals
- Improve customer service

Con:

- None

The use of electronic signatures will save the organization approximately $1,800 annually by eliminating the need for purchase order forms and supplies.

City staff recommends City Council adopt a resolution authorizing the City Manager, his or her designees to electronically sign contracts, purchase orders and other associated documents on behalf of the City and the Chief Financial Officer to sign the pre audit statement documents electronically or by any other means specified in N.C. Gen. Stat. 159-28.1.

RESOLUTION BOOK NO. 32 – PAGE 278

G. RESOLUTION NO. 09-246 - RESOLUTION REAPPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: The terms of DeRothea Williams and Ken Kaplan expired on November 13, 2009.

At the November 10, 2009, meeting, it was the consensus of Council to (1) reappoint DeRothea Williams to serve an additional three-year term, term to expire November 13, 2012; and (2) reappoint Ken Kaplan to serve a three-year term, term to expire November 13, 2012. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 279

H. RESOLUTION NO. 09-247 - RESOLUTION REAPPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

Summary: The terms of Richard Leatherman and Celeste Collins expired on November 1, 2009. Both have served one, one-year term.

At the HIAC meeting on November 10, 2009, the HIAC recommended City Council reappoint Mr. Leatherman and Ms. Collins.

At the November 10, 2009, City Council meeting, it was the consensus of Council to reappoint Mr. Leatherman and Ms. Collins to each serve a three-year term respectively, terms to expire November 1, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 280

I. RESOLUTION NO. 09-248 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Summary: Pastor Spencer Hardaway has resigned as a member of the Recreation Board thus leaving an unexpired term until June 30, 2012.

On November 10, 2009, it was the consensus of Council to appoint Hutch Kerns to serve the unexpired term of Pastor Hardaway, term to expire June 30, 2012, or until his successor is appointed.

RESOLUTION BOOK NO. 32 – PAGE 281

J. RESOLUTION NO. 09-249 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE DONATION OF THREE REMNANT PROPERTIES ALONG BROADWAY STREET FROM THE N.C. DEPT. OF TRANSPORTATION FOR THE PURPOSE OF IMPLEMENTING PHASE II OF THE REED CREEK GREENWAY

Summary: The consideration of a resolution authorizing the Mayor to accept, for no monetary consideration, the conveyance of three N.C. Dept. of Transportation (NCDOT) remnant properties for the purposes of implementing Phase II of the Reed Creek Greenway.

The NCDOT remnant properties identified by PIN 9649-14-7057-00000, 9649-13-9931-00000, and 9649-23-1821-00000 along Broadway Street are needed in order to reach 100% of the right-of-way necessary to implement Phase II of the Reed Creek Greenway.

Property 9649-14-7057-0000 is 0.28 acres in size, 9649-13-9931-00000 is 0.12 acres in size, and 9649-23-1821-00000 is 0.03 acres in size. The total acreage of property proposed for conveyance is 0.40 acres.

In August, 2009 staff contacted NCDOT to inquire about conveyance of the properties. NCDOT researched the properties and agreed to convey them to the city for no consideration with the stipulation that the properties will revert back to the State should they cease to be used for greenway purposes.

Upon City Council approval, NCDOT will take the conveyance proposal to the North Carolina Board of Transportation and Council of State for final approval. The City will only be

responsible for paying deed recordation fees, which should not exceed $100.00. NCDOT will prepare the deeds through the Attorney General's office.

This action complies with (1) City Council's Strategic Plan in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, and pursues opportunities to preserve open space; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) the Greenway Master Plan and the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

This item has been reviewed by the Council's Greenway Commission and has received the Commission's endorsement on November 12, 2009. It has also been reviewed the by Recreation Board and at their meeting on November 9, 2009, they recommended approval.

Pros:

- Securing these properties will allow Phase II of the Reed Creek Greenway to be implemented.
- Increases the City's inventory of park space.

Con:

- Modest additional maintenance costs.

No monetary consideration required for the conveyance. Deed recordation fees will be the responsibility of the City, which should not exceed $100.00.

City staff recommends City Council to adopt a resolution accepting the conveyance of three NCDOT remnant properties for no monetary consideration for the purposes of implementing Phase II of the Reed Creek Greenway.

RESOLUTION BOOK NO. 32 – PAGE 282

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Miller moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. ORDINANCE NO. 3806 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE FISCAL YEAR 2009-10 GRASSROOTS SCIENCE MUSEUMS COLLABORATIVE FOR THE WNC NATURE CENTER

Summary: The consideration of a budget amendment, in the amount of $35,621, for a grant from the N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Each year the State of North Carolina allocates and distributes funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Museums Collaborative as supported by North Carolina Senate Bill 1741. The WNC Nature Center is a member of the collaborative.

Funds will be used to enhance Nature Center operations and to make improvements to the facility and animal exhibits at the Nature Center.

The action complies with the City Council 2009-10 Strategic Plan in the Green focus area in that it supports the operation and maintenance of all city parks. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via grants.

Pros:

- Provide additional funds to support the overall operating cost of the Nature Center
- Provide funds to enhance special projects and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Con:

- None

The grant will increase the City's operating budget by $35,621 in a special projects account designated for the WNC Nature Center.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of $35,621 for the WNC Nature Center with a grant from the N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Councilman Mumpower was troubled with the dysfunctional court system and felt that the state should use those funds for that purpose. In addition, he felt we will be using borrowed money that will need to be paid back by our children and grandchildren.

Councilwoman Cape moved for the adoption of Ordinance No. 3806. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 487

E. RESOLUTION NO. 09-242 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT WITH THE U.S. DEPT. OF HOMELAND SECURITY FOR ADDITIONAL FIREFIGHTERS

Summary: The consideration of a resolution authorizing the Fire Department to apply for a grant in the amount of $540,000 from the US Dept. of Homeland Security to obtain funding for six additional firefighter positions.

The US Dept. of Homeland Security has recently issued guidance for the Fiscal Year 2009 Staffing for Adequate Fire and Emergency Response (SAFER) program. This is a grant opportunity for fire departments to add additional firefighters. The grant is a 3 year matching grant. In years 1 and 2, the grant covers 100% of the cost for the additional firefighter's salaries and benefits. The matching portion for the grant occurs in year 3, which is the full cost of these firefighter's salaries and benefits. This could be a good opportunity for our City to add needed personnel and have their cost completely absorbed by this grant for two years.

We currently operate 4 firefighter companies on 8 of our 17 fire companies (47%). One of our companies operates with two firefighters (Haw Creek). This grant could assist with increasing additional fire companies to four firefighter staffing which helps accomplish the following strategic priorities:

- Increased firefighter safety
  - Studies performed in Providence, RI, and Austin, TX, have shown that four firefighter companies reduce firefighter injuries and reduce the physiological effects of firefighting activities on firefighters.
  - Increased efficiency translates into increased firefighter safety during fire emergencies. Tasks that are performed more quickly reduce the exposure time for firefighters as well as mitigate emergencies earlier. In summary, a small fire is safer to firefighters than a large fire.
- Increased efficiency
  - We have conducted critical task analyses of our 3 firefighter and 4 firefighter companies. These analyses of actual fireground activities showed that 4 firefighter companies perform up to 41% more efficient during fire emergencies and up to 92% more efficient during medical emergencies.
- Increased service delivery
  - Increased efficiency translates into increased service delivery for citizens during fire and medical emergencies. Performing tasks quicker provides better service to citizens. Fire and medical emergencies have been shown to significantly worsen as time progresses. Mitigating emergencies earlier lessens the impact on citizens.
  - Earlier incident mitigation places fire companies in service and available to respond to other citizen needs earlier. The increased efficiency of 4 firefighter companies increases unit reliability and lessens the amount of time that citizens are receiving help from fire stations further away.
  - Additional firefighters are the one area that increases our ISO rating performance the most and moves us closer to an ISO 2.

We recommend applying for 6 firefighter positions for the following reasons:

- The grant program guidance indicates that a much higher priority for awards will be given to applicants who are increasing staffing to comply with the OSHA 2 in/2out standard. The strongest application we can compile would be to address our 2 firefighter company at Haw Creek to four firefighter staffing. This is the only area that we currently are not meeting the OSHA standard. This is also our only stand alone company that does not operate with 4 firefighters.
- We feel that a grant that asks for less or more would not be competitive.

This action complies with the Strategic Operating Plan by increasing safety, efficiency, and service delivery; therefore this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed and supported this item at their November 17, 2009, meeting

Pros:

- Firefighter safety, efficiency, and service delivery will be increased.
- Hiring 6 new firefighters will help reduce overtime. The firefighters obtained from this grant could be placed on shift without a requirement to be minimally staffed positions. These positions will fully meet the requirements and intent of the grant as more of our companies will be fully staffed more frequently.
- The grant covers 100% of the cost for these firefighters for two years.

Con:

- We would assume the full cost of these employees in year three (FY 12/13)

The City would receive $270,000 each year for two years. In year three, and potentially beyond, the City would have to absorb the $270,000 annually.

City staff recommends that City Council authorize the fire department to apply for a grant in the amount of $540,000 from the US Dept. of Homeland Security to obtain funding for six additional firefighter positions.

Councilman Mumpower felt we should fund our own police and fire services and not take these borrowed federal dollars that will have to be repaid by our children and grandchildren.

In response to Councilman Newman's concern about sustaining these firefighters after year two given our budget, Fire Chief Scott Burnette explained where those firefighters will be assigned and that there is a goal within the Fire Department's strategic priorities to increase staffing, safety and efficiency in service delivery to our citizens.

Fire Chief Burnette responded to Councilwoman Cape regarding the guidelines for this particular grant.

Councilman Newman felt that these positions will be effective in terms of how they will be deployed; however, when he thinks of the City's public safety priorities in general, to him the biggest needs we have are for expansion of police officers in making neighborhoods safer and where we have a lot of problems and simply need more people to address them.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-242. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

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III. PRESENTATIONS & REPORTS:

A. GUN BUY-BACK PROGRAM INITIATIVE

Vice-Mayor Davis, Chair of the Public Safety Committee, said that the Public Safety Committee took formal action on November 17, 2009, to propose a Gun Buy-Back program for a two week timeframe prior to the December holidays ($10,000 total).

He explained that the Public Safety Committee has identified $5,000 of private grant money from Eblen Foundation and $5,000 of grant money available from the Housing Authority for the purpose of administering a Gun Buy-Back Program. The Committee has asked the Police Department to consider a $5,000 match for its Fiscal Year 2009-10 departmental operating budget. The Police Chief has acknowledged that the department has the financial capacity to earmark $5,000 for its existing Community Outreach Program, if that is the direction of City Council.

In addition, the Committee has asked for implementation of the program prior to the December holidays and to be administered through the Police Department, similarity to past programs. The Police Chief has acknowledged staff's ability to absorb this new initiative in the timeframe described, if that is the direction of City Council.

Pro:

- The Gun Buy-Back Programs effectively removes guns from the community, which serves to limit availability of guns for criminal activity.

Con:

- Re-prioritization of Community Service dollars from other community service initiatives.

As previously noted, implementation of this program would require the Police Chief to allocate $5,000, or 10%, of the total existing Community Outreach dollars accordingly.

The Public Safety Committee recommends approval and implementation of this Gun Buy-Back Program two weeks prior to the December holidays. Staff is prepared to act upon this recommendation if approved.

In response to Vice-Mayor Davis, Police Chief Hogan said that last year we purchased approximately 183 guns through the very successful Gun Buy-Back Program in a three-weekend period. Last year the City bought small guns and weapons for $50 each and for the more radical-type guns they paid $100 each.

Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville, said that it's not unusual to find guns in vacated units in public housing. They supported any initiative to get guns off the streets and they have contributed $5,000 towards this effort.

Councilman Russell noted that guns are one of the highest targeted items in homeowner theft.

There was a brief discussion, initiated by Councilman Mumpower, about why the City doesn't re-sell the guns from the Buy-Back Program instead of destroying them (or using them for training purposes if it is a unique weapon). Chief Hogan felt the principle is that if you re-sell the guns, they could end up back in the cycle and back on the street. Councilman Mumpower felt that if we sold them to reputable, well-intended citizens that we would have the potential to create a reoccurring funding source and fund this program a couple of times a year.

Mayor Bellamy noted that if we did re-sell the guns, it was imperative that the process be transparent.

It was the consensus of Council that the Police Chief report back to Council regarding his investigation of what the best process would be to re-sell the guns and if he feels that is the best process for our community to implement.

Vice-Mayor Davis moved to implement the Gun Buy-Back Program, similar to the past, two weeks prior to the December holidays; and directed the City Manager to consider, in the future, a way to turn the re-sale of guns into a revenue stream. This motion was seconded by Councilman Russell and carried unanimously.

B. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-250 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH GREEN LIGHT ELECTRIC FOR THE PROJECT KNOWN AS FAIRVIEW ROAD SIGNAL UPGRADES, TIP # U-5175/CITY OF ASHEVILLE PROJECT # ARRA 09-10-03

RESOLUTION NO. 09-252 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH RIVERTOP CONTRACTING FOR THE PROJECT KNOWN AS CORRIDOR ENHANCEMENTS IN DOWNTOWN ASHEVILLE, TIP # U-5174/CITY OF ASHEVILLE PROJECT # ARRA 09-10-02

RESOLUTION NO. 09-252 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH MOORE & SONS SITE CONTRACTORS FOR THE PROJECT KNOWN AS ASHEVILLE SIDEWALK IMPROVEMENTS, TIP # U-5186, CITY OF ASHEVILLE PROJECT # ARRA 09-10-05

RESOLUTION NO. 09-253 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A CONTRACT AND ANY CHANGE ORDER WITHIN THE BUDGETED AMOUNT WITH MOORE & SONS SITE CONTRACTORS FOR THE PROJECT KNOWN AS COXE AVENUE MILLING, PAVING, RE-STRIPING, AND DRAINAGE; AND SOUTH SLOPE RE-STRIPING AND DRAINAGE, TIP NUMBERS U-5173 AND U-5177/CITY OF ASHEVILLE PROJECT NUMBERS. ARRA 09-10-01 AND ARRA 09-10-04

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of the following: (1) A resolution to award the construction contract for the Fairview Road signal upgrade project to Green Light Electric in the amount of $58,678.95; (2) A resolution to award the construction contract for the Downtown Streetscapes project to Rivertop Contracting in the amount of $79,006.00; (3) A resolution to award the construction contract for the Asheville sidewalks project to Moore & Sons Site Contractors in the amount of $436,920.00; and (4) A resolution to award the construction contract for the Coxe Avenue resurfacing and South Slope bicycle lane marking to Moore & Sons Site Contractors in the amount of $214,208.70.

ARRA funding was awarded for these projects through the French Broad River Metropolitan Planning Organization (MPO). The grant agreements and budget amendments were approved by the Asheville City Council on August 11, 2009, and August 25, 2009, and it is now time to approve the contract award. After this Council action, the documents will receive final review by N.C. Dept. of Transportation (NCDOT) and Federal Highways, and then the contracts can be executed. Each of these contracts is a unit price contract, not a lump sum contract.

All but the sidewalk project are fully funded by ARRA, and in consideration of the bids received, ARRA funding can be expected to cover the full cost of the sidewalk project. Kimberly Avenue resurfacing, selected for funding by the MPO only if funds are available (which depends on the costs for the other MPO projects), remains on hold, probably until at least March 2010.

Fairview Road Signal Upgrades, TIP # U-5175; City of Asheville Project # ARRA 09-10-03

This project will upgrade the existing traffic signals, install pedestrian signals and will add crosswalk markings at the intersections of Fairview Road and Onteora Boulevard/Baldwin Street, and Fairview Road and Cedar Street, at Oakley Elementary School. The contract specifies that work may begin work as soon as January 4, 2010, and must be completed by May 4, 2010.

Formal request for bids was issued on October 15, 2009, and bids were opened November 5, 2009:

Bidder	Address	Bid Amount
Haynes Electric	Asheville, NC	$60,000.00
Green Light Electric	**Weaverville, NC**	**$58,678.95***

*Green Light Electric is a woman-owned business.

Downtown and Gateway Streetscapes, TIP # U-5174; City of Asheville Project # ARRA 09-10-02

This project will plant several existing medians and bulb outs in downtown Asheville. The contract specifies that work may begin work as soon as January 4, 2010, and must be completed by May 4, 2010.

Formal request for bids was issued on October 15, 2009, and bids were opened November 5, 2009:

Bidder	Address	Bid Amount
Allison Landscaping	Hendersonville, NC	$141,648.00
Landmark Landscapes	Arden, NC	$81,438.86
Rivertop Contracting	**Black Mountain, NC**	**$79,006.00***

*Rivertop Contracting is a woman-owned business.

Sidewalks, TIP No. U-5186; City of Asheville Project # ARRA 09-10-05

This project will construct sidewalks on Hilliard Avenue, Depot Street, Evelyn Place, Hendersonville Road, Linden Street, Short Michigan Avenue, and a multi-use path along Choctaw Street. The contract specifies that work may begin work as soon as January 4, 2010, and must be completed by September 17, 2010.

Formal request for bids was issued on October 21, 2009, and bids were opened November 12, 2009:

Bidder	Address	Bid Amount
Econ International Corp.	Charlotte, NC	$466,041.00*
Fletcher Grading Contractors	Arden, NC	$439,341.69
J.L.S. Company	Arden, NC	$446,084.40*
Moore & Sons Site Contractors	**Mills River, NC**	**$436,920.00**
Patton Construction	Arden, NC	$560,932.00
Tennoca Construction	Candler, NC	$908,792.03

*Econ International Corp. is a minority-owned business and J.L.S Company is a woman-owned business.

Coxe Avenue, TIP No. U-5173, and South Slope Bike Lanes, TIP No. U-5177; City of Asheville Project # ARRA 09-10-01 and ARRA 09-10-04

These two projects were combined into one construction contract. The projects will provide a full-width resurfacing of Coxe Avenue and mark bike lanes on Coxe Avenue, Asheland Avenue, Hilliard Avenue, Martin Luther King, Jr., Drive, and Choctaw Avenue. The contract specifies that work may begin work as soon as January 4, 2010, and must be completed by September 17, 2010.

Formal request for bids was issued on October 27, 2009, and bids were opened November 18, 2009:

Bidder	Address	Bid Amount
APAC Atlantic, Inc.	Candler, NC	$278,867.40
J.L.S. Company	Arden, NC	$219,058.04*

Moore & Sons Site Contractors	**Mills River, NC**	**$214,208.70**

*J.L.S Company is a woman-owned business.

Once these resolutions are adopted, the documentation can be forwarded to the NCDOT for final reviews and authorizations, including review of the contractors' Disadvantaged Business Enterprise (DBE) efforts and goals.

This project supports the City Council's strategic plan goals of proactively pursing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pros:

- Improves Asheville's transportation facilities
- Implements projects in the City's adopted pedestrian and bicycle plans
- Provides long term investment in the City's infrastructure
- Improves pedestrian safety at a school

Con:

- The City will be responsible for future maintenance of the projects
- Project management and contract administration will consume staff time

These projects will bring more than $788,000 in active transportation infrastructure improvements to the City, and there is a reasonable expectation that no matching funds will be required. At the August 25, 2009, meeting, City Council approved the appropriation of $366,812 from fund balance to cover costs for the sidewalk and Kimberly Avenue projects that were not funded with ARRA proceeds. If this City funding is not needed for these projects then it will be returned to fund balance.

City staff recommends City Council adopt each of the resolutions identifying the recommended lowest responsible bidder and authorizing the City Manager to execute the contracts.

Councilman Mumpower could not support these actions because these are borrowed federal dollars that our children and grandchildren will have to repay.

Mayor Bellamy thanked Ms. Bills for her efforts in reaching out to our local vendors, noting that all contracts are local companies.

Councilman Mumpower felt strongly that the City needs to do everything they can to hire legal citizens to work on these projects.

Public Works Director Cathy Ball said that we were able to realize approximately $663,000 from the engineer's estimates to what the actual bids came in. One of the projects we had gotten Council approval for was Kimberly Avenue but based on the engineer's estimates we weren't going to be able to afford that. City Council then appropriated $400,000 that we might have to use to be able to fund that project. Since we now have the balance of $663,000, we went back to the NCDOT and asked if we could include Kimberly Avenue and have it fully paid for out of the balance of that amount. They have said to move forward with it; however, the City can't meet the December 31 deadline because it's impossible for the City to bid the project, get the bids in and come to City Council before December 31. She asked for Council's support to request the North Carolina Secretary of Transportation extend the December 31 deadline one month so that we can include Kimberly Avenue in this process. She understands that the State's staff and NCDOT is supportive of that, but it may take some additional action from City Council to

make that happen. She suggested a letter from the Mayor in support of that process be sent to the Secretary.

Vice-Mayor Davis asked for a friendly amendment to instruct staff prepare a letter for Mayor Bellamy's signature to the North Carolina Secretary of Transportation supporting the one-month extension of the December 31 deadline so that the Kimberly Avenue project can be included in this process. Councilman Newman and Councilwoman Cape accepted the friendly amendment.

Ms. Ball updated Councilman Miller regarding the Azalea Road project.

Upon request of Mayor Bellamy, Ms. Ball said that she would provide Council with a listing of the streets that are planned for improvements this year.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished copies of the resolutions and they would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-250. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Miller moved for the adoption of Resolution No. 09-251. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 285

Councilman Newman moved for the adoption of Resolution No. 09-252. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 286

Councilman Newman moved for the adoption of Resolution No. 09-253, and to instruct staff prepare a letter for Mayor Bellamy's signature to the North Carolina Secretary of Transportation supporting the one-month extension of the December 31 deadline so that the Kimberly Avenue project can be included in this process. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. QUARTERLY REPORTS

Public Safety Committee Chair Report

Vice-Mayor Davis, Chair of the City Council Public Safety Committee, provided Council with an update of their activities during the last quarter. He thanked his other Committee members of Mayor Bellamy and Councilman Newman for their hard work on this Committee.

Mayor Bellamy was pleased to present Police Chief Hogan with a plaque from Getting Back to Basics Inc.'s Annual Event she recently attended. Said program originated in the Police Department and is supported also by the Fire Department. That program helps teenagers to stay

on the right track and keep them out of gangs, along with parental involvement. The program thanked the Asheville Police Department for supporting the goals of Getting Back to Basics Inc.

Strategic Operating Plan Update

Assistant City Manager Jeff Richardson reviewed with Council the End of the Year Strategic Operating Plan in the following areas (1) Affordable; (2) Green; (3) Safe; (4) Sustainable; and (5) Fiscal Responsibility.

In the affordable focus area (1) Affordable Housing Fee Rebate Program; (2) Comprehensive Annual Performance Evaluation Report; (3) 2011-2015 Consolidated Strategic Housing and Community Development Plan; and (4) Newly Purchased Land in West Asheville.

In the green focus area (1) Mills River Solar Panel Array; (2) Total Carbon Reduction: 2.5%; (3) Historic Preservation; and (4) Launched a New Pilot Project, City Share.

In the safe area of Pack Square Park (1) North Pack Street re-paved and opened; (2) The circle in front of Pack Place completed; (3) Roger McGuire Green opened to the public; (4) Interactive fountain programmed and running; (5) Veterans' monument completed; and (6) $16,817,830 raised, with $3,685,034 remaining to complete Construction/Pavilion.

Regarding safe, he provided the following chart of Asheville Police Department Drug Charges/Seizures:

	FY 08-09	FY 09-10 (33% Complete)
Dealers Charged	85	38 (45%)
Firearms Seized	121	60 (50%)
Currency Seized	$68,999	$33,569 (49%)
Individuals Charged	717	274 (38%)
Drug Dollar Amount Seized	$295,980	$363,361 (123%)

In the safe area for the Downtown Patrol Unit, (1) Number of business contacts: 2,594; (2) Citations and/or arrests: 829; (3) Special Operations: 169; (4) Hours of foot patrol: 418; (5) Hours of bike patrol: 919; and (6) Hours "Other": 663.

Also in the safe area regarding (1) Nuisance Court (a) Cases: 26; (b) Case Reviews: 9; (c) Guilty Pleas: 13; and (d) Community Service Hours: 290; and (2) Downtown Cleanliness (a) Graffiti Removal Sites: 556; (b) Sidewalk Cleaning: 9.24 miles; and (c) Private Property Graffiti Identified: 142 Locations.

Regarding sustainability, he provided the following chart of the ARRA grant success: For Year End FY 2008-09 the entitlements were $7,597,242; the grant funding applied for to date is $12,800,249; and the grant funding awarded to date is $994,500. For the Quarter 1 Fiscal Year 2009-10, the entitlements are $7,597,242; the grant funding applied for to date is $16,242,152; and the grant funding awarded to date is $1,497,500.

In the sustainable area, (1) Civic Center Roof on Schedule; (2) Shiloh Community Center Project; and (3) Expanded Partnerships with UNC-Asheville. Also in the sustainable area regarding the Downtown Master Plan (1) Action Committee; (2) Urban Design Committee; and (3) UDO Modifications Related to Economic Conditions. In the Development Services area (1) Grand Opening; (2) Completed on Time and Under Budget; (3) Permits & Projects; (4) Cooperation with Asheville Fire Department; and (5) Educational Classes.

In the area of fiscal responsibility (1) Early Retirement Program (a) 27 Staff to Date; (b) $256,755 Annual Cost Savings; and (2) Montford Commons Development Project (Public/Private Partnership Opportunity) (a) Financial Analysis Underway.

Mayor Bellamy commended Director of Administrative Services Lauren Bradley for her leadership in Council's nuisance court initiative and looked forward to working with her in her new leadership position.

Energy Coordinator Maggie Ullman responded to Mayor Bellamy when she questioned if we have a cost analysis of the return on investment for surpassing our annual carbon reduction goal.

At Mayor Bellamy's suggestion of a quarterly report on the City's investments in land purchases and what those purchases have meant to the City, City Manager Jackson said that staff is finalizing the first major annual report and will have measurements for Council to see.

Quarterly Financial Report

Chief Financial Officer Ben Durant provided Council with the following executive summary of the First Quarter of 2009-10 financial information in this report reflects the City's overall financial position for the fiscal year through September 2009.

Amendments. The General Fund budget presented in this first quarter report reflects the adopted budget of $92,688,293; plus $1,097,031 in prior year encumbrances that rolled over from FY 2008-09; along with ten budget amendments approved by Council during the first quarter that totaled $603,538. Two of the budget amendments involved an appropriation from fund balance: 1) $366,812 was appropriated from fund balance as the City match for transportation improvement projects that were partially funded with an ARRA grant; and 2) $60,000 was appropriated from fund balance to expand the number of early voting sites. The other amendments were funded with various grants and donations. He provided council with a complete list of first quarter General Fund budget amendments.

Adopted Budget	92,688,293
Encumbrances	1,097,031
10 Budget Amendments*	603,538
9/30/2009 Budget	$94,388,862

* Fund balance appropriations since July 1 total $426,812

Revenues. Through September 30, 2009, the City has collected $11,336,483 in General Fund revenue, which represents approximately 12.5% of the total General Fund revenue budget. Sales tax collections continued to decline in the fourth quarter of FY 2008-09 and the first quarter of FY 2009-10. As a result, sales tax revenue is expected to come in under budget in the current year by $1,000,000. On a positive note, during the first quarter the City received a $391,000 reimbursement check for expenses associated with the January 2008 demolition of property on Tunnel Road. *Based on current year-end estimates, staff is projecting that FY 2009-10 total General Fund revenue will come in under budget by $659,000.*

Expenditures. General Fund expenditures through September 30, 2009 total $20,793,663 or 22.0% of the budget. *Based on spending in the first quarter and historical trends, staff is currently estimating that the General Fund departmental budgets will be 99.5% committed by the end of the current fiscal year producing a budget savings of $407,000. Staff, however, is estimating that expenditures in the Health Care Fund will exceed revenues by approximately $1.0 million. It is anticipated that health care reserves, which ended FY 2008-09 at approximately $1.13 million, will be used to cover this shortfall.*

Fund Balance. The City ended FY 2008-09 with available fund balance of $16,696,979, which equated to 18.7% of FY 2008-09 expenditures. *Based on current year-end revenue and expenditure estimates for FY 2009-10 staff is projecting that available fund balance will decrease to $14,223,431, which will equate to 15.1% of estimated year-end expenditures.*

He said that Water Resources Director Steve Shoaf provided Council with information noting that in 2007 City Council approved a $40 Million Revenue Bond for water system improvement projects as part of Asheville's commitment to upgrade aging infrastructure, ensure reliable water service, and improve fire protection. In April 2008 the City launched 11 major water improvement projects which status was summarized.

He then provided Council with a brief overview of the Fiscal Year 2009-10 First Quarter Report as follows: (1) Current year budget trends show a $659,000 General Fund revenue shortfall; (2) Available Fund Balance is projected to decline to 15.1%; and (3) The FY 2010-11 preliminary budget forecast includes a significant imbalance between revenues and expenditures.

He then reviewed the current General Fund budget, along with the General Fund budget amendments.

General Fund Revenue highlights include (1) Sales tax revenue is down 12.9% in the 1st quarter - Projected to fall $1.0 million short of budget; (2) State will withhold 2/3 of beer & wines tax revenue - $250,000 revenue loss; and (3) Powell Bill revenue is down 10.4% or $250,000 compared to prior year - Anticipated in the budget.

General Fund Revenue highlights include (1) State utility tax revenue to exceed budget by $200k; (2) $391,000 reimbursement for Tunnel Road property demolition; and (3) Overall, general fund revenues are projected to *fall short of budget by $659,000*.

General Fund expenditures highlights include (1) Early Retirement Incentive Program; (a) Departmental Savings Plans to Recover Payouts; and (b) Budget Office Review; (2) Operating Budgets are Tight; and (3) Anticipate 99.5% of budget will be spent at year end - $400,000 in savings.

He then reviewed the Fiscal Year 2010 current year estimate (Fund Balance). The year-end estimate is 15.1%. Using a chart he explained the ten year Fund Balance trends.

Regarding the Health Care Fund, current trends indicate that expenses will exceed revenues by $1.0 million. Health Care Reserves total $1.13 million.

He then briefly reviewed the Enterprise Funds.

Ordinance No. 3808 – Budget amendment from the current Water Resources Fund budget to fund capital projects as outlined in the Sullivan Act Amendment

Mr. Durant said that this is the consideration of a budget amendment, in the amount of $1,657,481, from the current Water Resources Fund budget to fund capital projects as outlined in the Sullivan Act Amendment.

This report outlines progress on the identification of sources of funding for projects to be funded in FY 2009-10 in response to the June 2009 Sullivan Act Amendment. A process for identifying projects and a ranking system for project selection is presented. FY 2009-10 Water Resources funds have been identified and are ready for transfer into a designated General Fund capital account.

Water Resources staff identified funding to support the expenditure of up to 5% of Water Resources revenue as outlined in the June 2009 Sullivan Act Amendment. It is assumed that Water Resources revenue for this fiscal year will be $33,149,629, and 5% of this amount totals $1,657,481. Staff's approach for the current fiscal year was to identify money already budgeted and not likely to be used in the current year. Staff first looked to existing projects that are completed and have some amount of funding remaining. Staff also tapped funding from some existing projects that may need to be restored in subsequent years. Seven (7) capital projects have funds that could be transferred to meet the Sullivan Act Amendment requirement. These projects are:

WC0005	$ 90,890	Interest Accumulation Account
WC0501	$689,103	NCDOT Brevard Rd. Improvements
WC0703	$ 50,000	Distribution System Improvements
WC0704	$ 50,000	Master Plan Development
WC0804	$ 75,000	24" & 36" Line Replacement Study
WC0805	$500,000	River Flow meters
WC0908	$ 2,485	Parker Ave. service lines
Total from capital:	$1,457,478	

One operations account will also be used to meet the Sullivan Act Amendment requirement. It is the Meter Services Capital Outlay / Other – Improvements account.

330-5005-409-7003	$200,003	Meter purchases, etc.

To implement the enhancement of water system projects with street and sidewalk improvements, there will be a five (5) year project plan that:

1. Looks at Water Resources projects planned for the 5-year period;
2. Investigates opportunities to enhance these projects with needed associated street and sidewalk improvements;
3. Applies a ranking system that is used to assign priorities to the enhancement portion of these projects for funding via the Sullivan Act Amendment; and
4. Develops a timeline and cost estimates for projects that are likely to be implemented.

The Water Resources and Public Works Departments will collaborate to develop the 5-year project plan and present the plan to City Council for consideration as part of the FY 2010 2nd Quarter Report.

Regarding the Strategic Operating Plan, this initiative enhances the City's efforts to operate the City of Asheville's organization to the highest fiscal responsibility. Through planning and combining resources, the intended outcome will be better project conception and implementation aimed at meeting community needs.

Pros:

- Better infrastructure that meets community needs.
- Coordinated project activity that minimizes construction-related disruption and produces enhanced results.

Cons:

- The Sullivan Act Amendment will use Water Resources funds for non-water capital projects.
- Some projects may have an extended timeline to finish all phases due to a larger scope.

This change in operation will transfer approximately 5% of Water Resources revenue to the General Fund for capital projects each year. Over a five-year planning period, this represents over $7.5 million transferred from Water Resources to the General Fund.

City staff recommends City Council adopt the budget amendment approving the transfer of funds for Fiscal Year 2009 -10, and approve the concept of a five-year project planning process.

There was a brief discussion, initiated by Councilman Mumpower, regarding the process which brought the Council to this point of being allowed to transfer 5% of Water Resources revenue for eligible capital projects.

At Mayor Bellamy's request, Councilman Russell, as Chair of the Finance Committee, said that they will be providing an update on how much the City has invested in the water system thus far.

Throughout discussion, Mr. Durant answered various questions/comments from Council, some being, but are not limited to: clarification of the year-end Fund Balance; request to show the actual revenue sources that support each budget amendment; do we have any innovative programs, similar to the Asheville Project, to reduce our health care costs and request for Council to receive quarterly updates on this process; how is the projection of the $1 Million shortfall of sales tax revenue computed; how much interest does Fund Balance earn; what is the City's annual cost for health care; suggestion to possibly partner with the Metropolitan Sewerage District in their 5-year Capital Improvement Plan to see if there is some overlapping of projects for potential cost savings; due to the possibly delay any major purchases, is it feasible to delay the contract for installation of the new irrigation system at the Golf Course; is the City's data in line with the Chamber of Commerce information regarding room occupancies; concern of Council living within their means and not reaching into Fund Balance; clarification that the sales tax numbers are for July and August only; request for a graph showing the full picture of capital improvements made over the year as Council has addressed capital needs that have went unaddressed for years; what is the City's Fund Balance percentage vs. the State's suggested percentage; City should not have a large Fund Balance with capital improvements that need attention; and if the City dips to a 13-14% Fund Balance, does it affect our bond rating.

Budget Director Tony McDowell reviewed with Council the preliminary Fiscal Year 2010-11 budget forecast.

The General Fund revenue outlook is (1) Economy will continue to impact revenue growth in FY 2010-11; (2) Property & sales taxes make up 70% of budget; (3) Overall, revenues are projected to be flat; and (4) No fund balance will be appropriated.

The General Fund expenditure outlook is (1) Continued increases in health care costs; (2) Decrease in federal funding for Transit; (3) Slight increase in operating costs; (4) Allocation for employee raises; and (5) No growth in capital expenditures.

He then reviewed with Council the budget outlook of the General Fund Gap.

He provided Council with some budget balancing strategies for moving forward as (1) The $5.1 million budget gap reflects a structural imbalance between revenues and expenditures; (2) Departments will prepare 4% and 8% budget reduction packages for submittal in late January; and (3) Staff will provide a detailed white paper analysis of the City's financial position prior to the January Council retreat.

Budget Director Tony McDowell reviewed with Council the preliminary Fiscal Year 2010-11 budget forecast.

The General Fund revenue outlook is (1) Economy will continue to impact revenue growth in FY 2010-11; (2) Property & sales taxes make up 70% of budget; (3) Overall, revenues are projected to be flat; and (4) No fund balance will be appropriated.

The General Fund expenditure outlook is (1) Continued increases in health care costs; (2) Decrease in federal funding for Transit; (3) Slight increase in operating costs; (4) Allocation for employee raises; and (5) No growth in capital expenditures.

He then reviewed with Council the budget outlook of the General Fund gap of about $5.1 Million.

He provided Council with some budget balancing strategies for moving forward as (1) The $5.1 million budget gap reflects a structural imbalance between revenues and expenditures; (2) Departments will prepare 4% and 8% budget reduction packages for submittal in late January; and (3) Staff will provide a detailed white paper analysis of the City's financial position prior to the January Council retreat.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3808. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant's request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant's request in that it became necessary, due to the recent economic conditions, the ownership group is currently exhausting opportunities and trying to secure financing and/or additional partners to help with the project economics. On October 28, 2008, at the applicant's request, this motion was continued to October 27, 2009.

Mayor Bellamy said that on September 1, 2009, Mr. Chris Peterson requested this matter be removed from City Council consideration.

On October 23, 2009, the following letter was received from Mr. Marty Kocot, PE, from LandDesign Inc.: "The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed "Horizons" Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. We realize this request to extend this project again is a bit unusual but the economic conditions we are all experiencing are bit unusual as well. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City and an extension of time on the Urban Village Rezoning request for this project gives us the best chance to succeed. To date thousands of dollars have been spent crafting and guiding the project through TRC and P&Z only to have the economy delay us from obtaining the

needed financing. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for consideration by City Council. This project has the ability to create local jobs and help with the economic recovery."

On October 27, 2009, a motion was made to continue the matter for two weeks until November 10, 2009. On November 10, 2009, the matter was continued again until November 24, 2009.

From Staff Report by Urban Planner Julia Cogburn: "This is the consideration of a property request for an additional twelve (12) month continuance of the public hearing on the rezoning petition for the Horizons Urban Village Project.

"In November of 2007, the Asheville Planning and Zoning Commission reviewed a rezoning petition for the Horizons Urban Village project located on an 8.54 acre site on Merrimon Avenue. The Commission voted to recommend the rezoning (7-0) and the conceptual site plan (5-2) presented by the developers/property owners of the project, and the matter was scheduled to be heard by Asheville City Council in January of 2008. At that time, the developers requested a six (6) month continuance in order to review the site design particularly as it related to the height of some of the buildings. Building height was a major issue for the adjoining neighbors of this project. In June of 2008, the property owners requested an additional three (3) month continuance primarily due to economic conditions. In October of 2008, the property owners requested and obtained an additional twelve (12) month continuance from the Asheville City Council. The property owners are now requesting an additional twelve (12) month continuance due to the continuing economic slowdown.

"The major concern with granting an additional continuance is the effect it may potentially have on the valid protest petition submitted with respect to this project. The owners of sixteen (16) properties within one hundred (100) feet of the development parcel signed a petition. This petition was deemed to be a valid protest petition in accordance with NCGS § 160A-385 as the signatories properties totaled 21.9% of the property within one hundred (100) feet of the development parcel. Twenty (20%) percent is required for a valid protest petition. NCGS § 160A-386 states that the petition must be submitted at least two (2) normal working days before the date established for the public hearing (which was done) and must meet the qualifying standards for a protest petition "at the time of the vote on the zoning amendment." The effect of a protest petition is that it triggers a supermajority voting requirement on a zoning issue. The concern is that if property ownership changes during the time of continuance of this project, that the petition becomes invalid without an opportunity to resubmit another petition.

"Options for Council include:

1. Grant the continuance. The project would be considered by Council on November 23, 2010. The protest petition may or may not be valid depending upon property ownership at that time.
2. Do not grant the continuance. The developer would have to resubmit the project at the time that they were prepared to move forward with the development.
3. Postpone the hearing indefinitely. Reschedule the public hearing when the developer is ready to move forward with the project. Staff would recommend, if this option is chosen, that the request for a public hearing must be made by a date certain.

Pro:

- Allows the property owners additional time to work on the details of an urban village project for this property.

Cons:

- Gives extensive continuation to a project that was first submitted to the City of Asheville in June of 2007.

- May create additional confusion/effort for those who previously submitted a protest petition on this project.

"City staff recommends City Council adopt one of the following three options: (1) Grant the continuance. The project would be considered by Council on November 23, 2010. The protest petition may or may not be valid depending upon property ownership at that time; (2) Do not grant the continuance. The developer would have to resubmit the project at the time that they were prepared to move forward with the development; or (3) Postpone the hearing indefinitely. Reschedule the public hearing when the developer is ready to move forward with the project. Staff would recommend, if this option is chosen, that the request for a public hearing must be made by a date certain."

Councilman Mumpower moved to allow Council to discuss the options presented. This motion was seconded by Vice-Mayor Davis and carried unanimously.

City Attorney Oast briefly outlined the three options available for Council as outlined above. If the option to postpone the hearing indefinitely and reschedule the public hearing when the developer is ready to move forward with the project is Council's choice, then the current protest petition may remain valid although there is not a lot of guidance in the statutes on this. It may extend the date or establish a new date for filing a new protest petition or correcting any deficiencies in the old protest petition because a new date would be established for the public hearing. Mr. Chris Peterson, property owner, inquired about the Permit Extension Act of 2009, but since this is a zoning approval that is pending and has not been acted on, that law would not apply.

Councilwoman Cape moved to postpone the hearing indefinitely and reschedule the public hearing when the developer is ready to move forward with the project, with the stipulation that this matter will be discussed again on November 23, 2010, if no public hearing is requested prior to that date. This motion was seconded by Councilman Mumpower and carried unanimously.

Closed Session

At 7:27 p.m., Mayor Bellamy announced a short recess, at which time City Council would conduct a closed session.

At 7:27 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is approximately 11 acres at Shelburne Road and Hominy Creek Road, and 615 Swannanoa River Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Newman and carried unanimously.

At 7:52 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

A. PUBLIC HEARING TO CONSIDER FLOODPLAIN ORDINANCE TEXT CHANGES AND NEW FLOODPLAIN MAPS

ORDINANCE NO. 3809 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING ENVIRONMENTAL PROTECTION STANDARDS FOR FLOOD PROTECTION

ORDINANCE NO. 3810 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING FLOOD PROTECTION DEFINITIONS

ORDINANCE NO. 3811 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING DEVELOPMENT REVIEW PROCEDURES

ORDINANCE NO. 3812 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING VIOLATIONS, PENALTIES AND ENFORCEMENT PROVISIONS

Mayor Bellamy opened the public hearing at 7:58 p.m.

Stormwater Services Manager McCray Coates said that this is the consideration of adopting the following four Unified Development Ordinances, which include the Flood Insurance Rate Maps (FIRM) and the Flood Insurance Study (FIS) report, as follows: (1) Environmental Protection Standards for Flood Protection Article XII, Section 7-12-1; (2) Flood Protection Definition Section 7-2-5; (3) Development Review Procedures, Section 7-5-12; (4) Violations, Penalties and Enforcement Provisions Section 7-18-2.

He said that the purpose of this report is to provide the Planning and Zoning Commission with information related to the proposed Flood Damage Prevention Ordinance and to ask the Planning and Zoning Commission to approve the proposed Ordinance in order for staff to present the Ordinance to the City Council.

The Federal Emergency Management Agency (FEMA) in consultation with the State of North Carolina, have issued new Flood Insurance Rate Maps (FIRM) applicable to the City of Asheville. The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the Flood Insurance Study (FIS) to maintain membership in the National Flood Insurance Program (NFIP). The NFIP provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas. The new FIRMs, have, in some cases, modified the location of the floodway, 100-year floodplain, and 500-year floodplain boundaries in the City of Asheville. The new locations of the floodway may limit how affected property owners may use their properties. The proposed amendments to the text of the floodplain regulations are consistent with the Flood Damage Prevention Model Ordinance prepared by the State of North Carolina, taking into consideration the revised FIS and the revised FIRMS.

In order for the City to be in compliance with the requirement necessary to remain a member of the National Flood Insurance Program (NFIP) provided by FEMA, the City must adopt a revised Flood Damage Prevention Ordinance that is in compliance with the North Carolina Division of Emergency Management Model Flood Damage Prevention Ordinance. The model ordinance was created to satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations. The North Carolina model ordinances have been reorganized, simplified and expanded over the years to clarify older ordinance language.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010 and is adopted by the approval of the Flood Damage Prevention Ordinance

The Flood Damage Prevention Ordinance must be adopted prior to January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

A Flood Ordinance Project Oversight Group has been formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Damage Prevention Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee include John Broadbrooks, Barber Melton, Karl Koon, Karen Cragnolin, Paul Szurek and Bob Smith.

City staff has held one recent public meeting to discuss the Flood Damage Prevention Ordinance and the revised Flood Insurance Rate Maps (FIRM) with the public. Previous public meetings were held in 2008 prior to the State finalizing the FIRMs which provided the opportunity for public input related to the FIRMs.

Pros and Cons:

- The City will satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regard to the adoption of required floodplain management regulations.
- The Flood Damage Prevention Ordinance follows the State model ordinance which is recommended by the NC Floodplain Mapping Program to be the best way to obtain FEMA approval.
- The Flood Damage Prevention Ordinance follows closely with other jurisdictions within Buncombe County and western North Carolina as it relates to floodplain regulations.
- The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial.

Mr. Coates noted that the Planning and Zoning Commission, at their November 19, 2009, mid-month meeting unanimously adopted the ordinances with an amendment to the non-conforming section in Section 7-12-1 as follows: "A nonconforming use shall be deemed discontinued after a period of more than 2 years ..." to be consistent with the UDO. The original draft was 365 consecutive days.

Mr. Coates explained that through the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA, updated FIS and FIRM applicable to the City of Asheville have been released.

City staff recommends City Council adopt the following four Unified Development Ordinances, which include the Flood Insurance Rate Maps (FIRM) and the Flood Insurance Study (FIS) report, as follows: (1) Environmental Protection Standards for Flood Protection Article XII, Section 7-12-1; (2) Flood Protection Definition Section 7-2-5; (3) Development Review Procedures, Section 7-5-12; (4) Violations, Penalties and Enforcement Provisions Section 7-18-2.

Mr. Coates explained the following Flood Ordinance modifications of the FIRM maps: (1) Three public participation meetings for new FIRM maps held on December 11, 12, and 13 of 2007; (a) December 11, Black Mountain Town Hall. Approximately 70 persons attended a presentation by the state with open question and answer with state, engineers contracted to complete the maps, and local government staff; (b) December 12, AB Tech Enka Campus. Approximately 25 persons attended; and (3) Dec 13, Asheville Public Works Building. Approximately 35 persons attended; (2) Advertising included the County and City websites; contacted fire chiefs to post; Buncombe County TV aired information; press releases sent to Mountain Xpress, Asheville Citizen Times, Urban News, WLOS, Asheville Daily Planet, WNCW, and Asheville Tribune; and (3) This resulted in several articles (a) Clarke Morrison December 13

Citizen Times article on meetings, and 90-day appeal/protest period; (b) Brian Bartlett December 11 Citizen Times entitled "Learn How New Flood Maps May Affect Your Property"; (c) December 9 the Citizen Times article entitled, "Determine Your Level of Flood Risk" which advertised each of the 3 meetings; (d) December 5 Citizen Times article entitled, "Flood Maps to be Displayed" which advertised each of the three meetings; (e) Dec. 5 Mountain Xpress article entitled, "Waterlogged: New Maps Predict Bigger Floods for Swannanoa Valley"; and (f) The three meetings were advertised in this article.

Regarding the FIRM Maps, (1) The new FIRMS have, in some cases, modified the location of the floodway, the 100-year floodplain, and the 500-year floodplain boundaries in the City of Asheville; and (2) Amendments to the Flood Ordinance text reflect required regulation changes associated with the new FIRMs, and required changes made to the N.C. Division of Emergency Management Model Flood Damage Prevention Ordinance.

With regard to the NFIP Program, (1) The National Flood Insurance Program (NFIP) provides federally backed flood insurance to property owners in the City of Asheville jurisdiction located in flood prone areas; (2) The City of Asheville is required to adopt the new maps and amendments to its floodplain regulations consistent with the FIS to maintain membership in the NFIP; and (3) The updated Flood Damage Prevention Ordinance must be adopted prior to January 6, 2010, which is the effective date as established by FEMA, or the City could be removed from the NFIP program.

He said that a municipal flood ordinance group was formed to discuss the flood regulations in Buncombe County, including representatives from the City of Asheville, Buncombe County, Black Mountain, and Montreat. Recommendations from the Group determined it was best to utilize the Model Flood Ordinance created by the NC Floodplain Mapping Program (NCFMP) as the base document to ensure State and FEMA approval. Recommendations from the Group determined it was best for the area to have similar flood damage protection requirements.

Also, the Flood Ordinance Project Oversight Group was formed to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and to City Council on the revised Flood Protection Ordinance. This group, in a limited capacity, assisted staff in the development of the proposed Ordinance. The members of the committee include John Broadbrooks, Barber Melton, Karl Koon, Karen Cragnolin, Paul Szurek and Bob Smith. This Group will continue to meet to discuss floodplain related regulations and guidelines.

Mr. J. P. Johns, PE, Principal with McGill Associates, said that the following sections of the Code of Ordinances will need to be amended: (1) Article II, Section 7-2-5, Definitions; (2) Article V, Section 7-5-12, Floodplain Development; (3) Article XII, Section 7-12-1, Flood Protection; and (4) Article XVIII, Section 7-18-2, Penalties and Violations.

He then explained in detail some of the following major changes: (1) Some definitions related to flood ordinance terminology have been added or modified as required by FEMA; (2) The regulatory flood elevation (freeboard above the base flood elevation) is set at 2 feet for both commercial and residential. Currently it is 2 feet for residential and 1 foot for commercial; (3) No new habitable structures or substantial improvements to habitable structures shall be permitted in floodways and non-encroachment areas, except this subsection requirement shall not be applicable to structures that have substantial damage; and (4) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted in the floodway unless: (a) It is demonstrated that the proposed encroachment will not increase the base flood elevations during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed by a registered professional engineer in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the

proposed encroachment. Utilities in the floodway now must provide a No-Rise impact analysis (not required in the current ordinance). This is required by FEMA.

Mr. Johns then outlined the following processes: (1) Public Meeting held on November 17, 2009; (2) Approved by NC Floodplain Mapping/FEMA on November 19, 2009; and (3) Asheville Planning and Zoning Commission on November 19, 2009, unanimously approved the ordinances with one exception as it related to discontinued uses in the nonconforming section of 7-12-1. Originally proposed 365 days was modified to 2 years to be consistent with the UDO.

Council action is requested to conduct the public hearing and then act upon the recommended modifications to the ordinances.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy closed the public hearing at 8:09 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3809. This motion was seconded by Councilman Mumpower and carried unanimously.

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Councilman Mumpower moved for the adoption of Ordinance No. 3810. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 512

Councilwoman Cape moved for the adoption of Ordinance No. 3811. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 519

Councilman Mumpower moved for the adoption of Ordinance No. 3812. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE 522

V. UNFINISHED BUSINESS:

A. UPDATE ON ANNEXATION AGREEMENT DISCUSSION WITH THE TOWN OF WOODFIN

Mayor Bellamy provided Council with the two Town of Woodfin's counter-proposal maps (received one day earlier in the afternoon) regarding (1) the Erwin Hills/Lees Creek area (noting the delineating line of New Leicester Highway); and (2) the line regarding Elk Mountain Scenic Highway to the Blue Ridge Parkway. As this was the last meeting of the current Council, she felt it was appropriate to let the entire body know of Woodfin's counter-proposals.

City Attorney Oast provided Council with three detailed maps of the Erwin Hills/Lees Creek area; UNC-Asheville area; and the Merrimon Avenue/Weaverville Road area.

In response to Councilman Newman, it was City Attorney Oast's understanding that there is no disagreement with the Town of Woodfin on the two boundary adjustment areas (that would

not be part of the annexation agreement) of (1) the Reynolds Mountain boundary adjustment area, subject to the N.C. Dept. of Transportation's approval; and (2) the UNC-Asheville boundary adjustment area.

Councilman Newman moved to (1) endorse the proposal submitted by the Town of Woodfin as to Elk Mountain Scenic Highway; (2) reaffirm the City's position as to the Reynolds Mountain boundary adjustment area, subject to the N.C. Dept. of Transportation's approval; (3) reaffirm the City's position as to the UNC-Asheville boundary adjustment area; and (4) reaffirm the City's position regarding the Leicester/Erwin Hills area (3.54 miles in the City's extraterritorial jurisdiction area be in Asheville) along with the City's commitment not to annex into Leicester Township for three years contingent upon the same commitment by the Town of Woodfin. This motion was seconded by Vice-Mayor Davis.

In response to Councilman Mumpower, Mayor Bellamy said that the City put a proposal forward to the property owner of the Sherwood Heights area; however, the property owner chose to continue with his voluntary annexation request into the Town of Woodfin, which Woodfin recently annexed.

Councilman Mumpower felt that all meets with the Town of Woodfin should be held in an open forum and property owners in the affected areas should be allowed to have input into that process.

Ms. Betty Jackson urged Council to be sensitive to the people who live in the area that the City of Asheville and the Town of Woodfin are talking about annexing. She asked for transparency in all discussions.

Mr. James Sheeler urged for the City to stage a forum where people can express their feelings on annexation, noting that there is no transparency is the process.

Ms. Carolyn Williamson also asked for transparency in the annexation process, noting that it is expensive for people in the affected area to fight the process.

Vice-Mayor Davis said that Asheville does not have an interest in extending the current City limits to the area Woodfin tried to annex. We have been in dialogue with Woodfin regarding future growth.

Councilman Newman stressed that Asheville believes it's a good idea that as cities grow, through whatever means, there will be areas that make sense to annex. The City is simply trying to come up with a general agreement of the City's boundaries as they will not be the same in 30 years as they area now. It makes sense for both bodies to come up with a shared vision.

Councilman Mumpower noted that there are no planned annexations by the City of Asheville.

City Attorney Oast said that prior to an annexation a public hearing is required to be published, but individualized notices are not required.

At the request of Mayor Bellamy, it was the consensus of Council for City staff to contact people in the area affected by the agreement if the agreement goes forward.

The motion made by Councilman Newman and seconded by Vice-Mayor Davis carried unanimously.

B. CONSIDERATION OF RESOLUTION REQUESTING FINAL DECISION AND CONSTRUCTION OF THE I-26 CONNECTOR

Mayor Bellamy said that Mr. Davis Gantt, Chairman of the Buncombe County Board of Commissioners, has requested that the Mayors of the City of Asheville, Town of Black Mountain, Town of Biltmore Forest, Town of Montreat, Town of Weaverville and Town of Woodfin to join in on a resolution requesting final decision and construction of the I-26 Connector. Said resolution is requesting that the N.C. Dept. of Transportation take into consideration all of the information gathered to this point and expedite any additional requirements to enable the construction of the I-26 Connector to begin as soon as possible.

Councilman Newman felt that the completion of the project as quickly as possible is a vital goal, but is not the only goal that we have for the project. Every time Council has adopted a position on this, we have included a request that it be completed as quickly as possible as part of the resolution. His concern is that we not only want to get the project completed quickly, but we want to get it done right. Therefore, he moved to add the following additional language to the resolution: "WHEREAS, we wish to thank the NCDOT for considering the concerns of the community and the design of this important project, especially the concerns of the neighborhoods that will be most directly affected by the project, including west Asheville; and WHEREAS, we also wish to thank the NCDOT for taking into consideration local land use plans as it weights on the decisions about the alternatives including the Unified Development Ordinance, the 2025 Plan, the Wilma Dykeman Riverway Plan and other city plans in previous resolutions from the City Council; and WHEREAS, we also appreciate NCDOT's efforts to continue working with the community to hone the alternatives in order to achieve the best possible design." This motion was seconded by Councilman Russell.

When Mayor Bellamy asked for public comments, none were received.

There was discussion, initiated by Vice-Mayor Davis, about how Asheville could amend the language of this resolution, which has been already adopted and signed by the other municipalities. Mayor Bellamy suggested the resolution be adopted as presented by Chairman Gantt and include a cover letter addressing Councilman Newman's additional language request.

Councilwoman Cape felt Asheville should have the ability to add additional language since the Connector is going through the center of our community. She fully supported the unified resolution, but suggested since this is not time sensitive, she suggested the amended language be re-circulated to the other municipalities and it be re-considered by Council in January.

Mayor Bellamy explained that this request is coming to Asheville at this time due to the fact that the Buncombe County Commissioners scheduled their meeting with City Council during the middle of our election process. She had suggested they postpone meeting with Council until the election was over to review their respective goals. During that time the Commissioners met with all the other municipalities and obtained approval of the resolution. The meeting with the Commissioners will be scheduled in January, 2010.

Councilman Russell suggested that instead of amending the body of the resolution with the three additional Whereas' that the resolution be amended by adding an additional resolved paragraph, as crafted by Councilman Newman.

It was the consensus of Council to delay consideration of this resolution until the joint meeting with the Buncombe County Commissioners in order to advise them of Council's concerns. Mayor Bellamy said that she would contact Chairman Gantt with Councilman Newman's proposed language to see if there is consensus to amend the resolution. Councilman Newman and Councilman Russell withdrew their motion.

C. DISCUSSION OF LIVING WAGE POLICY FOR SERVICE CONTRACTS

American Recovery & Reinvestment Project Manager Brenda Mills said that this is the consideration of a resolution adopting a living wage policy for general service contracts.

The purpose of this staff report is to provide additional analysis on the application of a living wage policy to City of Asheville contracts. At its meeting on October 28, 2008, City Council asked staff to provide information on: (1) options for applying a living wage policy to contracts awarded by the City of Asheville; (2) the estimated fiscal impact to the City of Asheville if a policy were implemented; (3) the administrative costs incurred by the City for monitoring such a policy; (4) the estimated administrative costs to contractors; and (5) additional stakeholder input.

This direction was preceded by three dates on which a living wage policy was considered by City Council. The Asheville-Buncombe Living Wage Campaign first presented the item to City Council at its meeting on March 13, 2007. On May 22, 2007, City Council established a living wage for full- and part-city employees at $10.86 per hour for employees without health insurance and $9.50 per hour for employees with health insurance. City Council then directed staff to conduct additional analysis on the financial impact of a living wage policy for City contracts at its meeting on October 28, 2008. This report addresses the City Council direction received at that meeting.

(1) Options for applying a living wage policy to city contracts

State purchasing law is complex given that the law prescribes bidding and award procedures for certain types of contracts that meet specific dollar thresholds. Staff has conducted research and consulted with the North Carolina School of Government to determine what kinds of contracts are best suited for consideration of a living wage policy. A summary of those conclusions are presented in the table below.

Type(s) of contract	Advisable for living wage policy?	Why or Why not?
• Construction or repair work $500,000+ • Purchase of apparatus, supplies, materials, or equipment $90,000+	No	State law requires formal, competitive bid procedures and that the contract is awarded to the "lowest responsible bidder taking into consideration quality, performance and time specified...". Application of policy may be in violation of the law.
• Construction or repair work $30,000-500,000 • Purchase of apparatus, supplies, materials, or equipment $30,000-90,000	No	State law requires informal bidding and contracting procedures and that the contract is awarded to the "lowest responsible bidder taking into consideration quality, performance and time specified...". Application of a living wage policy may be in violation of the law.
• Construction contracts for building projects $300,000+	No	State statutes the manner in which these projects are specified, bid and awarded. Application of a living wage policy may be in violation of the law.
• Professional services including architectural, engineering and surveying services	No	State law prescribes special requirements for the procurement of these services and stipulates that an award must be based on qualifications. Application of a living wage policy may be in violation of the law.

• General service contracts of any amount	Yes, with considerations	State law prescribes no procurement or bidding procedures for most general service contracts. General service contracts $25,000+ are covered by the City of Asheville's contract policy, which states that three informal quotes should be obtained and that the contract be awarded to the lowest responsive bidder. Application of a living wage policy may be in violation of the city's contract policy. The policy would have to be amended to accommodate provisions of a living wage policy. In addition, the volume of contracts in this category may be administratively difficult to manage if a living wage policy were applied. Outside agency contracts would fall within this category.
• Any contracts under $30,000 except for professional services including architectural, engineering and surveying services	Yes, with considerations	A city may use any procedure it deems appropriate for any contract under $30,000, with the exception of professional service contracts that must be awarded based on qualifications. Contracts under $30,000 are covered by the city's contract policy, which states that at least two price quotes should be obtained before awarding a contract. The volume of contracts in this category may be administratively difficult to manage if a living wage policy were applied. Omitting contracts for the purchase of goods from the policy would alleviate some of the volume while having a limited impact on the goals of a living wage policy because most goods and supplies are produced outside the local area. Outside agency contracts would fall within this category.

Given this analysis and taking into consideration the legal and administrative factors associated with implementing a living wage policy, staff would recommend a defined scope of contracts for City Council when consideration of this policy. This scope would include general service contracts between $5,000-30,000.

(2) Fiscal impact to the City of Asheville's contracting costs

In order to ensure bidding practices are fair and that contract awards are not determined on the ability of the contractor to pay a living wage to employees, it is the best practice for governmental entities to bear the cost of requiring a living wage as part of the contract.

Unfortunately, the ability to estimate the financial impact a living wage policy would have on general service contracts is limited by data management capabilities with the City's current financial management software (HTE), the lack of hourly wage information in current service contracts, and the reluctance of private business owners to share what they consider to be proprietary or sensitive information.

As an alternative, staff has analyzed samples of general service contracts in an effort to present a snapshot of what the financial impact might be. Information compiled by staff shows:

- Among all registered vendors with the city, general service contractors make up the largest number (see Chart 1), and so a living wage policy in this category has the potential to impact the most vendors.
- At the same time, most vendors in this category provide general services like appraisers, information technology vendors, electrical contractors, demolition services, vehicle repair and environmental services. These service areas typically pay at or above living wage levels, as shown by a sampling of current general services contracts (see Chart 2). Service providers who may not meet living wage requirements include custodial and landscaping services. These contracts may have a cost increase if a living wage is required (see Chart 3 for vendor estimates on contract increases).

Chart 1. Breakdown of Vendors registered with the City of Asheville

Type of Vendor	Number Per Category	Percentage of Total
Service	780	19.4%
Professional	54	1.3%
Procurement	529	13.2%
Construction	60	1.5%
Government Agencies	95	2.4%
Non-Profits	244	6.1%
Employees	456	11.4%
Citizens / Individuals	1794	44.7%
Total Vendors	**4012**	

Chart 2. Sampling of city contracts comparing current wages to living wage standards

Contract Type	Current Contract Price or Hourly Wage	Cost difference to adding a Living Wage
Concrete Cleaning	$12.00 to $15.00 / hour	None
Door Controls & Repair	$17.50 / hour	None
Janitorial Contract	**$7.00 to $9.00 / hour**	**$2.35 to $4.35 / hour**
Landscape & Mowing	**$9.00 to $10.00 / hour**	**$1.35 to $2.35 / hour**
Legal Services	$200 / hour	None
Mail Management	$10.00 and up an hour	None
Painting	$12.00 / hour	None
Surveying service	$50.00 to $120.00 an hour	None
Utilities Contractor	$12.00 and up / hour	None
Vault Services	$16.00 and up an hour	None
Waste Management	$12.00 and up an hour	None

Chart. 3. Sampling of city service contracts with current wages comparing with living wage rate of $11.35

Contract Type	Current Hourly Wage	Current Annual Contract Price	Cost differential if Living Wage is incorporated (estimated by vendor)	Benefits Provided
Custodial	$8.00 Janitorial (7) $10.00 Lead Worker $15.00 Supervisory staff (1)	$86,400.00	**+ $17,108.80**	Sick and Annual
Mowing Contract #1	Equip Operator $12 Supervisor $14	$33,012.00	None	One week paid vacation only
Mowing Contract #2	Five Seasonal FT Employees	$60,655.00	**+ $9,648.00**	No employer benefits

(3) Administrative costs for monitoring a living wage policy

If a living wage policy were implemented for general service contracts $5,000-$30,000, staff would recommend budgeting funds for the City to contract for auditing services during the first year of implementation. The auditor would be charged with reviewing certified payrolls provided by vendors for a sample percentage of all contracts. Staff estimates the costs for these services to be $10,000-15,000, although they may be more or less depending on the number of contracts executed during the year.

(4) Administrative costs for contractors

Currently, it is the best practice for governments to absorb incremental costs associated with a living wage policy so there is not a financial impact to the vendors doing business with the government entity. These costs would be built into the contracted fees that get passed along to the City of Asheville. According to the Asheville-Buncombe Living Wage Campaign, as of February 2009, the current living wage rates are $11.35 per hour for employees with no employer provided health benefit and $9.85 per hour for employees with employer paid health benefit. These recommended wage rates have increased since Council approved a living wage for city employees.

(5) Additional stakeholder input

There was collaboration with the Chamber of Commerce to conduct a survey to gauge business owners' thoughts on the living wage. This survey was sent to Chamber members and minority business owners in February 2009. The survey was also sent to stakeholder groups such as the Asheville-Buncombe Living Wage Campaign and the Council of Independent Business Owners (CIBO) to provide to their members.

Policy considerations:

Given the limited availability of data to estimate costs associated with implementing a living wage policy, staff would offer the following options for City Council consideration:

Option 1 – Gather additional contract data January-June 2010 for further evaluation

Without more specific data about how a living wage would affect the cost of general service contracts, staff could begin requiring contractors to provide two sets of cost proposals during the next six months, one for a standard bid and one that would include the incremental costs necessary to cover a living wage requirement. Staff could use the data provided over this timeframe to more accurately estimate the costs associated with a living wage policy.

Option 2 – Implement a living wage policy for general service contracts $5,000-30,000

This option would allow the City to apply a living wage policy to a limited number of contracts, allowing staff to assess the overall financial and operational impacts prior to broader policy application. Under this option, staff would recommend applying living wage provisions to general service contracts between $5,000 and $30,000 for a one year period beginning July 1, 2010. A program design and budget would be developed by staff for inclusion in the FY 2010-2011 budget.

Pro:

- Further progress in achieving living wage policy objectives.

Cons:

- Potential loss of vendors.
- Potential increase in service contracting and administrative expenses.

If accountability is required with implementation, audit services estimated at $10,000-15,000 would be required. Staff is unable to quantify the impact of such programs on contracting costs at this time.

Staff recommends City Council receive this information and provide direction on the next steps in consideration of a living wage policy for the City of Asheville.

Councilwoman Cape suggested delay on this matter for clarification on any legal factors associated with implementing a living wage policy. She questioned why the City would have to bear the cost of requiring a living wage as part of the contract, since the City would be contracting with the low bid and that could be a requirement.

Councilman Newman agreed with Councilwoman Cape and felt the City should require the contractor to pay a living wage.

In response to Councilman Newman and after Ms. Mills explained that the City of Durham and Durham County have living wage policies which they apply to general service contracting, Councilman Newman asked for a broader sampling of other communities.

Councilman Mumpower explained why he did not support this concept. He believed in the concept of people making a decent living; but not this way. He felt we are manipulating the system for a few people and creating, what he believed, a dishonest system. He felt we need to keep fighting the illegal immigration pool that is affecting wages.

Councilman Miller moved to direct staff to gather additional contract data from January-June 2010 for further evaluation and report back to Council. This motion was seconded by Councilman Newman.

Councilman Miller felt there may be some unintended consequences of implementing a living wage policy and would be interested in seeing that impact.

Vice-Mayor Davis, small business owner who does pay a living wage, has spoken to other small business owners who could not afford to bid on projects if they are required to pay a living wage. Contracts from $5,000-30,000 will affect a lot of small businesses. He felt it was the wrong time to start this policy that may affect existing jobs because due to our economy some businesses are barely surviving now. He would be interested in seeing additional data; however, couldn't support staff spending a lot of time on the details at this time.

Councilman Newman withdrew his second in that he felt additional information was needed; however, this is a bigger public policy issue and felt the new Council should decide on whether this will be a priority.

Councilman Mumpower then seconded Councilman Miller's motion.

Ms. Sarah Osmer, Director of Just Economics, let Council know that there is a lot of research available on what other cities have done in implementing a similar policy and they have found that the budgetary cost to contractors is less than 1/10th of 1% of their overall budget. It is also important to note that we are talking about 5 service contractors (janitorial and lawn service) and we should be able to collect the information quickly. She provided Council with a Living Wage Compliance Form that Durham County uses and it does not require an outside auditor. She felt the cost of $10-15,000 for auditing services seems high and noted some cities fold that duty into a current staff person's responsibility. She felt Council should not delay on this issue.

Mr. David Rigby, intern with Just Economics, provided Council with a form that describes how Durham County measures compliance. He felt that Council should act on this policy issue on a more timely fashion.

Ms. Laura Copeland, with the Asheville Area Chamber of Commerce, supported staff being given additional time for further analysis.

Mr. Greg Goren, with Children First Communities and Schools, urged Council to act on this issue sooner because budget discussions will almost be completed by the time the additional research is presented to Council. He ultimately hoped for a living wage for service contracts.

Mr. James Sheeler urged Council to adopt a living wage policy for service contracts.

In response to Councilman Mumpower, City Manager Jackson explained the research staff would be conducting in the 6-month timeframe; however, if Council is only interested in taking other people's research, then that can be done in a shorter period of time. Director of Administrative Services Lauren Bradley also explained that the 6-month process was not to miss the budget process, but to coincide with it.

Mayor Bellamy said that at Council's retreat there will be an opportunity to hear an update on major issues and at that time Council can decide on whether they want this issue to move forward or not. If it moves forward, then staff can proceed with obtaining data from the new software and obtain additional research, then Council can consider its options during budget deliberations.

Councilman Miller and Councilman Mumpower withdrew their motion.

D. RESOLUTION NO. 09-254 - RESOLUTION APPROVING A FUNDING PLAN TO COMPLETE $2.3 MILLION IN STORMWATER CAPITAL IMPROVEMENT PROJECTS

Director of Public Works Cathy Ball said that this is the consideration of a resolution directing the City Manger to include $2.3 million for stormwater capital improvement projects in a comprehensive bond package to be financed in December 2009.

In 2005, City Council established a Stormwater Utility Enterprise Fund. Of the approximate $2.5 Million budget, $300,000 was dedicated annually to capital improvement projects. Several projects have been completed since Fiscal Year 2006. These projects include Simpson Street, Richmond Hill Drive, Greenleaf Circle, South French Broad to Patton Avenue, All Souls Crescent, and Atlanta Avenue, Burton Street, and Bryant Street drainage improvements.

Staff has identified several additional stormwater capital projects that need to be completed. Some of these projects include failing storm drainage pipes while others are necessary to improve water quality. A list of additional projects that need to be completed is provided below:

Priority	Description	FY 11	FY 12	Total
1	Stormwater Phase II Environmental Compliance - City Vehicle Wash Bay	$300,000		$300,000
2	Old Toll Road Drainage Improvements	$350,000		$350,000
3	North Bear Creek (from Johnston Blvd to W. Rash Road) Drainage Improvements	$309,000		$309,000
4	Town Branch Water Quality Improvement	$125,000	$425,000	$550,000
5	Evelyn Place Drainage Improvements	$55,000		$55,000
6	Fairway Drive Drainage Improvements		$101,000	$101,000
7	Ballentree Subdivision Drainage Improvements		$218,000	$218,000
8	Gardenwood Road Drainage Improvements		$62,000	$62,000
9	Michigan Avenue Drainage		$274,000	$274,000

	Improvements			
10	North Market Street Drainage Improvements		$85,600	$85,600
	Total	**$1,139,000**	**$1,165,600**	**$2,304,600**

The aforementioned projects are currently not included in the Fiscal Year 2009-10 adopted stormwater capital improvement budget. In August 2009, staff recommended to the Finance Committee that one option would be for the City to appropriate stormwater capital reserve funds (i.e. fund balance) to fund some of the projects listed above.

Since that time, staff has done further analysis. The approximate capital reserve balance in the Stormwater Enterprise Fund is $1.1 Million. Finance staff recommends that we maintain at least a 40% fund balance in the capital reserve or approximately $1 million (consistent with fund balance policy for the water fund) to cover unforeseen emergencies and to provide adequate cash flow. Therefore, there is not a significant balance in capital reserve account to complete the capital projects.

As an alternative, staff is recommending that Council indentify the aforementioned projects as high priorities and direct staff to include them as a part of the fiscal Year Fiscal Year 2009-10 financing package that will be issued in the December/January timeframe. Any additional debt service costs associated with adding these projects to the current package will be paid from the Stormwater Utility Enterprise Fund through line item transfers

Pros:

- This recommendation would allow the City to complete some significant capital stormwater improvements to help reduce damage to life and property.
- This recommendation would allow the City to comply with a State mandate to contain water runoff from vehicle and equipment washing.
- This recommendation would improve water quality in the Town Branch Watershed.
- This recommendation provides for implementation of the Dingle Creek Master Plan

Con:

- Based on initial estimates, financing these projects will require a commitment of approximately $185,000 in annual debt service costs from the Stormwater Utility fund for the next 20 years.

The first debt service payment may come due in June 2010; therefore, staff is prepared to pay approximately $95,000 from the current Stormwater Enterprise Operating Fund through line item transfers. Thereafter, debt services costs would be approximately $185,000 annually. The Stormwater Fund's proposed Fiscal Year 2010-11 revenue structure may need to be adjusted to accommodate the additional annual debt service costs.

The consideration of a resolution directing the City Manger to include $2.3 million for stormwater capital improvement projects in a comprehensive bond package to be financed in December 2009.

Councilman Mumpower felt that the need is compelling; however, he could not support the action due to the economy climate.

In response to Mayor Bellamy, Ms. Ball said that there is $1.1 Million in the stormwater savings account, which is about 45% of the revenues that are generated every year.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-254. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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E. CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH LANDSCAPES UNLIMITED LLC FOR THE INSTALLATION OF A NEW IRRIGATION SYSTEM ON THE BACK NINE HOLES AT THE ASHEVILLE MUNICIPAL GOLF COURSE

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Landscapes Unlimited LLC for the installation of a new irrigation system on the back nine holes at the Asheville Municipal Golf Course, for an amount not to exceed $238,000.

City Council approved $300,000 as part of the City's Fiscal Year 2009-10 capital improvement budget for the irrigation system and back flow preventers at the Asheville Municipal Golf Course. The City issued a request for proposals for the project and the lowest, responsible bid was received from Landscapes Unlimited, LLC, located at 1201 Aries Drive, Lincoln, Nebraska, for a cost not to exceed $238,000. This expense, along with the cost of and the installation of a water tap and back flow preventers will total about $265,000.

This action complies with the City Council Strategic Operating Goal in the Green Focus Area in that it achieves long term energy goals to reduce electricity cost and conserve water, and it supports the operation and maintenance of all city parks. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it ensures a continued high level of service in the park system via strategies that address maintenance and safety improvements.

Pros:

- The contract amount plus the cost of the water tap and backflow preventers will not exceed the approved project budget of $300,000.
- The new irrigation system will replace an old and antiquated system that is manually operated and in continuous need of repair.
- The new system will save considerable time and money in the form of staff time, repair costs and water use.
- The new system will increase water efficiency while improving overall playability of the golf course.
- Water and cost savings due the replacement of an old, leaking and obsolete system.
- Back flow preventers are required by the Water Department and will put the Golf Course in compliance with public health and safety standards.

Con:

- There will be some inconvenience to golfers during the time of construction and installation however construction will occur during the non-peak season.

Three hundred thousand dollars was approved in the City's Fiscal Year 2009-10 Capital Improvement Budget for this project.

Staff recommends City Council to authorize the City Manager to enter into a contract with Landscapes Unlimited, LLC not to exceed $238,000 for the installation of an irrigation system on the back nine holes of the Asheville Municipal Golf Course.

In response to Councilman Mumpower, Mr. Simmons said that the Golf Course has not broken even on the Golf Course since the City took over operation from the County. They do not plan a subsidy from the City this year.

Councilman Mumpower felt this is a nice program but not necessary, and due to our budget realities going forward, he could not support this action.

Throughout discussion, and in response to Councilman Newman, Mr. Simmons said that this contract will allow the City to be in compliance with public health and safety standards and will also give us the technology to manage the system.

Mayor Bellamy agreed that the project needed to happen, but felt that due to the anticipated budget shortfall and since this will come out of General Fund dollars, she would prefer to delay the process.

When Councilwoman Cape asked if there are fines associated with the back flow preventer requirement, Mr. Roderick said that we have received notice of violations, but no official notice of fines yet.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of the resolution. This motion was seconded by Councilman Miller and failed on a 2-5 vote, with Councilman Russell and Councilman Miller voting "yes."

F. DISCUSSION OF VARIOUS STRATEGIES PROPOSED IN THE DOWNTOWN MASTER PLAN RELATED TO PROJECT REVIEW PROCESSES

Mayor Bellamy thanked the Downtown Commission members for the enormous amount of time they have devoted to the Downtown Master Plan process. Due to the lateness of the evening and in order to give the item the proper attention by the proper body, she felt this should be considered by the new Council.

Councilman Mumpower moved to postpone action on this item. This motion was seconded by Councilwoman Cape and carried unanimously.

Planning & Development Director Judy Daniel said that when this is heard by Council, they will be pleased to see that there is virtually consensus on the first group of issues and that guidance is needed only on one issue.

G. RESOLUTION NO. 09-255 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE DOWNTOWN DEVELOPMENT AGREEMENT DECISION MAKING PERIOD FOR THE PROPOSED PARKING GARAGE AT 51 BILTMORE AVENUE TO INCLUDE AN EXTENSION OF THE OPTION TO PURCHASE THE PROPERTY LOCATED AT 51 BILTMORE AVENUE FOR SIX ADDITIONAL MONTHS FROM JANUARY 1, 2010, TO JUNE 30, 2010

Director of Public Works Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to extend the Downtown Development Agreement decision making

period for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue for six additional months from January 1, 2010 to June 30, 2010.

In October 2008, City Council approved a Downtown Development Agreement with McKibbon Hotel Group, Public Interest Projects and the City of Asheville for the purpose of constructing a parking garage. The design of the parking garage is complete. The architect is in the process of applying for all applicable permits.

As designed, the project consists of the following:

- four hundred ten (410) parking spaces;
- public restrooms;
- four (4) parking spaces for electric vehicles;
- ten (10) bike lockers; and,
- public art component.

In June 2009, City Council extended the Downtown Development Agreement six months due to the inability of McKibbon Hotel Group to obtain funding due to current economic conditions.

The Downtown Development Agreement is structured to expire on December 31, 2009. The agreement allows for one additional extension. Staff is requesting that Council authorize the City Manager to execute the extension of the agreement which primarily includes the extension of the option for the purchase of the property at 51 Biltmore Avenue.

This project is in alignment with the Strategic Plan by promoting sustainable, high-density, in-fill growth that makes efficient use of resources and by making environmentally efficient capital improvements. In addition, this action complies with the Parking Action Plan adopted by City Council.

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City

determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

The cost to extend the option for the property at 51 Biltmore Avenue for an additional six months is $5,000.

City staff recommends City Council authorizing the City Manager to extend the Downtown Development Agreement for the proposed parking garage at 51 Biltmore Avenue to include an extension of the option to purchase the property located at 51 Biltmore Avenue.

Councilman Mumpower felt it was reasonable to extend this agreement; however, he believed that with the economic reality at hand and the investment of City dollars, he could not support this action.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-255. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

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H. UPDATE ON WATER SERVICE REQUEST FROM CHAPEL HILL CHURCH ROAD AREA

Water Resources Director Steve Shoaf said that purpose of this memorandum is to provide the Council requested construction cost estimate for a waterline and associated fixtures along Chapel Hill Church Road and Gilmore Drive, which is outside the City limits. This line is intended to provide water service to parcels directly connected to these two roads. This cost estimate was prepared by our Water Engineering Division.

Using a map, he explained that the installation would require approximately 2200 linear feet of 8" ductile iron pipe, approximately 400 linear feet of 6" ductile iron pipe, and approximately 400 linear feet of 2" copper line. In addition this job would require about 350 feet of ¾ inch copper line for service connections from the water main to the meter. The estimate includes a provision for the necessary fittings to be used during installation. This installation would also include 6 fire hydrants spaced along the length of the 8 and 6 inch waterlines to be used for fire protection and water quality flushing.

The total construction cost estimate is $227,630 if the waterline can be installed with minimal (one lane) of paving repair along the road. If there is a need for full-width paving, this would add an estimated $64,000 to the cost of the project and bring the total up to $277,070.

This estimate includes design, materials, equipment, and labor costs for installation. As you recall, during the nearby Oaks project, Buncombe County purchased all materials, and the City contributed the design, equipment, and labor for installation. This accounted for approximately 44% of the Oaks project costs. The included labor costs for the Chapel Hill Church Rd. project is estimated between 35 and 40 percent.

This cost estimate does not include running private water service lines from each meter to the residence. The existing off-premise meters would be abandoned and property owners would bear the expense of the connection from the meter to the house. Owners of property

developed at a later date would be expected to pay all tap and meter labor and fees similar to other connections to our system.

The preferred treatment of contaminated ground water is air stripping followed by carbon adsorption, which can create an air quality issue. A possible alternative to running water lines into this area would be the installation of carbon filtration "point of entry" devices attached to the individual wells. This option would be effective for low levels of contamination and would buy time and peace of mind for some whose wells are not contaminated at this time. A locally represented business provided budget estimates of $4,000 for purchase or $2,000 per year for lease of the necessary equipment. If purchased, the maintenance and testing costs are borne by the owner, and if leased, maintenance costs are covered by the supplier while testing costs are again borne by the end user. At $4,000 per installation, the initial cost for 21 installations would be approximately $84,000 and may represent a viable alternative to an expansion of the distribution system. Similar to the installation of waterlines, this option would need further investigation to explore practicality and efficacy.

This memorandum is provided for informational purposes only.

In response to Councilman Russell, Urban Planner Blake Esselstyn said that this property is entirely in Buncombe County. Using a map, the distance between the road and the City limits would be more than 1 mile. As a crow flies, the distance is approximately 1,000 feet from the City limits; however, one large parcel is not included in the discussions.

In response to Councilwoman Cape, Mr. Shoaf said that the closest waterline is on Pinner's Cove Road and the property owners have asked for an extension of a waterline up Chapel Hill Church Road up to Gilmore Drive. The entire length of line would be approximately 2,600 feet of waterline.

In response to Mayor Bellamy, Mr. Shoaf said that the line on Pinner's Cove Road was installed by developers to serve communities further out.

Mayor Bellamy felt it would be appropriate to send the City's analysis information to Buncombe County to assist them in their discussions. She noted that during the Sullivan Act discussions, it was clear that Buncombe County owns the lines they have installed outside the City limits. She felt this would be an opportunity for the City to ask them to address this concern that is outside the City's jurisdiction.

In response to Vice-Mayor Davis, City Manager Jackson said that his interpretation of an e-mail circulated is that the County is not extending services at this time as they did to the Oaks Subdivision. They would seek remedy from the Environmental Protection Agency and the N.C. Dept. of the Environment and Natural Resources based upon verified well contamination.

It was the consensus of Council to have the City will transmit all their information via letter to Buncombe County and copy the property owners who have reached out to City Council as well as Senator Burr. In addition, also communicate the City's willingness to partner with other governmental entities in extending water lines to the Chapel Hill Church Road area.

VI. NEW BUSINESS:

A. EMPLOYEE FITNESS POLICY

Councilman Mumpower Proposal for Annual Fitness Screen for Public Safety Employees

Councilman Mumpower said that we appear to have a number of public safety officers who may not be in a position to handle the physical demands of their respective responsibilities.

The lack of physical fitness places officers at risk and limits their effectiveness in addressing the physical demands associated with their good efforts.

His proposal is that the City of Asheville establishes a policy of annual fitness tests for all public safety employees – including our police officers and firefighters. Based on staff research requested Asheville is the only major city in North Carolina that does not have a fitness testing program for firefighters. One third of North Carolina cities conduct annual physical fitness tests for police officers – Charlotte and the Highway Patrol offer models for consideration.

Methods for implementation of a three step process is as follows:

- Year One – Voluntary participation in a nonbinding physical fitness test.
- Year Two – Mandatory participation in a nonbinding physical fitness test.
- Year Three – Mandatory participation in a binding physical fitness test w/ follow-up mediation as needed.
- Fully fund gym membership.
- Focus is on educating, salvaging, and uplifting our public safety personnel as primary mission.

He provided Council with several e-mail links and noted that the City of Charlotte has had an annual fitness test policy since the early eighties while the Highway Patrol has a semi-annual test. Support is provided through education and resources versus compensatory exercise time.

He said that he initially raised this issue about 3 years ago and have collaborated with the City Manager and staff since that time on exploring potentials. Over the past year staff has completed a thorough study of North Carolina realities on mandatory annual public safety fitness tests. Prior to completing his tenure, he wanted to assure that this issue received formal consideration.

Staff Memorandum

Ms. Lisa Roth, Human Resources Director, provided Council with the following information on physical examinations and fitness testing:

Part 1: Police & Fire

A study of annual Medical Exams and Fitness Testing compared the City of Asheville's Police and Fire Departments to similar North Carolina and South Carolina Municipalities. A summary of the finding are shown below.

Municipalities Surveyed: Gastonia, NC; Greensboro, NC; Greenville, NC; Greenville, SC; Hickory, NC; and High Point, NC:

- Annual Physical Exams
  - COA Fire Department – new and current Fire Department employees are required to submit to an annual physical separate from the medical insurance. The Physical includes a medical exam, blood work, EKG, Pulmonary Function and Stress test. The cost is $350 per employee
  - All other municipalities surveyed require their Fire Department employees to submit to an annual Physical with similar tests included. The only variable is the treadmill stress test requirements. Thirty three (33%) require treadmill stress tests for all ages, 33% is optional based on physician recommendation, and 33% require stress tests for employees age 50 and over.
  - COA Police Department – new Police Department employees are required to submit to a physical, but do require an annual physical for current employees.

- Only 1 other municipality surveyed does not offer an annual Physical to their current police department employees, but only recently (2010) changed this requirement due to budget cuts (were offered in 2009). All other police departments require (50%) or offer (25%) an annual Medical Exam to current police department employees.
- If an employee does not pass the Stress Test as a part of their annual Physical, duty status can be affected. All follow up care is coordinated through Health Services and specialist providers.

- Fitness Exams - The City of Asheville does not require or offer current Fire or Police Department employees to complete a fitness test other than the stress test for Fire Department employees. Both Fire and Police require a fitness exam for new employees.
  - All but one municipality conduct an annual or bi-annual fitness test of their Fire Department Employees. Sixty seven (67%) percent require at least an annual fitness test consisting of tasks similar to the Fire Fighter Physical Agility Test required for new hires.
  - Fifty (50%) percent of the municipalities surveyed had Fitness Committees made up of Fire Department employees in all stations.
  - Sixty seven (67%) percent of municipalities surveyed require at least 1 hour of physical activity per shift for all Fire Department Employees.
  - Thirty three (33%) percent of Police Departments conduct an annual or bi-annual fitness tests that require some form of strength, agility, POPAT or Aerobic fitness level.
  - Municipalities provide the results of fitness testing (fire & police) to employees and fitness committee (if applicable). There is no direct penalty or reward for passing test, but team effort and peer pressure designed to encourage all failures to pass test.

Part 2: CDL & Laborer Positions

- New CDL employees and promotions are required to have a limited physical exam that is handled by an Occupational Health Nurse. CDL guidelines indicate this testing should be performed on a regular basis, but not less than every 2 years. This has previously not been tracked or required by Health Services.
- Physical Labor Positions – Neither new nor current physical labor positions require any type of physical exams.

Part 3: Recommendations

All City employees have access to an Annual Physical through the City's medical insurance plan. Of the estimated 1,721 Adult employees and dependents covered by the medical plan, 565 received Preventive Services/Physical Exams through the medical plan. The average cost under the medical plan was $360, but individual prices range from $150-$1,500 depending on the services included in the exam. These figures may be artificially low since some providers code physicals with a diagnosis code (hyperlipidemia, high blood pressure, etc.). Fire Department physicals are not included in these figures because they are paid under the Fire Department budget.

The following changes would be recommended to the City's New Hire and Annual Physicals:

- Fire Department – No changes to current process of requiring annual physicals paid by AFD budget.
- Police Department – Follow the current Fire Department policy of requiring physicals based on the age of the employee. Most common recommendation is age <30 every 3

years, 30-39 every 2 years, 40+ annual exams. Physicals should be paid out of the APD budget and include hearing, labs, and stress tests. Estimated cost of $350-$500 per employee per exam.

- CDL Employees – Continue to provide CDL physicals by Health Services for all new hires. Begin immediately to follow CDL guidelines to track and provide a CDL physical exam by Health Services as required (12-24 months). Estimated impact to budget is additional staffing time and lab fees. Expected annual cost of less than $10,000.
- Laborers – Require Health Services "CDL-type" Physicals for all new and current employees. These exams should include basic hearing tests, vision, urinalysis and vitals. Health Services is not currently staffed to handle the volume required, but estimate additional nursing staff would be necessary 1-2 days per week. Workers Comp claims may be positively impacted if injuries are discovered and/or documented early.

In response to Councilman Mumpower, Ms. Roth said that the City didn't survey Charlotte, N.C., or the Highway Patrol as they studied cities Asheville's size.

Councilwoman Cape felt an annual fitness test is a form of prevention. She felt more benchmarking information might be needed on how this helps our insurance ratings, what is the offset cost, how many people are hurt on the job that may have benefitted from this program, etc.

When Mayor Bellamy asked for public comments, no one spoke.

Mayor Bellamy felt this program, and others similar to the Asheville Project, the Weight Watchers Program, nutritional counseling, etc., might help to bridge the health insurance gap.

Councilman Mumpower moved to instruct City staff to explore the development of an annual fitness testing procedure for our public safety employees to include voluntary, mandatory and other options and possibilities that could be deliberated by the future City Council. This motion was seconded by Councilwoman Cape and carried unanimously.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Mumpower stated that he would be unable to attend the December 8, 2009, organizational meeting of the new Council. It has been his pleasure to serve on City Council and thanked everyone who tried to help him fulfill his role the best way he knew how. He wished everyone the best going forward.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:40 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - December 8, 2009 – 5:00 p.m.

ORGANIZATIONAL SESSION:

Mayor-Elect Terry M. Bellamy welcomed everyone to the organizational session.

The Marine Corp JROTC led City Council in the Pledge of Allegiance.

Mayor-Elect Bellamy then introduced the Reverend James V. King from Family of Faith Fellowship who gave the invocation.

The Honorable Gary S. Cash, Chief Judge of the Buncombe County District Court, administered the Oath of Office to the following, who after sworn, thanked family and friends for their support:

Mayor Terry M. Bellamy
Council Member Cecil Bothwell
Council Member Esther E. Manheimer
Council Member Gordon D. Smith

RESOLUTION NO. 09-243 - RESOLUTION OF APPRECIATION FOR ROBIN L. CAPE

Mayor Bellamy read the resolution.

Resolution No. 09-243 was adopted by acclamation.

Mayor Bellamy thanked Ms. Cape for her service to Asheville and presented her with the resolution, a plaque, her name plate and a City pen.

RESOLUTION BOOK NO. 32 - PAGE 276

RESOLUTION NO. 09-244 - RESOLUTION OF APPRECIATION FOR R. CARL MUMPOWER

Mayor Bellamy read the resolution.

Resolution No. 09-244 was adopted by acclamation.

Even though Mr. Mumpower was unable to attend the meeting, Mayor Bellamy thanked him for his service and said we would forward him his resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 32 - PAGE 277

RECOGNITION OF VICE-MAYOR JAN DAVIS

Mayor Bellamy expressed her and the Asheville City Council's gratitude to Councilman Davis for his service as Vice-Mayor to the citizens of the City of Asheville.

Councilman Davis thanked City Council and his wife, Ann, for their support and explained what a rewarding experience the past two years have been for him. He urged the citizens of Asheville to continue to step up and serve on our boards and commissions as he felt they are the life's blood of government in the City of Asheville.

Mayor Bellamy presented Councilman Davis with a gift of pottery.

ELECTION OF VICE-MAYOR

Councilman Davis nominated Councilman Newman as Vice-Mayor of the City of Asheville. Councilman Russell seconded the nomination.

After hearing no more nominations, Mayor Bellamy closed the floor for nominations.

Mayor Bellamy called for a vote, resulting in Councilman Newman being appointed as Vice-Mayor unanimously.

Vice-Mayor Newman said that he was honored to be Vice-Mayor and looked forward to working with everyone. He thanked the City Council, his wife, Beth, and others, for their support.

COMMENTS FROM MAYOR

Mayor Bellamy recognized Buncombe County Commission Chairman David Gantt and Buncombe County Commissioner Holly Jones for attending this special occasion.

Mayor Bellamy said that four years ago she made a commitment to make sure that City Council was transparent; that we would continue to focus on the people's business; we would work on core services; work on local, state and federal level relationships; and make sure Asheville was safe city. She is really proud of what we have accomplished over the last four years and felt we have moved in the right direction as a community. As we look over the next four years, we need to realize that we are in a different economic time and it is imperative as a community that we begin to truly work together and bridge our differences. We need to focus on jobs in our community and provide opportunities for individuals who do not finish school to obtain their GED or higher learning. We also need to begin to look at issues and how we address those issues in a different way. She challenged us as a community to not only embrace our new Council Members but to begin anew. Lastly, she thanked her mom and others, but specifically thanked her husband Lamont who has shared her with the community for 10 years and if he had not been for him, she would not have been able to represent our community in the manner in which she has over the past four years as Mayor.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 5:37 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – December 15, 2009 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Brownie W. Newman, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (representing Asheville at a White House event)

PLEDGE OF ALLEGIANCE

Vice-Mayor Newman led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE HIGH SCHOOL QUARTERBACK BRANDON WHITESIDE

RECOGNITION OF ASHEVILLE HIGH SCHOOL DEBATE TEAM

Vice-Mayor Newman introduced Ms. Carol Ray, Principal of Asheville High School. Ms. Ray recognized the efforts of Mr. Brandon Whiteside and the Debate Team.

Councilwoman Manheimer, alumni of Asheville High School, was pleased to read a proclamation for Mr. Brandon Whiteside, Asheville High School Quarterback. Mr. Whiteside, a senior at Asheville High is a student who is uniquely capable of identifying needs in his community and working to meet those needs. A perfect example of this is his "Pass for the Cure" campaign to benefit American Cancer Association's Relay For Life. Brandon has intimately experienced the struggles and tragedies that come along with cancer; his father died of cancer and both his little sister and mother are currently in remission with different types of cancer. Instead of festering with these hardships, Brandon has decided to be a champion for his family. Brandon pledged to donate his personal money to cancer research for every successful pass he threw this season. He finished the season with a total of 1854 yards passing. Brandon raised his money by doing chores, working a part-time job, and doing everything else he could to raise money. This season, he set a school record for yards passed in a season. As a result of his pledge, outside donations have rolled in to help support Brandon's campaign. In addition to Brandon's outstanding work with Relay for Life, Brandon is also an honor roll student and involved with many other extracurricular clubs and activities at Asheville High School.

Mr. Whiteside thanked his family and friends for their support.

Vice-Mayor Newman also recognized the Asheville High School Debate Team. Ms. Ray explained that the Asheville High Debate team participates in 15 to 20 tournaments a year both locally and nationally. It has grown to over 40 members. The team is nationally ranked and is the defending state champion in debate. Accomplishments for this year include winning the University of Florida Lincoln Douglas Championship, as well as bringing home that tournament's third place Lincoln Douglas award, two Congressional Debate semifinalist awards and two Public Forum octafinalist awards. At Wake Forest the team had the runner up in Congressional Debate, as well as the fourth and seventh place winners in Congressional Debate. The team also had two octafinalists in Public Forum at Wake Forest. The team's Congress and Lincoln

Douglas squads are currently ranked number one in the state and the Public Forum squad is in the top five in the state. The Congress squad is also the number seven team in the country in the Harvard rankings and will compete in the prestigious Harvard Invitational in February, which is the country's top invitational tournament. The head coach is Keith Pittman and the three assistant coaches are Larry Burke, Katie Williams and Jenni Davidson.

B. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Women's Tapping Team consisting of Michelle Massey, Brenna Cook, Myrriah Ringgenberg and Coach Phillip Buckner; and Men's Tapping Team consisting of Jason Hyatt, David Hyatt, Bryan Todd, and Noel Campbell. Both teams have taken first place in the North Carolina State Pipe Tapping Competition; (2) Excellence in Financial Reporting Award for the 29th time the City has received this prestigious award and Distinguished Budget Award for the 19th time the City has received this prestigious award - financial reporting staff of Pat Leckey, Tia Keith, Charity Constance, Dean Luebbe, Sheri Banks and Sharlene Franklin and budget staff of Tony McDowell, Sandy Ryland and Alina Law; and (3) Fire Captain Jeremy Edmonds who was selected as State Firefighter of the Year.

On behalf of City Council, Vice-Mayor Newman thanked the employees on what they do on behalf of the City of Asheville and City Council. He was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 24, 2009, AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 8, 2009

B. RESOLUTION NO. 09-256 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL FOR PERMITTING PRECIOUS METAL BUYERS THROUGH THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution amending the Fees and Charges Manual for permitting Precious Metal Buyers through the Asheville Police Department.

Based on North Carolina General Statute 66-165, Local Law Enforcement Agencies are to permit precious metal buyers within their jurisdiction. The permitting process requires an initial background check for the business owner and all employees. An annual renewal of the permit is also required. The statute allows fees to be charged for the background checks and administrative costs associated with the issuance of the permits. Based on a cursory overview of the businesses within Asheville that would likely purchase precious metals, staff has identified nearly 100 businesses that would require annual permits. The various businesses that set up for a few days to conduct precious metal purchasing would require special occasion permits.

The Statute sets the following fees:

- The annual fee for a permit within each jurisdiction is one hundred eighty dollars ($180.00) to provide for the administrative costs of the local law enforcement agency, including the purchase of required forms and the cost of conducting the criminal history record check of the applicant.

- Every employee engaged in the precious metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local law enforcement agency. The agency shall issue to the employee a certificate of compliance with this section upon the applicant's payment of the sum of ten dollars

($10.00) to the agency. The certificate shall be renewed annually for a three dollar ($3.00) fee.

- The filing fee for a special occasion permit application is one hundred eighty dollars ($180.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permit is denied or is later suspended or revoked. A special occasion permit is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

- A special occasion permit is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form approved by the Department of Crime Control and Public Safety and shall be accompanied by a nonrefundable renewal fee of one hundred eighty dollars ($180.00).

- Effective January 1, 2010 local agencies can begin enforcing this statute.

This action complies with the City Council Strategic Plan in the area of Fiscal Responsibility in operating the City of Asheville at the highest fiscal responsibility. By charging appropriate fees to recoup administrative costs of permitting, we provide efficient services for our community.

Pros:

- This action will enable better regulation of Precious Metal Buyers and their employees
- Management of the files and documentation requirements of businesses will provide another source to review for potential stolen items

Con:

- Additional time spent by Asheville Police Department staff conducting background checks and maintaining permitting files.

Revenue generated from permitting process would likely total between $15,000 and $20,000.

City staff recommends that City Council approve a resolution amending the Fees & Charges Manual for Permitting of Precious Metal Purchasers.

Chief Hogan responded to Councilman Davis when he asked if we received input from dealers in our area and if other cities in North Carolina are permitting these buyers.

RESOLUTION BOOK NO. 32 – PAGE 290

C. ORDINANCE NO. 3813 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS INVOLVING APPLICANTS FOR PRECIOUS METAL PERMITS WITH THE CITY AND TO CONDUCT BACKGROUND CHECKS ON EMPLOYEES WHO WORK FOR DEALERS REQUIRED TO GET SAID PERMIT

Summary: The consideration of an ordinance authorizing Asheville Police Department to access the State Bureau of Investigation's Division of Criminal Information Network (DCI)

database for criminal history checks involving applicants for precious metal permits with the City and to conduct background checks on employees who work for dealers required to get said permit.

Pursuant to N.C.G.S. § 66-165, the Asheville Police Department is required to conduct criminal background checks for persons applying for a precious metal permit. In addition, the State requires Asheville Police Department (APD) to conduct criminal background checks for all employees who work for dealers required to obtain a precious metal permit. Currently, the City is doing limited criminal history checks through City County Bureau of Investigation. However, the City/County database only deals with crimes adjudicated by the State of North Carolina.

The Asheville Police Department is has access to the State Bureau of Investigation's DCI database which contains criminal background information for the entire country. The State of North Carolina has strict requirements for using this criminal database for non-criminal employment and licensing. In order to access the state database, City Council must pass an ordinance requiring the criminal history checks and the consequences for failing the criminal background check. City staff has passed similar ordinances allowing APD to access the DCI system for adult entertainment licenses and ABC permits.

Pro:

- The City will be able to access the DCI network to conduct criminal history checks on applicants precious metal permits and employee buying and selling precious metals in compliance with N.C.G.S. § 66-165.

Con:

- None

City staff recommends City Council adopts the ordinance authorizing the APD to conduct criminal history checks for precious metal permits and registration for employees buying and selling precious metals within the City's territorial limits.

ORDINANCE BOOK NO. 26 – PAGE 1

D. ORDINANCE NO. 3814 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION ON AGING AND THE LAND-OF-SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR IMPROVEMENTS AND EQUIPMENT FOR THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of budget amendments in the amount of $12,707 for Senior Opportunity Center and $12,706 for Harvest House for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) re-paint the interior of the center, 2) replace flooring in men's restroom, front entry and office areas, 3) replace furniture in the activity area, and 4) replace stove and microwave in the kitchen. The allocation requires a 25% local match which will be provided via in-kind services in staff time to manage the project.

Funds will be used at Harvest House to 1) re-paint the interior and exterior of the building, 2) clean and re-seal the deck, 3) replace wood timbers in parking lot, 4) repair heating and air system, and 5) purchase a portable room divider for the multi-purpose activity room. The allocation requires a 25% local match which will be provided via in-kind services in staff time to manage the project.

This action complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it 1) will increase the level of service for indoor facilities to bring older facilities up to date before building new facilities; and 2) increases department funding with alternative funding via grants.

Pros:

- Room divider will enhance the existing activity area by making it multi-purpose thereby expanding program space
- Improvements will enhance the customer experience and enhanced safety
- Replace of old and worn equipment

Cons:

- None

The allocation will increase the City's operating budget by $25,413 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services in staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) $12,707 for Senior Opportunity Center, and 2) $12,706 for Harvest House for improvements and equipment.

ORDINANCE BOOK NO. 26 – PAGE 3

E. RESOLUTION NO. 09-257 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF HENDERSONVILLE FOR EMERGENCY WATER PURCHASE

Director of Water Resources Steve Shoaf said that this is the consideration of a resolution authorizing the Mayor to sign an Emergency Water Purchase Agreement between the City of Asheville and the City of Hendersonville.

Asheville and Hendersonville signed a wholesale agreement in January 2007 for the sale of bulk water. Under this agreement, there are provisions for the cost of the water and the terms of the sale of water. For several years, Hendersonville has purchased approximately one million gallons of water per day from Asheville. Hendersonville has notified Asheville that effective January 1st, 2010, they wish to discontinue purchasing water from Asheville on a regular basis. Instead, Hendersonville would like an agreement to purchase water under temporary, emergency conditions.

The two water systems are interconnected in two locations, so there is no need for additional connections at this time. Key features of the agreement include: (1) definitions of what constitutes emergency water purchases and (2) the cost of bulk water from either party will adjust as the price of bulk water purchases is adjusted for other wholesale customers as per City Council action. This agreement does not imply a transfer of ownership of assets or a purchase of treatment capacity for either party.

Hendersonville's Director of Utilities and Asheville's Director of Water Resources have discussed the potential collaboration between the two cities to provide water under emergency conditions and agreed upon terms for the purchase of wholesale water under temporary, emergency conditions. This agreement provides for the sale or purchase of water by either party.

This agreement reflects the City Council's strategic initiative to operate the water system in a fiscally responsible manner. This agreement promotes efficient operation and improves regional coordination of the management of our water resources with other agencies.

Pros:
- This agreement will establish the terms and conditions that will contribute to efficient regional operation of the water system.
- This agreement will allow the contract price for water to change as the price for water is adjusted for other wholesale customers.
- This agreement will allow Asheville to obtain water from Hendersonville should an emergency situation(s) arise.

Con:
- Given the loss of revenue caused by the termination of the present agreement for water sales, this new agreement will only generate revenue when there is an actual sale of water to Hendersonville.

The City will lose approximately $35,000 per month ($420,000 per year) in water revenue due to the termination of the existing agreement with Hendersonville. The current sales to Hendersonville represent about 5% of the total water produced making them our largest customer. The new agreement does not generate revenue unless there is a condition that would require Hendersonville to purchase water from Asheville. A portion of the lost revenue will be offset by anticipated savings of operational costs by a reduction of the quantity of chemicals used in treatment and reduced electrical costs for pumping and treatment.

City staff recommends that City Council authorize the Mayor to sign the Emergency Water Purchase Agreement between the City of Asheville and the City of Hendersonville.

In response to Councilman Bothwell, Water Resources Director Steve Shoaf explained the limitation about how long we would provide water and who determines if there is an emergency situation.

RESOLUTION BOOK NO. 32 – PAGE 291

F. RESOLUTION NO. 09-258 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A UTILITY EASEMENT TO PROGRESS ENERGY FOR AN EXTENSION OF POWER LINES TO SERVE THE ASHEVILLE HOUSING AUTHORITY ON WALTON STREET

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electric power facilities to serve Asheville Housing Authority facility at Walton Street.

Progress Energy (herein "PEC") has been working with the Housing Authority on changes to the current service at the Walton Street Apartments. The proposal involves replacing existing and outdated overhead lines to three buildings, and adding a utility pole. Currently, PEC's responsibility for maintaining the lines ends at the existing pole; the Housing Authority maintains the service lines between the pole and the buildings. Under the new configuration, PEC would have maintenance responsibility for these service lines as well. The Housing Authority is bearing part of the cost for this work.

An easement is needed because the new pole and part of the new lines will be on the City's Walton Street Park property. A pole and lines are currently there, but no easement has been found.

This action complies with the City's Strategic Operating Plan in that it supports affordable housing and the Housing Authority. The project has been reviewed by the City's Parks Department, and the Housing Authority is of course aware of it.

Pros:
- Will improve service to Housing Authority Facility

- Will reduce Housing Authority maintenance responsibility

Con:

- Lines not underground (cost prohibitive on Housing Authority budget)

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 32 – PAGE 292

G. RESOLUTION NO. 09-259 - RESOLUTION ADOPTING THE 2010 CITY COUNCIL MEETING SCHEDULE, INCLUDING THE CITY COUNCIL ANNUAL RETREAT ON JANUARY 8-9, 2010, AT WARREN WILSON COLLEGE IN CANON LOUNGE

Summary: Formal meetings would continue to be held on the 2nd and 4th Tuesday formal meetings at 5:00 p.m. in the Council Chamber on the 2nd Floor of the City Hall Building.

The City Council annual retreat would be held on January 8, 2010, beginning at 11:00 a.m. – 5:00 p.m. and on Saturday, January 9, 2010, beginning at 9:00 a.m. – 1:00 p.m. at Warren Wilson College in Canon Lounge.

RESOLUTION BOOK NO. 32 – PAGE 293

Vice-Mayor Newman asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. H1N1 PREPAREDNESS FOR COMMUNITY REPORT

Ms. Gibby Harris, Buncombe County Health Director, briefed Council on the latest numbers of the H1N1 flu pandemic. She felt that we have started to get a good penetration of the flu vaccine in our community.

B. HOUSING AUTHORITY REPORT ON RECOVERY ACT/ENERGY EFFICIENCY PROJECTS

Mr. David Nash, Chief Operations Officer of the Housing Authority of the City of Asheville, briefed Council on their Recovery Act and Energy Efficiency Investments for 2009-10.

He explained the one time funding as follows: (1) Awarded in 2009: $5.9 Million; and (2) Anticipated Energy Performance Contract Extension in 2010: $3.6 Million for a total of $9.5 Million.

Work in 2009 includes: (1) Klondyke Modernization Phase 4 (a) First 20 units are 35% complete; (b) outside contract for high efficiency gas heating system is underway; (b) 11 new employees on Modernization Crew; and unrelated (4) Extended benefits to all Modernization Crew and other full-time employees and raised HACA minimum living wage to $10.50 per hour); (2) Request for Proposals out for Pisgah View Community Services Center Phase 3; (3) Designs

complete for new roofs at Altamont and Bartlett Arms – cost estimation and pricing underway; and (4) Updated energy audit from Siemens (energy performance contractor since 2003).

Other work in 2009 includes (1) installed 10,000 CFL bulbs (last 3 years); (2) applied for and received Recovery Act competitive grants; and (3) adopting (a) integrated pest management protocols; (b) Low – VOC paints, primers, adhesives and sealants; and (c) 25% salvaged/Forest Stewardship Council certified wood.

Anticipated work in 2010 includes: (1) Complete 80-90% of construction projects discussed above; (2) Work with FLS Energy to install solar hot water systems on new roofs at Bartlett and Altamont, possibly other developments; (3) Physical needs assessment and green assessment of facilities; (4) Adopt other green operations and maintenance practices; (5) Extend Energy Performance Contract with Siemens, subject to HUD and Board approval; (6) EPC work planned: (a) Water conservation: 313 new dual flush toilets; 970 lower flow toilet retrofits; 3,600+ lower flow aerators/showerheads; (b) Weatherization: 970,000 square feet of living space in six developments; (c) Insulation: 290,000 linear feet in walls; 350,000 square feet in attics – four developments; (d) Window replacements: 900; and (e) Door replacements: 300; and (7) After approval of Energy Performance Contract, Recovery Act replacement window projects; (a) Pisgah View: 3,000; (b) Hillcrest: 2,200; and (c) Deaverview: 1,250 for a total of 6,450 windows. (scope may increase depending on final costs after the Request for Proposals)

Results expected (EPC alone) since 2003 include (1) Guaranteed annual energy savings: (a) Electricity - 680,000 kWh, (b) Natural Gas - 180,000 therms; (c) Water- 41 million gallons; and (d) Utility Bills - $757,000; and (2) Annual Carbon Dioxide Reduction: (a) Electricity - 490 metric tons; and (b) Natural Gas - 900 metric tons. www.epa.gov/RDEE/energy-resources/ calculator. html.

On behalf of City Council, Vice-Mayor Newman thanked Mr. Nash for this informative report.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-260 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE AMERICAN RECOVERY AND REINVESTMENT ACT LOAN ASSISTANCE FROM THE CLEAN WATER STATE REVOLVING FUND FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-261 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FUND TO REDUCE THE AMOUNT FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-262 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BLUE RIDGE GRADING FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-263 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT SUBGRANTEE FUNDS VIA THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FROM THE N.C. DIESEL EMISSIONS – ECONOMIC RECOVERY GRANT PROGRAM TO SUPPORT THE PURCHASE OF 5% BIODIESEL (B5) FUEL FOR THE MUNICIPAL FLEET FOR ONE YEAR

ORDINANCE NO. 3815 - BUDGET AMENDMENT ACCEPTING SUBGRANTEE FUNDS VIA THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FROM THE N.C. DIESEL EMISSIONS – ECONOMIC

RECOVERY GRANT PROGRAM TO SUPPORT THE PURCHASE OF 5% BIODIESEL (B5) FUEL FOR THE MUNICIPAL FLEET FOR ONE YEAR

RESOLUTION NO. 09-264 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH LANDMARK LANDSCAPES FOR THE DOWNTOWN AND GATEWAY STREETSCAPES PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

As part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council consideration of the following:

I. Dingle Creek Stormwater Improvements

(1) A resolution authorizing the City Manager to accept a loan offer from the Clean Water State Revolving Fund for the Dingle Creek Stormwater Project.
(2) A resolution and amendment to the agreement with the Clean Water Management Trust Fund (CWMTF) to reflect a reduce award amount.
(3) A resolution awarding the construction contract for Dingle Creek Stormwater Improvements to Blue Ridge Grading in the amount of $166,495.

II. NC Diesel Emissions - Economic Recovery (NC DEER)

(1) A resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Environment and Natural Resources to accept sub-grantee funds from the NC Diesel Emissions - Economic Recovery (NC DEER) to support the purchase of 5% biodiesel (B5) fuel for the municipal fleet for one year.
(2) Budget amendment, in the amount of $30,000, accepting sub-grantee funds from the NC DEER to support the purchase of 5% biodiesel (B5) fuel for the municipal fleet for one year.

III. Downtown and Gateway Streetscapes Project

(1) Approval of a resolution authorizing the City Manager to execute a contract with Landmark Landscapes in the amount of $82,362.86 for the Downtown and Gateway Streetscapes project, TIP # U-5174.

I. Dingle Creek Stormwater Improvements

Staff is seeking City Council consideration of three actions related to the Dingle Creek Stormwater Improvements Project. This project was previously considered and approved by the Asheville City Council. The project's goal is to improve the quality of water released into Dingle Creek by installing a stormwater wet land and providing additional capacity for water storage during a storm event. This project will also provide a much needed stream bank restoration along this reach of Dingle Creek.

State Revolving Fund Acceptance and Assurance of Repayment

Earlier this year, the City Council authorized staff to apply for ARRA funds from the Clean Water State Revolving Loan for the Dingle Creek Stormwater Improvement Project. Asheville was awarded $454,500 for this project, 50% of which was in the form of a grant with the remaining 50% in the form of a loan that must be paid over a 20 year period. A technical requirement of receiving these funds requires the governing body to accept the loan offer and assure repayment the 50% loan portion over a 20 year period through formal action. As a result, staff is seeking City Council consideration of a resolution authorizing the City Manager to accept the loan offer

and all applicable assurances.

Amendment to the Clean Water Management Trust Fund (CWMTF) Agreement

When the Asheville applied for ARRA funding for the Dingle Creek project, staff intended to use previously awarded funding from the Clean Water Management Trust Fund for Dingle Creek Stormwater Improvements to help cover a portion of the 50% loan amount. The CWMTF award was originally made in September 2008 but was subsequently held in reserve by the State as a result of its budget shortfall. Since then, those funds have been released, but the original award amount has been reduced to from $335,000 to $167,500 to align with the amount awarded to Asheville through ARRA. Since the original CWMTF award has been reduced, staff is seeking Council consideration of a resolution authorizing the city manager to amend the city's agreement with the Clean Water Management Trust Fund (CWMTF) to reflect the revised award of $167,500. The city would apply the $167,500 grant award toward the 50% loan repayment, leaving a balance of $59,750 as the city's repayment responsibility over 20 years.

Award of Dingle Creek Stormwater Improvements Construction Contract

Staff is seeking City Council consideration of a resolution authorizing the City Manager to execute a construction contract to complete the Dingle Creek Stormwater Improvements project. A formal request for bids for the Dingle Creek Stormwater Improvements project was issued on October 26, 2009, and bids were opened on November 24, 2009. The City of Asheville determined Blue Ridge Grading and its bid of $166,495 as the low responsive and responsible bid. Please note that Wright Contracting withdrew their bid in keeping with GS 143-129.1.

Blue Ridge Grading will perform the construction tasks outlined in the contract set forth by the City of Asheville pertaining to the Dingle Creek Watershed. The contractor will adhere to any guidelines in accordance to the ARRA. Said contractor will also comply with any local, state, or federal requirements related to construction activity (i.e. safety, erosion control, etc.).

Bids received for this project were:

Bidder	Address	Bid Amount
Wright Contracting	Lawndale, NC	$144,500.00*
Blue Ridge Grading	**Burnsville, NC**	**$166,495.00**
Appalachian Environmental	Sylva, NC	$203,914.00
Bryant's Land & Development	Burnsville, NC	$221,335.80
Spur Construction	Waynesville, NC	$251,812.00
Backwater Environmental	Eden, NC	$268,600.00
Taylor & Murphy	Asheville, NC	$290,625.00
Tennoca Construction Co.	Candler, NC	$244,980.00

These actions comply with goals in the City Council's Strategic Plan in the areas of Affordability, Sustainability, and Green. They will allow the city to implement an infrastructure project that supports water quality initiatives while taking advantage of State and Federal resources.

Pros:

- Approving these items will allow for completion of the Dingle Creek Stormwater Improvements Project, which will protect and enhance water quality of the French Broad River Basin by reducing runoff pollutants released into Dingle Creek.
- Approval of these items will provide significant financial support for the project.

Con:

- Coordinating these funding sources will require staff time.

The City will be responsible for repaying the ARRA loan amount not covered by the

CWMTF, which could be up to $59,750 over a 20 year period. This remaining loan amount will be repaid through the stormwater utility fund.

$454,500	Estimated Project Cost awarded by ARRA State Revolving Funds
-227,250	Less 50% State Revolving Fund Grant Amount
$227,250	50% Loan Repayment Amount
-167,500	Less CWMTF Grant Amount
$59,750	City of Asheville Loan Repayment Amount

Staff recommends: (1) City Council adopt the resolution authorizing the city manager to accept a loan offer under the American Recovery and Reinvestment Act of 2009 from the Clean Water State Revolving Fund; (2) City Council adopt the resolution authorizing the City Manager to amend the CWMTF grant agreement to reflect the award amount of $167,500, and; (3) City Council adopt the resolution authorizing the City Manager to execute a contract with Blue Ridge Grading for the services described in a contact for $166,495 and to allow the City Manager the ability to approve contingencies up to 10% of the original contract price.

II. NC Diesel Emissions- Economic Recovery (NC DEER)

The City of Asheville Fleet Maintenance Division conducted a biodiesel pilot project May 2007-August 2008. During this time, all 437 municipal diesel fleet vehicles used B5. This pilot project resulted in a decreased carbon footprint with without increasing fuel costs. The pilot project terminated in August 2008 during the fuel crisis at which point biodiesel was no longer cost competitive with standard diesel fuel. Through acceptance of this award, the municipal diesel fleet will resume using B5 for a period of one year.

This grant requires no match funding; however, the City budgeted $873,000 for yearly fuel costs to which the $30,000 grant will be added. With assistance from this grant, with City will purchase roughly half a million gallons of B5, reducing the municipal fleet carbon footprint by 223 tons or 3.7%.

This action complies with City Council's Strategic Operating Plan in the following ways: (1) it supports diversified job growth and small business development; (2) it provides leadership in buying local products and services; and (3) it achieves short term and long term energy goals to reduce city carbon emissions by 2% each year.

Pros:

- Reduce municipal fleet carbon footprint by 3.7%.
- Support the local alternative fuel economy through stimulus funding.

Con:

- Staff time will be used to implement the project.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter an agreement with the North Carolina Department of Environment and Natural Resources for North Carolina Diesel Emissions - Economic Recovery; and (2) adopt the budget amendment in the amount of $30,000.

III. ARRA Downtown and Gateway Streetscapes Contract

At its November 24, 2009, meeting, City Council adopted Resolution 09-251 authorizing the City Manager to execute a contract for this project with Rivertop Contracting, Inc., in the amount of $79,006. Upon further review and consultation with the N.C. Dept. of Transportation (NCDOT), it was discovered that Rivertop failed to meet the project's disadvantaged business enterprise (DBE) participation goals.

This project is federally funded and requires good faith efforts to involve registered DBEs. Rivertop Contracting represented itself on its bid as a DBE, however, the company was not registered as such with the NCDOT. As a result, its bid is considered non-responsive by NCDOT and not authorized to receive funding.

Staff is seeking City Council authorization to execute a contract for the project with the next lowest bidder, Landmark Landscapes, in the amount of $82,362.86.

Bids received on this project were:

Bidder	Address	Bid Amount
Rivertop Contracting	Black Mountain, NC	$79,006.00
Landmark Landscapes	**Arden, NC**	**$82,362.86**
Allison Landscaping	Hendersonville, NC	$141,648.00

This project supports the City Council's strategic plan goals of proactively pursing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pro:

- Fulfills the goals of this stimulus project while meeting legal requirements

Con:

- This bid from Landmark Landscapes is $3,356.86 higher than was the non-responsive bid by Rivertop Contracting

There will be no fiscal impact to the city because the project is 100% grant-funded.

City staff recommends City Council adopt the resolution identifying the recommended lowest responsive responsible bidder and authorizing the City Manager to execute the contract with Landmark Landscapes.

When Vice-Mayor Newman asked for public comments, none were received.

Councilman Smith understood that the biodiesel provided by Blue Ridge Biodiesel is recycled vegetable oil, whereas, some of the other providers are actually shipping in virgin soybean oil from other parts of the country. Since our aim is to reduce carbon footprint, he wondered if we could stipulate that we prefer the locally produced recycled vegetable oil.

City Manager Jackson said that during this interim period between now and when the contract is up in July, staff will review the specifications with a report back to Council.

Vice-Mayor Newman said that members of Council have been previously furnished with copies of the resolutions and the ordinance and they would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 09-260. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 294

Councilman Russell moved for the adoption of Resolution No. 09-261. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 295

Councilman Russell moved for the adoption of Resolution No. 09-262. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 296

Councilwoman Manheimer moved for the adoption of Resolution No. 09-263. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 298

Councilman Russell moved for the adoption of Ordinance No. 3815. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 5

Councilman Smith moved for the adoption of Resolution No. 09-264. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 299

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO PERMANENTLY CLOSE HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET

RESOLUTION NO. 09-265 - RESOLUTION PERMANENTLY CLOSING HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET

Vice-Mayor Newman opened the public hearing at 6:00 p.m.

Interim Assistant Director of Public Works David Foster said that this is the consideration of a resolution permanently closing Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street (sometimes known as Hamilton Loop, Old Victoria Road and Victoria Circle). This public hearing was advertised on November 13, 20, 27 and December 4, 2009.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owner's, Memorial Mission Hospital, Inc., Mission Health System, Inc., and CHSA Building Partnership have requested the City of Asheville to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

The Greenway Commission reviewed these proposed closures at their meeting on November 12, 2009, and supported the closures, provided the bike lanes are installed on Victoria Road per the Comprehensive Bicycle Plan. The City Traffic Engineer has worked with Mission's engineer to develop a plan to add bike lanes to Victoria Road as well as the new proposed roadway.

Regarding the City Council Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- In consideration of the location of the closures and the proposed street realignment, staff can find no potential challenges.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

Mr. True Morse, Director of Facility Planning for Mission Health System, explained that there is a bigger picture involved for this area – a project for cancer care in western North Carolina. He showed Council a picture of the Master Plan for the campus. The road project is to widen and actually straighten Victoria Road. They have asked for the name of Hospital Drive to be reserved and it will connect into McDowell. He noted that Hamilton Street is not actually closing, but closing for public use. In their design it will still be open, but privately maintained. He explained the need for the road closures, especially as it relates to their ability to provide proper public access to the health care campus. The closing will also set the stage for the ability to implement future projects. He explained how they have worked closely with the N.C. Dept. of Transportation, the City of Asheville, A-B Technical Community College and Asheville City Schools. He asked for Council's support of these closures.

Mr. Bill Roark, civil engineer for the project and road closures, said showed Council the existing conditions and proposed plans. He explained that since this is such an important corridor, their plan is to maintain access levels that are comparable to what is there today. They have met with the Greenway Commission and City staff and their project will include bicycle lanes on Hospital Drive and Victoria Road, along with sidewalks on both sides.

The following individuals spoke in support of the road closings:

Mr. Brian Moffitt, representing the Aycocks, who own properties on Victoria Road
Ms. Claudia Nix, representing the Bike Pedestrian Task Force
Mr. Charlie Glazener, representing Asheville City Schools
Mr. Dick Mauney, representing A-B Technical Community College
Mr. Mike Soule, representing Asheville on Bikes

City Attorney Oast explained the voting procedures due to Mayor Bellamy's absence.

Councilwoman Manheimer commended Mission Hospital for communicating with the various groups. She hoped that this cooperation will be precedent-setting when we implement the Bicycle Master Plan to have all interests and concerns met.

Vice-Mayor Newman closed the public hearing at 6:13 p.m.

Vice-Mayor Newman said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 09-265. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 300

B. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIDEWALK ORDINANCE

ORDINANCE NO. 3816- ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO THE SIDEWALK ORDINANCE

RESOLUTION NO. 09-266 – RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ALLOW DEVELOPERS ELIGIBLE FOR THE FEE-IN-LIEU OF CONSTRUCTION TO PAY 50% OF THE FEE IF SIDEWALK IS ONLY REQUIRED ON ONE SIDE OF THE STREET

Vice-Mayor Newman opened the public hearing at 6:16 p.m.

Public Works Director Cathy Ball said that this is the consideration of (1) an amendment to the Unified Development Ordinance (Section 7-11-8) pertaining to the sidewalk ordinance; and (2) a resolution amending the Fees and Charges Manual to allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

Staff recently conducted a review of the sidewalk ordinance given the recent economic conditions. Based on this review staff would recommend the following changes to Section 7-11-8 of the Unified Development Ordinance. These changes are intended to address some clerical/housekeeping changes in addition to three issues:

1. Consolidate the geographical areas where the fee-in-lieu of construction funds can be spent.
2. Allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.
3. Provide the ability for the fee-in-lieu of construction amount not to exceed 15% of construction costs even if the sidewalk is shown as a needed linkage on the Pedestrian Thoroughfare Plan.

She reviewed when sidewalks on both sides of the street are required.

This action complies with the City Council Strategic Operating Plan of sustainability by reforming and streamlining the development review process.

The requested change was presented to the Planning and Economic Development Committee (PED) at their July 2009 meeting. The PED Committee unanimously recommended that these recommendations move forward to the Planning and Zoning Commission and City Council. The Planning and Zoning Commission unanimously supported the recommended changes.

Pros:

- Allows more flexibility in where the City can spend fee-in-lieu of construction funds by combining the existing two areas into one.
- Allows developers to pay a fair amount in fee-in-lieu of construction when sidewalk is only required on one side of the street.
- Prevents the fee-in-lieu of construction fee from stopping the feasibility of a project and allows for fairer assessment of smaller impact projects.

Con:

- Potentially reduces amount of money that can be spent to build sidewalks in the fee-in-lieu of construction account.

These changes could potentially reduce amount of money that can be spent to build sidewalks in the fee-in-lieu of construction account. Staff is not able to accurately estimate the impact at this time.

Ms. Ball noted that the effective date of the ordinance will be immediately, not January 6, 2010, as the ordinance currently before Council reads.

Staff requests that City Council (1) amend the Unified Development Ordinance (Section 7-11-8) pertaining to sidewalks; and (2) adopt a resolution amending the Fees and Charges Manual to allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

Ms. Claudia Nix, representing the Bicycle Pedestrian Task Force, noted that the cost for sidewalks is low now but was concerned about what happens when the cost goes back up. She felt we are cutting the potential growth of the funds.

Mr. Alan Ditmore felt that sidewalks increase the price of housing and that would be a detriment to the affordability of a house.

Mr. Chris Pelly, President of the Haw Creek Community Association, noted that they have worked with the City for many years to bring sidewalks to their community. He questioned if this amendment would stay in place or go back as the economic climate improves. Ms. Ball responded by saying that we are not changing the dollar amount on how much they pay per linear foot, just the percentage that they pay.

Vice-Mayor Newman closed the public hearing at 6:28 p.m.

Throughout discussion, Ms. Ball responded to various comments/questions from Council, some being, but are not limited to: a brief explanation of how the fee-in-lieu of requirement is applied; what was the rationale behind the 50% cost and would 75% still be an incentive; what was the rationale behind the cap of 15% of the construction costs; how are the sites for sidewalks prioritized when using the fee-in-lieu of funds; does the City take over the maintenance of the sidewalks that lead to nowhere; and what percentage of the fee-in-lieu funds make up the total sidewalk fund.

City Manager Jackson explained that with this incentive we are trying to increase the pool of funds to close gaps in the system, e.g., sidewalks closer to the Central Business District and in those networks that serve the schools. That is why we are really interested in gaining more payments in-lieu-of because under this current formula it's cheaper for a developer to put a sidewalk in rather than pay a fee-in-lieu of.

Councilman Bothwell understood the idea of helping people out in economic bad times; however, if we use that as a criteria to make decisions, we put ourselves into a position on who benefits and who doesn't, noting that we don't give our residents a tax cut during these economic times.

In response to Councilman Smith, City Manager Jackson said that staff will be coming to Council for a review of the different transportation plans as staff sees a need to tie all those plans together in order to move people in a multi-modal fashion.

Councilman Russell said that there are places in Asheville where the property owner has been required to build a sidewalk 300 feet and no one uses it. He felt this amendment will be a win/win in that we will take half that money and build 150 feet of sidewalk to connect to a school, etc. He felt this is a step in the right direction.

When Councilwoman Manheimer felt it would be beneficial to have a red-lined copy of the ordinance showing changes made, Ms. Ball apologized for that omission and walked the Council through the changes in the ordinance.

Councilwoman Manheimer felt that this amendment is economically driven. Since the cost to build sidewalks is cheap now and where developers that have the option, most will make a bottom-line number crunch and build the sidewalk. She did think that the incentive will be a motivating factor. Since Asheville has a priority of working on the sidewalk problem, she is concerned that a vote in support of this may be a step backwards. She sees the good intentions, but hoped that we watch this carefully since we have a meager sum for sidewalks. To just consider the issue of a sidewalk where development is going in is not the reality of it. When you grow a city's overall population and put in more infrastructure, you are creating an overall increase demand for sidewalks and pedestrian areas. She felt we need to think about this more globally in terms of an overall impact to our city. To her, if this is a positive move and does incentivize people to pay into this fund, then we have done a good thing. She would have liked to seen data from other communities that have done this and see their results.

Vice-Mayor Newman felt that the value of getting sidewalks in key places where we need them is more important than getting them where development is happening.

Councilman Smith felt it would be beneficial for Council to receive a report in 12 months to see if the reality matches the theory.

Vice-Mayor Newman said that members of Council have previously received a copy of the ordinance and resolution and they would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3816 with a 12-month review. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 7

Councilman Russell moved for the adoption of Resolution No. 09-266. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 302

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-267 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H & M CONSTRUCTORS FOR THE CONSTRUCTION OF THE RECREATION CENTER AT LIVINGSTON STREET PARK

ORDINANCE NO. 3817 - BUDGET AMENDMENT TO INCREASE THE BUDGET TO SUPPORT THE CONSTRUCTION OF THE RECREATION CENTER AT LIVINGSTON STREET PARK

At the request of Councilwoman Manheimer and upon concurrence of City Attorney Oast, Councilman Russell moved to excuse Councilwoman Manheimer from participating in these actions due to a conflict of interest (firm Councilwoman Manheimer is a partner in represents two companies that participated in this bid process). This motion was seconded by Councilman Davis and carried unanimously. At this time, Councilwoman Manheimer left the Council Chamber.

City Attorney Oast then explained the voting procedures which must be met due to the absence of Mayor Bellamy and the excuse of Councilwoman Manheimer.

Parks, Recreation and Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to 1) enter into a contract with H & M Constructors for the construction of the Recreation Center at Livingston Street Park for an amount not to exceed $1,954,000, and 2) approve a budget amendment in the amount of $1.83 million to increase the budget to support the construction of the center.

On October 13, 2009, City Council approved a financing plan to support the initial phase of construction for the Recreation Center at Livingston Street Park. Thereafter staff followed the procedure for contracts over $500,000 and issued a request for proposals to construct the project. The lowest, responsive, responsible bid is H & M Constructors for a cost of $1,954,000.

Staff determined H & M Constructors located at 187 Deaverview Road in Asheville is the lowest, responsive, responsible bidder for the project. This determination included assessing the bidder's qualifications in terms of general and specific project performance, and LEED construction experience since these skills are critical to a successful project of this unique design requirement. The evaluation team comprised of staff and the project architect deemed H & M Constructors responsible for this work due to the following qualities:

- Project Manager and Site Superintendents have managed LEED certified projects
- The LEED Accredited Professional had managed three LEED certified projects
- Their prime sub-contractors have worked on a number of LEED certified projects and geo-thermal projects

This construction contract action complies with (1) the City Council Strategic Operating Goal in that it pertains to the Green Focus Area via reduced energy consumption, and it fulfills the Sustainable Focus Area goal to address the city's aging infrastructure; (2) the Sustainability Management Plan in the Facilities Focus Area to support the City Council Resolution 07-91 for LEED certification for new City building. The center is over 5,000 square feet and will be constructed to the "gold" LEED standard which will provide an energy savings pay back period of not greater than 10 years. Construction of the recreation center will be the City's first new construction built to the LEED "gold" standard; and (3) the Parks, Recreation, Cultural Arts and Greenway Master Plan in that 1) the recreation center as the most priority capital project to fund and implement, and 2) ensures a continued high level of service in the City's park system.

The portion of the budget amendment in grants and donations complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding.

Pros:

- Greatly enhances the City's ability to provide unique, vital and community based recreation services via this first phase of development at a site with more expansion potential
- The new location enhances the facility's linkage to the neighborhoods in the future via the Town Branch Greenway whose first phase is under construction
- The new facility will be a landmark structure that serves several the nearby neighborhoods
- The facility will meet the "gold" LEED standards and the first municipal construction to meet the standard

Cons:

- The project will require a substantial financial investment by the City beyond grants and donations
- Future construction phase(s) will be needed to meet the remaining programming needs as identified by the community

The WC Reid Center Capital Project currently has an authorized project budget of **$600,000.** Approximately $467,000 of this budget has already been spent or committed to be spent for design-related services, including the development of a site master plan and associated construction documents. A balance of approximately $133,000 remains in the project budget that can be used for construction costs.

In conjunction with the award of the construction contract, an amendment to the project budget in the amount of **$1.83 million** is needed to cover construction costs. A portion of this amendment is supported by $737,982 in grants and donations revenue raised from various sources since 2006. The remaining portion of the amendment will be supported by $1.09 million in installment purchase proceeds that will be secured through a private bank loan. Approval of the budget amendment, plus the $133,000 remaining balance of funds from the original $600,000 project budget, will provide approximately **$1.96** in construction funds. The total project budget for the Reid Center will now be $2.43 million.

The estimated financial impact of the $1.09 million bank loan is to increase the city's annual debt service expenses by approximately $110,000 per year. This is based on a financing term of 15 years and a conservative interest rate of 6%. Due to timing issues related to issuing the debt, the City is only likely to incur a half a year's debt service payment in the current year, which would reduce the Fiscal Year 2009-10 financial impact to $55,000.

Staff recommends City Council 1) authorize the City Manager to enter into a contract with H & M Constructors not to exceed $1,954,000 for the construction of the Recreation Center at Livingston Street Park, and 2) approve the budget amendment authorizing the City Manager to increase the budget for center construction by $1.83 million.

Councilman Russell said that he originally supported this project but unfortunately withdrew his support due to the grant funding withdrawal and the cost escalating. The project was originally $7-8 Million then trimmed down to $1.2 Million with $500,000 of City funds (which he supported). But now the project is back up to $2.5 Million, with $1.6 Million coming from the City. He did not think the City could afford the project at this time.

Mr. Alan Ditmore felt that given our economy he didn't think Council will have enough funds to achieve their top four goals, noting that there will also be emergency priorities that will need to be met.

The following individuals spoke in support of moving forward with the construction of the Recreation Center at Livingston Street Park for various reasons, some being, but are not limited to: the community has worked on this for several years; the current building is beyond repair; the current building is old and is not maintained (broken windows, no air conditioning, constant heat, disrepair kitchen, wasted space); this is a needed safe haven for our youth; request that people who live in that community have the opportunity to be employed to work the Reid Center; if youth in the area were employed to work on the Reid Center it would be a wonderful training opportunity; as development occurs throughout the City, no community should be left behind in redevelopment; other community centers are not as utilized as much as the Reid Center; the center has brought positive structure for the youth; and the center is a place where the youth go to escape their hardships and is a safe haven with adult supervision:

Ms. Mildred Nance Carson, Chairman of the Advisory Board at the W.C. Reid Center
Mr. Dwayne Barton
Mr. Bill Rhodes, current user of the facility
Six youth from Getting Back to the Basics Program

Vice-Mayor Newman closed the public hearing at 7:10 p.m.

Councilman Davis recognized the need for the center and noted that the new center will be a classroom complex. The gym part of the project is not in Phase I and if the new center is constructed, the City will have the expense of maintaining the new center, along with the existing center for the gym. Before Phase II is considered, he supported selling the existing building and using that money to fund subsequent phase. With that in mind, he felt he could support moving forward.

Vice-Mayor Newman felt that there has been a lot of work into this project and perhaps we could have built a building with a lower price tag, but we have over $700,000 in private funding that will be lost if we do not move forward on this project by the end of the year.

In response to Councilman Smith, Mr. Simmons said that the Reid Center serves 300-350 youth a day. He said that there are 20-25 youth in the After-School Program and the rest are youth that come there to have a safe place to go. He said that in that neighborhood there are roughly 3-4,000 children.

Councilman Smith said that the annual debt service of $110,000 for 300 kids that are off the streets and are safe, is about $350 per kid per year and that sounds like money well spent. As far as the project has come, he felt we have an obligation to keep it moving forward. He wondered how we can bring those kids in to be a part of the sustainability measure so they can have work training and feel a part of what we are trying to do as a City with moving forward with the green initiatives and the sustainability initiatives that we have. He also hoped that people at the Reid Center who have worked hard on this for years will continue to work hard to bring in grant monies.

Councilman Bothwell noted that the 300-350 kids served at the Reid Center will not be served at this new facility directly because the new facility isn't fulfilling the gym function. He agreed that the heating system in the existing building does need to be repaired and there are other repairs that need to be done as well because that building will be continue to be used.

In response to Councilman Bothwell, City Manager Jackson said that we do have in writing from the private donors that their funds will be withdrawn if construction does not begin by the end of 2009.

Vice-Mayor Newman agreed that for some time we will be managing two facilities and that is not attractive from an operational or capital expenditure standpoint. However, in the alternative we would have to spend so much money to upgrade the existing facility and still not have the facility that we want. If we commit to do Phase II there will probably be some positive economic value.

Vice-Mayor Newman said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Davis moved for the adoption of the Resolution No. 09-267. This motion was seconded by Councilman Smith and carried on a 4-1 vote with Councilman Russell voting "no" (Councilwoman Manheimer being excused from voting).

RESOLUTION BOOK NO. 32 – PAGE 303

Councilman Davis moved for the adoption of Ordinance No. 3817. This motion was seconded by Councilman Smith and carried on a 4-1 vote with Councilman Russell voting "no" (with Councilwoman Manheimer being excused from voting).

ORDINANCE BOOK NO. 26 – PAGE 11

At 7:25 p.m., Vice-Mayor Newman announced a short recess.

At this time, Councilwoman Manheimer came back into the Council Chamber.

B. REQUEST FROM THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY TO WAIVE STREET CLOSURE PERMITS AND STREET CUT PERMITS ASSOCIATED WITH THE INSTALLATION OF THE WAYFINDING PROJECT

Transportation Planner Dan Baechtold said that this is the consideration of a request from the Buncombe County Tourism Development Authority (BCTDA) for a waiver of permit fees associated with the installation of the wayfinding signs.

Per City Council's direction, staff has been working with area partners for the past three years on a comprehensive wayfinding and signage program for Asheville and Buncombe County. The project is in the implementation phase, which includes the installation of pedestrian level signs, informational kiosks, and directional and destination signs within Buncombe County, of which the majority are in the City of Asheville. City-owned facilities such as parks, parking decks, and the Civic Center are included in the project.

The installation process for wayfinding signs requires Street Closure Permits and Street Cut Permits from the City of Asheville. Because the project has been a partnership between the City and the BCTDA, the BCTDA has asked for a waiver of the fees associated with these permits. This could result in as much as $10,000 in savings to the project.

The following is some background information:

- In 2006, the City joined with the Convention and Visitors Bureau, the Towns of Weaverville, Woodfin, and Black Mountain, and Buncombe County to form the Partnership on Wayfinding.
- The partners jointly funded the development of the Wayfinding Master Plan.
- Through a public input process, designs were selected that included pedestrian level signs and kiosks, vehicular signs, and gateway signs.
- In December 2007 Buncombe County Tourism Development Authority approved funding for construction of the wayfinding system in the amount of $1.65 million.
- In September of 2008 City Council adopted the Wayfinding Master Plan, and approved an interlocal agreement to cover the ongoing maintenance of the wayfinding signs.

Pros:

- Supports a successful regional partnership
- Makes a relatively small contribution to a project investing $1.65 million in the City.
- Allows Wayfinding funds to be invested in infrastructure instead of administrative costs.

Con:

- Processing the permits requires staff time, which will not be covered if the fees are waived.

This action complies with the City Council Strategic Operating Plan as the wayfinding program aims to address several identified City Council goals: 1) improving signage into and out of City facilities; 2) providing information kiosks in the downtown; 3) removing sign clutter and obsolete signage; 4) improving directional signage for residents and visitors.

Granting the fee waiver request would be a loss of potential revenue for the General Fund up to as much as $10,000. The waiver would be a savings, however, to a project to which the City is a primary partner. The City's budgeted contribution toward this project totals

$107,240, which is included in the Parking Services Capital Fund. The BCTDA is contributing the majority of the capital funds toward a project that benefits the City.

City staff requests City Council consider a motion to waive permit fees associated with the installation of the wayfinding signs.

In response to Councilman Bothwell, Mr. Baechtold said that the total project is approximately $1.8 Million and the City's portion is $107,240.

Councilman Russell moved to waive the street closure permits and street cut permits associated with the installation of the Wayfinding Project. This motion was seconded by Councilman Davis and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-268 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONSTRUCTION CONTRACT WITH CAROLINA SPECIALTIES CONSTRUCTION LLC FOR THE WILLIAM DEBRUHL WATER TREATMENT PLANT BACKWASH LAGOON PROJECT AND A CHANGE ORDER INCREASING BROWN AND CALDWELL'S AGREEMENT FOR ENGINEERING SERVICES FOR SAID PROJECT

ORDINANCE NO. 3818 - BUDGET AMENDMENT FOR FUNDING OF THE CONSTRUCTION CONTRACT WITH CAROLINA SPECIALTIES CONSTRUCTION LLC AND BROWN AND CALDWELL'S CONSTRUCTION ADMINISTRATION AND ENGINEERING COSTS

When Councilwoman Manheimer disclosed that Carolina Specialties Construction has been, but is not currently, a client of her law firm, City Attorney Oast felt that this does not rise to the level of a disqualifying conflict of interest for Councilwoman Manheimer.

Water Resources Director Steve Shoaf said that this is the consideration of a resolution authorizing the City Manager to (1) sign a construction contract with Carolina Specialties Construction, LLC in the amount of $405,874.35 for the William DeBruhl Water Treatment Plant (WTP) Backwash Lagoon Project; and (2) sign a change order increasing Brown and Caldwell's agreement for engineering services to $107,766 for said project; and adopt a budget amendment, in the amount of $93,410, for funding of the construction contract with Carolina Specialties Construction, LLC ($34,732), and Brown and Caldwell's construction administration and engineering costs ($58,878).

When the filters are cleaned during the water treatment process, the dirty water is discharged into a holding pond, or backwash lagoon. The N.C. Dept. of Environment and Natural Resources (NCDENR) has declared the backwash lagoon at the William DeBruhl Water Treatment Plant in a state of disrepair and in need of replacement in the current fiscal year. The Water Resources Department (WRD) issued an Advertisement for Bids for the furnishing of labor, materials, equipment, incidentals, site work, piping, structures, erosion/sediment control, and demolition for the construction of the 500,000 gallon backwash holding lagoon at the William DeBruhl WTP. In response to that Advertisement for Bids, the WRD received six (6) bids.

Companies responding were:

- Bryant's Land and Development Industries, Inc. – Burnsville, NC
  Total Base Bid: $453,480.50

- Carolina Specialties Construction, LLC – Hendersonville, NC
  Total Base Bid: $405,874.35

- MacKenzie Company – Asheville, NC
  Total Base Bid: $473,106.70

- Patton Construction Group – Arden, NC
  Total Base Bid: $477,000.00

- Spur Construction – Waynesville, NC
  Total Base Bid: $563,690.05

- Turner Murphy Company, Inc. – Rock Hill, SC
  Total Base Bid: $609,919.81

A review team, comprised of staff from multiple City departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these bids and selected Carolina Specialties Construction, LLC as the lowest responsible bidder at a bid of $405,874.35.

In addition, Brown and Caldwell was originally hired by the City through a competitive process to provide the Design, Permitting, Bidding, and Construction Services for said project in the amount of $49,088. The initial contract dated June 5, 2009, provided for the Design, Permitting, and Bidding services only. The Change Order in the amount of $58,678 will allow Brown and Caldwell to perform Construction Services, which will include a preconstruction meeting, inspections, record drawings, and other construction-related tasks. With the change order, the total agreement amount with Brown and Caldwell will be $107,766.

This project is part of City Council's Strategic Operating Plan to improve city infrastructure and provide local companies with labor opportunities.

Pros:
- Approval of the construction contract and engineering change order will allow the City to move forward with the project in the current fiscal year in order to ensure compliance with applicable state/federal laws.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.
- This project will result in improved infrastructure.

Con:
- Failure to award a construction contract and engineering change order may delay the project beyond the current fiscal year, which may result in fines from NCDENR for being out of compliance with applicable state/federal laws.

A majority of the funding needed for this project is available in the project budget ($371,143). The remaining funds needed for this project ($93,410) will be reallocated from the Allen Mountain Tank (serving the Town of Black Mountain) upgrade project that will receive replacement funding in a future fiscal year.

City staff recommends City Council approval of the City Manager (1) to sign a construction contract with Carolina Specialties Construction, LLC in the amount of $405,874.35 for the William DeBruhl Water Treatment Plant Backwash Lagoon Project and (2) to sign a change order increasing Brown and Caldwell's agreement for engineering services to $107,766 for said project; and (3) adopt a budget amendment, in the amount of $93,410 for funding of the construction contract with Carolina Specialties Construction, LLC ($34,732), and Brown and Caldwell's construction administration and engineering costs ($58,878).

When Councilman Smith asked if there anyway to alter the permitting of this site to reflect the actual volume that is being treated there, Mr. Shoaf said that we are not close to the

threshold. The issue is if we re-rate the plant down to what we actually doing now, it will handicap us in terms of future water treatment capacity. The prudent thing to do is to retain that capacity. The Bee Tree Reservoir came on line as an additional source of water and we found that we do need it during drought periods. In 2007, which was a very severe drought year, we needed to run the plant at full capacity. We do have a Drought Management Plan and the Bee Tree Plant is written into that Plan.

When Vice-Mayor Newman asked for public comments, none were received.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-268. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 305

Councilman Russell moved for the adoption of Ordinance No. 3818. This motion was seconded by Councilwoman Manheimer and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 13

B. STATUS ON MASTERS PARK PLAN

City Manager Jackson said that the December 15, 2009, agenda includes an item at the request of Mayor Bellamy to consider policy issues related to the Masters Park.

On November 27, 2007, City Council approved the acquisition of the Masters Park in partnership with private donors, State of North Carolina, Buncombe County and the Haw Creek Community Association. The acquisition occurred on October 20, 2008.

Since the acquisition, City staff from multiple departments have collaborated in developing an action plan to perform environmental assessments in-house and enable park development to begin.

On November 5, 2009, in response to an e-mail from Mr. Chris Pelly to Mayor Bellamy, staff provided the following timeline for the environmental assessments and park design work:

- Task 1 – Field Site Visit – November 2009
- Task 2 – Preliminary Design – December 2009
- Task 3 – Review/Comment on Design – January/February 2010
- Task 4 – Final Design – April/May 2010

Upon completion of the design, the Haw Creek Community Association may undertake clearing of trails and the parking area.

Councilman Russell felt this was a great collaboration of the City and the Haw Creek Community Association.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following claims were received by the City of Asheville during the period of November 13-25, 2009: Cecilia Johnson (Sanitation), Crystal Snyder (Transit), B&B Pharmacy (Police), Linda J. Kush (Streets), Mary Trauner (Sanitation), Lewis Blodgett III (Transit), Amber Moran (Water) and Matt Lillibridge (Water). These claims have been referred to Asheville Claims Corporation for investigation.

Mr. Alan Ditmore supported domestic partner benefits.

VIII. ADJOURNMENT:

Vice-Mayor Newman adjourned the meeting at 8:05 p.m.

Magdalena Burleson
CITY CLERK

MAYOR

Friday – January 8, 2010 - 11:00 a.m.
Saturday – January 9, 2010 – 9:00 a.m.
Warren Wilson College
Gladfelter Building – Canon Lounge

City Council Annual Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Bellamy convened the meeting and welcomed everyone to the annual City Council retreat. She asked all present to introduce themselves and say one thing they are grateful for. She then explained her goal of the retreat is to have a shared vision for the City of Asheville.

Mayor Bellamy then introduced Ms. Margo Flood, Director of the Environmental Leadership Center of Warren Wilson College, and briefly outlined the successful national model of partnership between the City of Asheville and Warren Wilson College. She thanked Ms. Flood for hosting City Council's retreat.

On behalf of the President of Warren Wilson College, Ms. Flood welcomed City Council to the Warren Wilson College Campus and explained their shared vision of sustainability. She then outlined the many areas of partnership between Warren Wilson College and the City of Asheville.

Mayor Bellamy then introduced Ms. Margaret Henderson, facilitator with the School of Government. Ms. Henderson reviewed the ground rules for effective groups; asked each Council member (and Mayor Bellamy asked City staff) what they hoped to gain from the retreat and what they have to contribute to the success of working together; and what reputation or legacy does Council hope to collectively create for the benefit of Asheville now and in 2020. Assessing the internal and external circumstances, at Ms. Henderson's request, Council members stated their thoughts about circumstances in the City and circumstances outside the City but with local impact.

Setting Goals for 2010-11

Mayor Bellamy noted that the strategic goal-setting process will be for the period of July 1, 2010, through June 30, 2011, as the City is currently working on the 2009-10 Strategic Goals. She explained that after Council identifies their 2010-11 strategic goals, City staff will wordsmith the goals and bring the individual focus areas back to Council for their approval, and then Council will adopt their entire 2010-11 Strategic Goals. Council agreed to this process and reaffirmed the existing 2009-10 goals.

Councilman Davis provided Council members with the following list of items he would like addressed: (1) Downtown Issues (A) continue implementation of Downtown Master Plan; (B) accelerate discussion of Business Improvement District; (C) cleanliness, educate property owners of their responsibility, City lead the way; (D) parking, sooner than later evaluation of fee structure – on-street parking suffering, back-up in garages with new equipment; (E) Pack Square Park fee structure, push backs from users; and (F) homelessness (i) A-HOPE; and (ii) western gateway corridor; (2) Civic Center Issues (recognizing budget constraints, be accomplished utilizing the Civic Center Commission working with staff and Council (A) continue improvement of image (i) actively promote the number and quality of events, the success stories; (ii) track economic impact – overnight stays, zip codes of patrons, restaurant impact; and (iii) promote small subsidy to

taxpayers; (B) improvement of facility (i) cleanliness; (ii) customer experience, (iii) opportunity to use residual of actual revenue below budget for capital improvement; and (iv) Sports Commission; and (C) Southern Conference bid (opportunity to partner with Tourism Development Authority); (3) Continue support of Riverfront Redevelopment Commission; (4) Stormwater Utility (A) understanding of revenue generated; and (B) accomplishments. Action items include (1) Azalea Park Road paving; (2) Continue active partnership with UNC-Asheville, Chamber of Commerce, Buncombe County, Asheville Tourists Baseball and City to recruit, coordinate and leverage athletic and recreational events sharing venues and assets promoting economic development ultimately leading to a Sports Commission; (3) Successful bid for the Southern Conference Men's and Women's Basketball Tournament for 2012-15; (4) Big South Lady's Basketball Tournament bid; and (5) Trash receptacles in western gateway corridor.

Throughout considerable discussion by Council, the following goals were grouped into the five focus areas: Affordable, Fiscal Responsibility, Green/Sustainable, Safe, and Job Growth/Community Development.

Affordable

- Transit oriented affordable housing
- Hold the line on taxes and support efforts to look at tax and fee relief
- Support diversified job growth and small business development
- Support the Housing Authority to develop a comprehensive plan for public housing; continue to pursue redevelopment of public housing with a HOPE IV-type project
- Support initiatives to end homelessness in Asheville
- Continue support of Housing Trust Fund
- Eagle-Market Street Redevelopment – Support progress and momentum in Mt. Zion Property
- Explore opportunities to enhance affordability through reducing utility costs and energy efficiency programs (public facilities and community and private properties)
- Implement reforms to Unified Development Ordinance that will enhance affordable housing as outlined in the Affordable Housing Plan
- Affordable transportation options; align with affordable housing development
- Small business support revisions through reduction in taxes, fees, restrictive regulations (e.g., sign regulations)
- Improve frequency of transit on major corridor service
- Restructure water rates to encourage conservation, affordability for residential user
- What will City's policy on affordable housing be? Look at zoning in key corridors to encourage affordable housing, e.g. public support for affordable developments via public/private partnerships. Creative financing to incent the type of development Council wants to see
- City support of non-profits that develop affordable housing
- Continue support for HOPE VI-type projects
- Continue to support initiatives to end homelessness with emphasis on Housing First philosophy and related strategies
- Balance affordability goals with fiscal responsibility
- Provide free bus passes to individuals who receive sources at A-HOPE
- Explore Bus Pass Program to enhance affordability
- City staff directed to capture language about broad support for affordable housing.
- Ensure stormwater program effectiveness and value for fees charged
- Better communicate/understand the stormwater utility revenue and how it is used and invested in community; review policy direction of utility and Capital Improvement Plan
- Ensure appropriate utility rates

Fiscal Responsibility

- Maintain balanced budget and review Fund Balance levels/policy
- Review revenue streams and reliability
- Discuss financing of capital improvements and infrastructure with City and through partnerships
- Explore funding opportunities through county partnership
- **Combine** - Attract and retain quality employees with an emphasis on local labor pool development opportunities **AND** Ensure operational effectiveness by paying sound wages and benefits
- **Combine** - Ensure financial accountability by matching resources with strategic initiatives and creating meaningful performance measures **AND** Filter City Council's strategic planning through the probability of a near-term economic turndown **AND** Operate the City of Asheville's organization to the highest fiscal responsibility
- Sustain a healthy Fund Balance in accordance with recommended State standards
- Leverage internal and external partnerships for Capital Improvement Projects and infrastructure improvements; think creatively about City property (Mayor Bellamy used a PowerPoint presentation to point out several different partnership opportunities)
- Form subcommittee to review Master Plans and interdependencies
- Explore feasibility of bond program now or in future years; get information about financial options outside of property tax increase
- Implement ways to reduce City-wide solid waste
- Efficiencies in Master Plan implementation
- Proactively pursue funding opportunities with state and federal economic stimulus packages
- Review cost recovery for sewer line improvements
- Review utility billing cycle and methods (Finance Committee)

Green/Sustainable

- Work with regional partners to create incentives for green building, energy conservation and energy independence
- Expand community education programs to attract volunteers to initiatives, including climate awareness, water conservation, recycling, stormwater, and sustainability
- Take sustainability program/energy reduction goal to the next level (4% minimum – how do we get there)
- Set a community energy/energy efficiency reduction goal
- Integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, and other system improvements resulting in a funding priority list
- Work cooperatively with state and county elected officials to enable the city to implement practical water system management and voluntary annexation policies

Job Growth/Community Development

- Provide leadership in buying local products and services
- Increase downtown cleanliness and beautification efforts
- Support the riverfront redevelopment partnership and dedicated office
- Complete the Downtown Master Plan process and begin implementation of the Plan
- Expand partnerships with UNC-Asheville, A-B Tech, Mars Hill College and other institutions to achieve common goals, including health and wellness, workforce development, and sustainable economic development

- Partner in regional economic development strategies, including the HUB; continue partnership in the Economic Development Coalition
- Enhance diversity throughout the City as an organization so that the workforce more closely resembles the community, especially in the area of public safety
- Pursue models for re-formatting the Unified Development Ordinance
- Promote sustainable, high-density, infill growth that make efficient use of existing resources

Safe

- Make Asheville the safest city in America based on approved metrics for similarly sized cities (City staff directed to look at survey data and come back with a specific bullet on accountability)
- Track and monitor performance of nuisance court
- Reaffirm commitment to eliminate open air drug market in Asheville
- **Mayor to re-work bullet** - Support of recreation and employment alternatives for youth at risk of gang exposure
- Support the Safe Routes to School program by implementing one school this year
- Develop an Action Plan for maintaining fire and rescue standard of cover
- **Staff to work on language** – Maintain Fire Accreditation and ISO ratings and continue to increase inspection program to 90%

Councilman Russell asked that more detailed information be included in the fiscal impact section on staff reports.

Mayor Bellamy stated that she was not comfortable in pursuing annexations this year. Vice-Mayor Newman stated that he would like to place on an upcoming Planning & Economic Development Committee meeting agenda the City policy of not annexing manufacturing facilities in areas that meet annexation requirements, with an idea of possibly phasing in their property tax over a reasonable period of time.

It was the consensus of Council to direct the City Manager (1) to provide Council with a report regarding studying the impact of the changes in the Minimum Housing Code, such as rescinding mandatory rental property inspections; (2) to review bicycle safety from the bicyclist and automobile driver points of view and report to the Public Safety Committee prior to being reported to the full Council.

City Council expressed their appreciation for City staff's efforts in preparing the Financial Crossroads paper.

After a quick evaluation of the process, at 5:10 p.m. Mayor Bellamy recessed the meeting until 9:00 a.m. on Saturday, January 9, 2010.

January 9, 2010 – 9:00 a.m.

Present: Mayor Terry M. Bellamy Presiding; Vice-Mayor Brownie W. Newman, Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

At 9:00 a.m. Mayor Bellamy reconvened the meeting. There was a brief reflection on the goal setting process.

Master Plans

City staff responded to various questions/comments throughout the introduction and update on each of the following Master Plans making sure that Council aware of what staff is currently working on and trying to implement: City 2025 Plan, Water Asset Management Plan, Affordable Housing Plan, Comprehensive Bike Plan, Downtown Master Plan, Downtown Parking Plan, Parks & Greenways Master Plan, Pedestrian Thoroughfare Plan, Sustainability Master Plan, Ten Year Plan to End Chronic Homelessness, Wayfinding Master Plan, Wilma Dykeman Riverway Plan, Transit Master Plan, Water System Master Plan, Civic Center Renovation Study, and Swannanoa Flood Damage Assessment Study.

City Manager Jackson was directed to compile a report of the accomplishments of the Pedestrian Thoroughfare Plan, the Parks & Greenways Master Plan, and the Comprehensive Bike Plan, particularly noting the use of economic stimulus funds. He was also directed to prepare a report summarizing the bicycle infrastructure improvements, sidewalk improvements and bicycle and pedestrian improvements that are forthcoming.

When Public Works Director Cathy Ball noted that the biggest hold-up in moving forward on some plans is getting easements, Councilwoman Manheimer commented on how labor intensive it is for staff to negotiate easements and noted that MSD outsources their condemnation components. Mayor Bellamy, member on the MSD Board, explained MSD's procedure. City Manager Jackson was directed to (1) bring back the existing City policy on non-condemnation for Council to revisit; and (2) in the next six months, review the MSD model for right-of-way condemnations for the Planning & Economic Development Committee review prior to coming to the full Council under the Consent Agenda, if appropriate.

City Manager Jackson was directed to provide Council a review of the 2008 Consultant's Report on bond capacity during the next quarterly update.

Partnerships

Mayor Bellamy noted that the City has a bi-monthly meeting with the Chamber of Commerce and felt it would be beneficial for City Council to be prepared to discuss partnership opportunities with them. She felt it was important to discuss the current and potential partnerships we have with the Chamber of Commerce, the N.C. Dept. of Transportation, the Buncombe County Commissioners, the State legislators, the Tourism Development Authority, and others. However, due to time constraints, it was the consensus of Council to schedule a worksession on Tuesday, January 19, 2010, at 5:00 p.m. in the First Floor North Conference Room to discuss strategic partnerships with other governmental, private and non-profit entities.

City Council Rules of Procedure

Mayor Bellamy provided Council with a copy of the City Council Rules of Procedure. She reviewed the "Form to Request Items on City Council Agenda" ("Form") that she felt would be beneficial to the process.

It was the consensus of Council that (1) all Council Members would submit the Form to the City Clerk for an item to be placed on the agenda; and (2) an urgent item would be considered by Council (without having to go through a Council Subcommittee) if a total of three Council members requested it. The Form would still need to be sent to the City Clerk. City Attorney Oast was directed to prepare an amendment to the City Council Rules of Procedure pertaining to this item to be placed on the January 26 agenda.

It was the consensus of Council that once a Council Committee has reviewed an item that unless there is some significant new aspect, it would not have to be reviewed again by that Council Committee.

City Attorney Oast was directed to see if there was a way to compress the number of times a project must be brought before the Council.

Work Processes

City Manager Jackson provided Council with a memorandum outlining protocols and procedures used by staff in the City Manager's Office to provide administrative support to the Mayor and City Council.

After a brief discussion, it was the consensus of Council that if a Council Member wants to have a meeting to conduct City business during normal business hours in the City Hall, Public Works Facility or the Municipal Building and the space is reasonably available, that City staff will accommodate the request for space only, not staff support. If space is not available in those buildings, then the meeting will need to be held in one of the community centers.

It was the consensus of Council for Mayor Bellamy to place on a future Council meeting agenda consideration of approval of the RICH Task Force, Mayor's Committee on (Dis)abilities, and Mayor's Committee on Veteran's Affairs in order for these programs to receive City staff resources. Mayor Bellamy also supported keeping the City of Asheville Youth Leadership Academy program as a Council program.

Boards & Commissions Members/Liaisons Assignments for 2010-11

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions. City Clerk Burleson has a complete listing of all appointments made.

Adjournment

At 1:35 p.m., Mayor Bellamy thanked City Council, Ms. Henderson, City staff and Warren Wilson College for their participation in the retreat and adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – January 12, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 14-18, 2010, AS "DR. MARTIN LUTHER KING JR. WEEKEND"

Mayor Bellamy read the proclamation proclaiming January 14-18, 2010, as "Dr. Martin Luther King Jr. Weekend" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons who briefed City Council on some activities taking place during the weekend and Council's continued support.

II. CONSENT AGENDA:

At the request of Mayor Bellamy Consent Agenda "D" was added.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 15, 2009

B. ORDINANCE NO. 3819 - BUDGET AMENDMENT TO THE POLICE/PATROL DIVISION'S SPECIAL PURPOSE FUND

Summary: The consideration of a budget amendment, in the amount of $1,000, from a Court-ordered action, to the Police/ Patrol Division's Special Purpose Fund for the purpose of investigative costs.

Asheville Police Department vice officers conducted an investigation into a gambling operation in March 2009. US currency was seized during the investigation. The case was heard before the Honorable Buncombe County District Court Judge Calvin Hill. Judge Hill signed an Order that $1,000 cash of the amount seized during the execution of a search warrant to be turned over to the Asheville Police Department Patrol Division's special purpose fund.

This action conforms to the City Council's Strategic Operating Plan under Safe - Asheville will be one of the safest and most secure communities when compared to similar cities - Partner to launch a nuisance court to achieve more efficient and effective prosecution of offenses that impact the quality of life.

Pro:

Revenue will be used in the course of special investigations which include surveillance, undercover operations, and investigative cost.

Con:

None noted

This will have a positive impact on the Police Budget by increasing the Special Purpose Funds used to conduct special operations. There will not be any further costs to the City of Asheville as a result of accepting these funds.

City staff recommends City Council adopt the budget amendment, in the amount of $1,000, to the Police/Patrol Special funds.

ORDINANCE BOOK NO. 26 – PAGE 15

C. RESOLUTION NO. 10-1 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SERVICE AGREEMENT WITH HERSEY METERS CO. LLC FOR THE FIVE YEAR AUTOMATED METER READING PROJECT

Water Resources Director Steve Shoaf said that this is the consideration of a resolution authorizing the City Manager to sign a service agreement with Hersey Meters Co., LLC, for the five-year Automated Meter Reading (AMR) Project contingent upon City Council approval of funding for the remaining four (4) fiscal years for the purchase and installation of approximately 52,000 AMR Devices to complete installation throughout the water system.

In Fiscal Year 2002, the Water Resources Department installed approximately 500 AMR Devices as part of a pilot program. In Fiscal Year 2005, the program was expanded to include 3,000 additional AMR Devices, which were installed by department staff. In Fiscal Year 2006, a requirement was made as part of the Engineering Standard Detail and Specifications that each new water meter installed shall have an automated meter reading unit installed as well. To date, a total of approximately 3,800 devices have been installed throughout the water system. These devices were installed at locations that are very difficult to access and that pose a safety threat to Meter Reading employees. The installation of automated meter reading devices at these locations eliminated serious safety hazards. In addition, the pilot program has proven to be very cost effective by reducing the time to read these AMR meter locations by 85%.

In July 2009, the City issued a Request for Proposals on the Automated Radio Frequency Meter Reading System for the Water Resources Department. On August 17, 2009, proposals were received from the four (4) following companies:

1. Hersey Meters Co., LLC
2. Metron-Farnier, LLC
3. Neptune Technology Group, Inc., and
4. Vanguard Utility Service, Inc

A review team, comprised of staff from multiple City departments, including Finance (Purchasing) and Information Technology, reviewed these proposals and selected Hersey Meters Co., LLC, located in Cleveland, North Carolina, as the lowest responsible bidder at a total project bid of $6,666,625.86.

This project complies with the City Council's strategic plan to improve city infrastructure. It will leverage technology to allow for more efficient and effective operation of Meter Services within Water Resources.

Pros:

- Significantly reduce meter reading time, which will reduce future personnel needs for meter reading. This will allow existing employees to address other needs.
- Reduce the safety hazards of reading meters at locations that are difficult to access.
- Improve customer service by reducing meter reading errors, and by identifying meter performance and leak issues in a timely manner.
- Reduce the unit cost of meter reading devices by purchasing them in bulk.

Cons:
- Initial project capital cost is significant.
- Training to utilize the new equipment will be necessary.

The total five-year cost to purchase 52,000 AMR devices is conservatively estimated at $7.0 million. Of that amount, the initial capital investment cost of $2.8 million for the AMR program is currently funded in the Fiscal Year 2010 Water Capital Improvement fund, leaving a remaining capital investment of up to $4.2 million to be funded over the next four years. The Water Department's Fiscal Year 2011 through 2014 budget and financial plans assume pay-as-you go contributions of up to $1.1 million per year from the Water Operating Fund to the Water Capital Improvement Fund to cover this remaining $4.2 million capital investment in the AMR program. This budget and financial plan is dependent upon the availability of funds and normal rate adjustments. The impact to Meter Services staffing will be the reduction of time required to read meters, thus allowing staff time for other functions (testing, repairs). The reduced time required to read meters may allow a change from bimonthly reading and billing to a monthly reading and billing which would make bills more affordable to customers and improve the City's Water Resources cash flow.

City staff recommends City Council authorize the City Manager to sign a service agreement with Hersey Meters Co., LLC, for the five-year Automated Meter Reading (AMR) Project. The agreement will recognize the funds available for this year and include a provision for extension of the contract as additional funding is available. This is contingent upon City Council approval of funding for the remaining four (4) fiscal years for the purchase and installation of the remainder of the approximately 52,000 AMR Devices to complete installation throughout the water system.

RESOLUTION BOOK NO. 32 – PAGE 308

D. RESOLUTION NO. 10-2 – RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE

Summary: Due to time constraints at the City Council annual retreat on January 8-9, it was necessary to schedule a City Council worksession on Tuesday, January 19, 2010, at 5:00 p.m. in the First Floor Conference Room, City Hall, 70 Court Plaza, Asheville, N.C., to discuss strategic partnerships with other governmental, private and non-profit entities.

RESOLUTION BOOK NO. 32 – PAGE 310

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. H1N1 PREPAREDNESS FOR COMMUNITY REPORT

Ms. Gibby Harris, Buncombe County Health Director, briefly updated Council on the H1N1 flu and urged the public to continue to get the vaccine.

B. PRESENTATION OF THE FISCAL YEAR 2009 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2009 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed no material weaknesses in internal controls or instances of non-compliance in the administration of federal awards programs. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. Also, we noted some areas for improvement in the City's accounting function that we have communicated to management in a separate letter dated November 12, 2009.

Mayor Bellamy thanked Mr. Broom for the thorough audit and Mr. Durant and his staff for their work associated with compiling the CAFR. She was pleased to see that the City is complying with all requirements and that the audit revealed no material weaknesses or instances of non-compliance in the administration of federal and state grant programs.

C. AFTER ACTION STORM BRIEFING

Assistant City Manager Jeff Richardson said that Asheville and the surrounding areas recently experienced a major winter storm lasting from December 18 – 22, 2009. He provided Council with information related to the key decisions taken to prepare and manage emergency operations during this time. He also provided information relative to preparation, snow removal and public safety. At this time we are pursuing FEMA reimbursement of $525,342 and would suggest a policy review of the sidewalk maintenance ordinance.

The information compiled in this presentation is to update City Council on key decisions taken to address the December 2009 winter storm. No action is necessary at this time.

Mayor Bellamy and Council members expressed their appreciation of City staff's and other agencies efforts and communication during the storm.

D. ECONOMIC STIMULUS PACKAGE UPDATE

ORDINANCE NO. 3820 - BUDGET AMENDMENT TO ACCEPT ENTITLEMENT FUNDS FROM THE DEPT. OF ENERGY FOR THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council consideration of the following:

1. Energy Efficiency and Conservation Block Grant (EECBG)

Staff is seeking approval of a budget amendment in the amount of $804,700 to accept entitlement funds from the Department of Energy for the Energy Efficiency and Conservation Block Grant (EECBG) program.

2. Update for Other ARRA Funding

Energy Efficiency and Conservation Block Grant

The EECBG program through the Federal Department of Energy (DOE) is funded for the first time through the American Recovery and Reinvestment Act (ARRA). The City of Asheville has been allocated $804,700 of entitlement funds through this program. The funds must be committed within 18 months of receipt of award and expended within 36 months. The primary requirements for use of this funding include: job creation, energy reduction, renewable energy production, carbon emissions reduction, and partnership creation. Through the evaluation of the Sustainability Management Plan the over arching objectives for Asheville's use of this funding were established in an Energy Efficiency and Conservation Strategy (EECS) which was approved by DOE in September 2009. These goals are as follows:

- Reduce energy consumption through energy efficiency
- Increase renewable energy usage
- Increase voluntary energy conservation efforts
- Reduce vehicle miles traveled
- Incorporate sustainability into the City's decision making process
- Incorporate sustainability into City communications and outreach efforts
- Reduce solid waste disposed at landfills

In June 2009 City Council approved the following projects:

Funding Category	Program Description	Project Funding	% of total allocation
$254,700	**Internal Sustainability Programs**		
	Solar thermal for Fire Station 6	$17,000	**2.1%**
	Building Inspector and Building Maintenance Energy Efficiency Training	$35,000	**4.3%**
	Sustainability Outreach Specialist (2 yrs)	$47,700	**6.6%**
	Civic Center Banquet Hall HVAC Replacement	$88,000	**10.9%**
	Fire Station 8 weatherization and solar thermal	$67,000	**8.3%**
$220,000	**Internal Energy Revolving Fund**		
	IT Server Downsizing	$100,000	**12.1%**
	City Hall Lighting Retrofit	$120,000	**14.6%**
$250,000	**Competitive grants for community projects**	$250,000	**31.1%**
$ 80,000	**Grant administration**	$80,000	**10%**

$804,700	**TOTALS**	**100%**

Pros:

- Reduce municipal energy spending
- Reduce municipal carbon footprint
- Support job creation in the local energy sector

Con:

- Implementing the programs within the grant require staff time, however the actual administration costs of the grant are covered through the $80,407 grant administration allowance

The grant will cover 100% of the costs, so there is no impact on the City's current General Fund budget. The installation of energy reduction measures will lower future costs, but the exact impact cannot currently be quantified.

City staff recommends City Council adopt the budget amendment in the amount of $804,700.

Update on Other ARRA Funding

As a part of the American Recovery and Reinvestment Act which was signed into law on February 17, 2009, the City of Asheville has received to date $7,597,242 in entitlements and $1,494,500 in grant funding. The following information is a short breakdown of the funding and where we are in the process of contracting and granting funds:

CDBG-R - $332,942- This funding is currently in the implementation phase. This funding was provided to Mountain Housing Opportunities for Tier II Emergency Home Repair ($75,000), Weed and Seed Weatherization Program ($75,000), Mountain BizCapital ($26,000), the City of Asheville ($123,648) for sidewalks to serve a lower income neighborhood in the city and the remaining funding of $33,294 for allowable administrative costs (10%).

Edward J. Byrne Justice Assistance Grant (JAG) - $265,466 -This project is in the bidding process to be opened on January 14, 2010. With time to review the request for proposals, we hope to bring to Council's next regular meeting for award of contract.

Homeless Prevention & Rapid Re-housing Program (HPRP) - $509,460 - Contact executed with the HPRP Team which includes ABCCM, Eblen Charities, WNCAP, United Way's 2-1-1 and Pisgah Legal Services which began October of last year. Clients are being served and staying in housing.

Transit Capital - $2,590,439 - Funding is being used by the City of Asheville to purchase 5 diesel buses and ten (10) shelters. As part of the sub-recipient agreement, the City will acquire two small CNG buses and one CNG van and will lease the vehicles to Henderson County who received a portion of this funding. These items were purchased in the fall of 2009 and currently awaiting delivery.

NCDOT Surface Transportation (STP-DA) - $3,094,235 - Four contracts have been let for this funding which were executed by December 31, 2009 which included the Downtown Streetscapes ($79,006.00), Fairview Road Signal Upgrades ($58,678.95), Sidewalk Gaps ($436,920.00) and Coxe Avenue Resurfacing and Restriping ($214,208.70). We were able to do the Kimberly Avenue Project because the initial bidding was under the estimated costs. This

project was let on December 31, 2009, and will be brought to City Council on January 26, 2010, for approval of contract award.

Drinking Water State Revolving Fund (NCDENR) - $510,000 - Funding will be used for the North Fork Water Treatment Plant Pumping System Improvements. Contract approved by NCDENR and final documents signed in December to proceed with contracting.

Clean Water State Revolving Fund (NCDENR) - $454,500 - Funding will be used for the Dingle Creek Stormwater Improvements ($166,495) which was approved by City Council for award on December 15, 2009. Contract must be approved by NCDENR to proceed with contracting.

Mobile Source Emissions Reduction Grant (NCDEER) - $30,000 - Council approved this funding budget amendment on December 15, 2009. These funds from the NC Diesel Emissions- Economic Recovery (NC DEER) will support the purchase of 5% biodiesel (B5) fuel for the municipal fleet for one year.

Clean Cities: Carolina Blue Skies & Green Jobs Initiative - $749,015 - This funding will provide the incremental cost of purchasing 11 new CNG pick up trucks, retrofit to convert 11 existing to CNG and upgrade the CNG station. The funding applied for as a sub-grantee with Triangle J Communities (Raleigh, NC) through the Land of Sky Regional Council was $749,015. The funding has been reduced and we are still awaiting word of the final number (estimate $500,000).

In response to Councilman Davis, Energy Coordinator Maggie Ullman explained the details on the competitive grant for community projects process.

Vice-Mayor Newman outlined some questions and concerns from the Housing & Community Development Committee, noting the large amount of staff time and energy to spend on a one-time grants program.

Mayor Bellamy said that the goal in the future is for the Federal Department of Energy to add funds annually as they do with Community Development Block Grant Funds.

Mayor Bellamy said that members of Council have bee previously furnished with a copy of the ordinance and it will not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 3820. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 17

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR THE GLEN ROCK MIXED USE DEVELOPMENT (FORMERLY IDENTIFIED AS DEPOT AND RALPH STREETS) LOCATED AT 362, 372 AND 403 DEPOT STREET, IN ORDER TO AMEND THE MIX OF USES PROPOSED IN PHASE III OF THE PROJECT AND TO REVISE THE APPROVED LANDSCAPE PLAN

ORDINANCE NO. 3821 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR THE GLEN ROCK MIXED USE DEVELOPMENT (FORMERLY IDENTIFIED AS DEPOT AND RALPH STREETS) LOCATED AT 362, 372 AND

403 DEPOT STREET, IN ORDER TO AMEND THE MIX OF USES PROPOSED IN PHASE III OF THE PROJECT AND TO REVISE THE APPROVED LANDSCAPE PLAN

At the request of Vice-Mayor Newman, Councilman Davis moved to excuse Vice-Mayor Newman from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Russell and carried unanimously. At this time, Vice-Mayor Newman left the Council Chamber.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. Mayor Bellamy disclosed that she was employed by Mountain Housing Opportunities during the approval of the first and second phases of this project and that she has no pre-judgment and will make her decision based solely on what is before Council at this hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:59 p.m.

Urban Planner Julia Cogburn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Cogburn said that this is the consideration of an ordinance to amend the conditional use permit for the Glen Rock mixed use development (formerly identified as Depot and Ralph Streets) located at 362, 372 and 403 Depot Street in order to amend the mix of uses proposed in Phase III of the project and to revise the approved landscape plan.

Ms. Cogburn said that the project site (2.11 acres total) is located within the City Limits between Ralph and Depot Streets at the intersection with Bartlett Street (Attachment to City Exhibit 3 – Aerial Map) . The property was conditionally rezoned from CI (Commercial Industrial) to UP CUZ (Urban Place Conditional Use Zoning) in 2005 by the Asheville City Council. At that time, a Conditional Use Permit was also approved for the project. The Conditional Use Permit (CUP) was necessitated due to the size of the project (Level III). The original CUP approved the rehabilitation of the Corner Market building for retail/gallery, office/studio, or light industrial use. It also established approval for the construction of a new building with a 46,800 square foot footprint with a mix of retail/gallery, office/studio, and community and residential development;

and renovation of the Glen Rock Hotel for mixed uses with residential units on the upper floors. At that time eighty-five (85) dwelling units were proposed for the new building which would house structured parking and 31,009 square feet for other uses. An approved uses list was incorportated in the approval.

Since 2005, the project has been developing in four phases. Phase I is complete, Phase IIA is under construction, Phase 2B has not yet begun, and Phase III is the primary subject of this report. (City Exhibit 4 – Site Plan)

Parking for the Glen Rock project, originally proposed to be provided all internally and on-street, is now proposed to be provided in a gravel lot on the site, on-street, and in a free-standing lot across Depot Street as a cost saving measure. The change to allow use of this lot, not part of the CUP, was approved under separate Level I project review in early 2009.

Phase I involved the conversion of the Old Corner Market Building at 362 Depot Street. It has been completed and is now occupied.

Phase II was to include approximately 46,800 square feet of mixed-use (retail/gallery/ office/studio/community) space, 85 dwelling units, and structured parking. In 2008, staff approved a modification of this phase reducing its size (overall square feet and number of dwelling units) and eliminating the structured parking facility. Proposals to reduce the size of a project have not generally been brought to the Council for review.

Phase IIA, currently under construction, involves the construction of a new building containing 124,726 square feet of gross floor area (17,002 for various permitted uses and 60 dwelling units). All dwelling units will meet the City's affordable housing standards.

Phase II B is not moving forward for now. If developed, it is to include up to an additional twenty-five (25) dwelling units and up to an additional 17,707 square feet of other approved uses in addition to the Phase IIA structure. The site for that addition is, however, being used for twenty (20) parking spaces serving the project (as noted above). Due to that change, any proposal to move forward on Phase II B would need to consider how it would affect parking for the entire site since both that parking area and the structured parking area not available for the project.

Phase III of the project involves the renovation of the old Glen Rock Hotel building, which was proposed to be converted into retail and community space on the first floor and twenty-five (25) dwelling units on the upper floors. This phase is the subject of this request. While originally proposed primarily for residential purposes, the developers now seek greater flexibility of uses following the renovation of the structure. The approximately 30,000 square feet in the building are presently being designed for office and community space. However, the proposed CUP amendment would allow this building in the future to be used for any of the proposed uses on the previously approved list (including residential use). If approved, Level II review by the Technical Review Committee would be required for a change of use, but no additional amendment to the CUP would be needed.

Cumulatively, the change approved and requested for this project reduce the number of residential units from one hundred and ten (110) units to a currently proposed sixty (60) units and the parking from one hundred eighty-four (184) spaces to the currently proposed one hundred nineteen (119) spaces.

Project Landscaping - The concept plan approved in 2005 for the Glen Rock showed street trees on both sides of Depot, Bartlett, and Ralph Streets and on both sides of Else Alley. MHO is requesting modification to that approved concept plan. First, the trees on Bartlett, Ralph and Else Alley were shown as alternative compliance in lieu of buffer that could not be provided due to site constraints. Buffer is no longer needed under the City's new landscaping ordinance

approved in 2007. Next, there are significant utility conflicts on and off the site which prohibit planting all trees as originally proposed. (City Exhibit 5 – Site Plan)

Because of these constraints, MHO is requesting an amendment to allow modification of their landscape plan as follows:

- Reducing the number of street trees on the MHO property along Ralph by one. Bulbouts with groundcover will be placed on both sides of the street.
- Street trees along Bartlett and Depot Streets – Due to utility conflicts MHO will place shrubs and groundcover in bulbouts and evergreen trees (some in planters) along with shrub border at arcade wall along these streets.
- In lieu of meeting the technical standards of the ordinance regarding landscaping, a request to instead add additional plantings throughout the site in courtyards, islands, along walkways and along the building façade.

On December 21, 2009, these proposed amendments were reviewed by the City's Technical Review Committee. The committee approved these changes with the conditions.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The proposed project has been reviewed by City staff and previously by the Asheville City Council and appears to meet all public health and safety related requirements once the conditions enumerated by the Technical Review Committee are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The applicant is incorporating the gradual slope of the property in the design of the proposed new mixed-use building. The developer is incorporating the channeled Town Branch Creek into the project and is proposing a clean up of the area surrounding the creek and the creation of a public amenity along the creek.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The Glen Rock development is being developed in a once vibrant area of Asheville that has experienced neglect in recent years. The design of the project is meant to bring vitality back to the area by bringing in a mix of uses at a significant density and by including a number of amenities to enhance the livability of the entire area. Significant vegetation is proposed to further enhance the beautification of the property that will be brought about as a result of this project.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The Glen Rock hotel building will basically be used in its current configuration on the property. The Urban Place District is envisioned for further application in this area and other locations along the urban riverfront to encourage redevelopment of the same scale and density as is seen in the Glen Rock and the Wilma Dykeman Plan envisions precisely this scale of development.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The *Asheville City Development Plan 2025* calls for the promotion of adaptive reuse of vacant and unterutilized structures and encourages the construction of affordable housing throughout the community. The City's smart growth initiative, contained in the comprehensive plan, encourages mixed use developments and compatible, higher density commercial and residential development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

Development on the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. While transit does not currently service the location, the developer is examining the issue of providing transit services with the City's transit services staff.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The City's Traffic Engineer has reviewed the proposal and has determined that there are no traffic issues created by this project nor is a traffic impact analysis warranted.

Pros:

- The Glen Rock renovation is the final phase of a development proposed in an area that has been neglected over recent years. It is believed that this development will bring renewed interest in development to this area and vitality that will help to further enhance the livability of the area.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to affordable housing, infill development, rehabilitation, and smart growth.
- Several amenities (e.g., creek enhancement, pedestrian facilities) are incorporated in the design of this project.

Cons:

- The reduction in parking provisions allowed in the Urban Place District may present some parking issues in the area. However, the developer meets the Urban Place parking requirements and is promoting multimodal transportation at the site.

City staff strongly supports these amendments to a project which it is felt will jumpstart the implementation of the Wilma Dykeman Plan, adaptively reuse an older structure having significant architectural and historic character, and establish a strong residential presence in this underdeveloped area of our City.

Ms. Cindy Weeks, representing Mountain Housing Opportunities, briefed Council of the Glen Rock Depot project. She explained the prior phases and said that they have scaled the project back due to the economy, but are still building the 60 affordable rental apartments as part of the new building. Using photographs, she showed some of the progress to date (Applicant Exhibit 1). The new building at 372 Depot Street, which is a 90,000 square foot building housing 60 affordable apartments and 9,000 square feet of commercial space, is 40% complete. This building will increase the value of that property by about $6 Million dollars. At the same time as the economic forces were taking place, construction costs decreased so they invested in green and sustainable features in the new building. The new building will be LEED certified and all apartments will have solar thermal heat. She then explained the financing for the renovations of the Glen Rock Hotel and how they hoped to complete it as a historic tax credit project which will bring about $1 Million in equity to the project. She urged Council to approve the amendment to the conditonal use permit.

After hearing no rebuttal, Mayor Bellamy closed the public hearing at 6:13 p.m.

Councilwoman Manheimer appreciated the efforts of Mountain Housing Opportunities. She felt that we are beginning to see in the new economy more creative solutions for financing these kinds of projecs and that we can't depend solely on private developers to do afforable projects.

Based on findings of fact as stated by staff, Councilwoman Manheimer moved for the adoption of Ordinance No. 3821 to approve the conditional use permit to the Glen Rock project. This motion was seconded by Councilman Smith and carried unanimously (with Vice-Mayor Newman being excused).

At this time, Vice-Mayor Newman re-entered the Council Chamber.

ORDINANCE BOOK NO. 26 – PAGE 19

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS MISSION OUTPATIENT CANCER CENTER LOCATED ON HAMILTON STREET

ORDINANCE NO. 3822 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS MISSION OUTPATIENT CANCER CENTER LOCATED ON HAMILTON STREET

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party

before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:17 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Mission Outpatient Cancer Center located on Hamilton Street for a 229,521 square foot medical building and parking deck, with a request to reduce the required number of parking spaces.

The applicant is requesting review of site plans for the construction of an outpatient cancer center (medical building) and associated parking deck. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for institutional developments with a gross floor area of more than 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Institutional District.

The project site consists of four parcels with a combined area of 3.02 acres (according to submitted site plans) with frontage on McDowell and Hamilton Streets, in between Brooklet Street and Victoria Road. The area is zoned Institutional and is developed primarily with hospital-related uses (Attachments to City Exhibit 3 – Aerial and Location Maps)

The applicant is proposing to construct a new medical building and associated parking structure on the site. The building is proposed to be used as an outpatient cancer center and will be 118,821 square feet and 6 stories tall (approximately 112' feet in height to the top of the highest architectural element at the tallest point of the structure). The associated parking structure is 110,700 square feet and 2 stories tall (approximately 52' feet in height at the tallest point of the structure) for a combined total square footage of 229,521 square feet. The site slopes approximately 30 feet from east (Private Drive) to west (McDowell Street), which results in a variety of height calculations depending on the façade elevation (Attachments to City Exhibit 3 – Site Plans).

The infrastructure shown on submitted site plans as existing is part of a conditionally approved major subdivision (BP # 09-4835) and a proposed road closure, but is not currently in place. Access to the site is proposed from "Private Drive" which is currently Hamilton Street. Plans propose five curb cuts off of "Private Drive" – three for access into the parking structure (to the north of the site), one for trash dumpster access and one for a patient drop-off / pick-up location (at the southernmost end of the project site).

The 2-story parking structure accommodates a total of 348 spaces (projected 147 spaces for staff and 201 spaces for patient use). Five percent of the total number of parking spaces has been designated for bicycle parking. There are sidewalks shown on the McDowell Street, Private Drive and Hospital Drive frontages.

Landscaping required for this project includes building impact landscaping, street trees, street buffer and parking deck screening. Five percent of the lot area is required to be set aside for urban-style open space amenities (0.15 acres). The plans indicate more than the required amount of open space. There are a number of retaining walls on the site – two of which appear

to trigger compliance with the retaining wall screening and landscaping requirements. Detailed landscaping review will be completed during the Final TRC process.

The UDO bases parking requirements for medical uses on the footprint of the building. In this case, a range of 475-594 parking spaces are required. The applicant has studied this specific use for the site and has found that a total of 348 spaces are needed (based upon 147 spaces for staff and 201 spaces for patient use). Because the building and use is a component of the overall Mission-St. Joseph's Hospital Campus, staff feels that any overflow parking needs can be adequately addressed through shared parking at existing surface lots and parking structures in the immediate vicinity.

This project was approved with conditions by the Technical Review Committee on November 2, 2009. There was no public comment and as of the writing of this report, no communication has been received regarding this proposal.

The Planning & Zoning Commission reviewed this proposal at their meeting on December 2, 2009. The project received unanimous support (4-0; 2 members recused). There was no public comment. Commissioners discussed how the separate infrastructure improvements address alternative transportation such as bus routes, bicycles and pedestrians. The applicant provided information from the TRC-Major Subdivision review and approval, such as sidewalks and sidewalk connections throughout the project area, provisions for bike lanes and an easement for a future transit stop. There was some discussion about how this project would fit into the closest greenway (sidewalk connections along Hamilton Street/Private Drive north to the Choctaw greenway).

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural and topographic features on the site. There is a change in grade of approximately 30 feet from east to west and the design of the structure and parking garage accommodates this shift including a partial floor on the lower side. There are several retaining walls on the site, primarily located at the southwestern corner of the parcel. These walls will comply with screening standards found in the UDO.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The parcels in the area surrounding this site are largely owned and operated by the Mission Health System for the hospital and medical offices or other similar, supporting uses. All parcels in the immediate area are also zoned Institutional. This general location has been established as a medical hub for some time. The Outpatient Cancer Center is expected to be a complimentary use and should not injure the value of adjoining or abutting properties.

Although not a part of this application, the owners of several properties in the immediate area have raised concerns about the impact of TRC-approved roadway improvements on the value of their properties. Those property owners are, however, meeting with representatives of Mission Health Systems and City staff and there is good progress toward an agreement, while not yet a final solution.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The new Outpatient Cancer Center is proposed at 6 stories in height, which is similar to other structures in the immediate area and while there are some lower buildings nearby, this development is proposed in a design similar to other buildings and structures on the Health Systems campus. There will be significant vegetation on the site with trees, shrubs and both green open space as well as a hardscaped open space area along Hospital Drive, reducing the coverage of structures on the lot. This site is an appropriate location for a medical use and this development is compatible with the scale, bulk, coverage and character of the area in which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The Asheville City Development Plan 2025 refers to the Sustainable Economic Development Strategic Plan, which notes that the top strength of the City is "availability of adequate health care." Furthermore, Goal IV in the Land Use & Transportation section recommends that "the City should enhance its role as western North Carolina's regional medical and education center," with the specific strategy of working with Mission-St. Joseph's Health System in the implementation of their Master Facilities Strategic Plan. This proposal enhances and expands the region's access to medical services and furthers the goals of the Hospital's master planning efforts.

Additionally, this project is proposed to be LEED certified, which aligns with Smart Growth policies recommended in the Plan.

Although not specifically linked to this approval, the associated roadway improvements in the immediate area that make this project feasible directly support goals in the transportation section of the Plan that seek to make infrastructure improvements that will support economic development and community needs. The Plan does recognize all modes of transportation, including cars, transit, bikes and pedestrians – this proposal is proximate to four transit routes and sidewalks are included on all street frontages. The Bicycle Master Plan does recommend bike lanes along Victoria Road, which has been noted in the TRC Staff Report and was discussed by the Greenways Commission during their evaluation of associated roadway closures.

This proposal works to achieve City Council's goals on being green by seeking LEED certification on the facility and on sustainability by the commitment to infrastructure with the related roadway improvements. Although not a part of this Level 3 review, the project is linked with improvements to Victoria Road and the creation of Hospital Drive, which will provide a link between Biltmore Avenue and McDowell Street, easing and improving traffic issues and congestion between the Health System campus, A-B Tech and Asheville High School.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposed development is located near major road facilities and interstate connections as well as proximate to several transit lines (Rtes. 4, 8, 6 & 12). In addition,

the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's Traffic Engineer. Based on the proposed street infrastructure improvements that were approved by TRC as a part of a separate Major Subdivision review, this development is not expected to cause undue traffic congestion and/or create a traffic hazard. This development was included in a traffic impact study that identified the need for the proposed street infrastructure improvements.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal satisfies a key goal in the comprehensive plan which seeks to advance and maintain a top strength of the City – the availability of heath care.
- The applicant will be seeking LEED certification, meeting key "green building" goals of the City.
- Parking for the project is proposed in a structured deck, thereby reducing the impervious area that a surface lot would consume.
- Related infrastructure improvements will create and enhance connectivity between Biltmore Avenue and McDowell Street.

Con:

- The applicant is seeking a modification for a reduction in parking based on the specific use – the parking provided does not satisfy the requirements of the UDO.

Staff recommends approval of the Level 3 development proposal for a new outpatient cancer center and associated parking structure as proposed, including support for the parking requirement modification.

Mr. True Morse, Director of Facility Planning at Mission Hospital, reviewed with Council a PowerPoint (Applicant Exhibit 1) and provided Council with the vision statement of the Cancer Center - "to create a regionally integrated and economically viable comprehensive Cancer Center of Excellence to reduce risk of cancer and improve cancer survival for citizens in WNC." Using pictures he showed the Mission Campus now, showing Victoria Road; the Mission Campus in the future with Hospital Drive; and the Cancer Center site plan. He urged Council to adopt the conditional use permit for this very important project.

Ms. Karen Grogan, Administrative Director of Cancer Services at Mission Hospital, explained the physical structure of (1) 118,000 square foot building - $59 Million Cancer Center, deck and equipment; (2) dedicated parking deck of 348 spaces (a) high mileage vehicles/bicycles; and (b) parking space variance; (3) five stories – top floor unfinished – flexible space; (4) Mission Hospital's first LEED certified building (a) dedicated recycling/14% energy efficiency; (5) location on McDowell side of Mission Campus; and (6) Victoria Road redesign (a) Hospital Drive will be 5 lanes/easy access to Center. She explained the Cancer Center facility building and stacking. The need for Cancer Center of Excellence (1) must prepare for expected growth in outpatient volume; (2) improve cancer survival and reduce risk; (3) consolidate outpatient services for access and efficiencies; (4) stop outward migration for services provided in WNC – Spares families from traveling for treatment; (5) space to house cutting edge technology; (6) expand clinical cancer research; (7) offer multi-disciplinary disease clinics; (8) expand pediatric and adolescent oncology services and space; (9) incorporate integrative therapies with

traditional cancer treatment; and (10) align a National Cancer Institute site. She explained the benefits of a formal affiliation with UNC-Chapel Hill (1) expanded access to clinical trials and research; (2) enhanced telemedicine capabilities; (3) expansion of Mission's patient navigator program; (4) hire oncology medical director with faculty appointment at UNC; and (5) access to survivorship programs. She requested approval of the proposed Cancer Center facility and adjoining deck, with parking space variance, to be located on Hospital Drive.

The following individuals spoke in support of the conditional use permit:

Mr. Fred English (who requested an item in the Center be named in memory of his daughter-in-law Marcy Rogers Stamey who worked at Mission Hospital)
Mr. John Locke, Mission Health Care Foundation, on behalf of Vice-Chair
Dr. Eric Kuehn, Oncologist at Mission Hospitals
Dr. Orren Beaty, Pediatric Oncologist in Asheville, N.C.

After rebuttal, Mayor Bellamy closed the public hearing at 6:39 p.m.

Based on findings of fact as stated by staff, Councilman Russell moved to adopt Ordinance No. 3822, approving the Conditional Use Permit for the proposed master plan for the Mission Outpatient Cancer Center including the parking requirement modification subject to the conditions recommended by City staff and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by these TRC prior to issuance of any required permits. This motion was seconded by Councilman Smith and carried unanimously.

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C. PUBLIC HEARINGS REGARDING THE STORMWATER AND EROSION CONTROL ORDINANCE

Councilman Russell moved to table the stormwater and erosion control ordinances pending review by the City Council Planning & Economic Development Committee, as Council had additional questions about the ordinances that staff had not previously answered. This motion was seconded by Councilwoman Manheimer and carried unanimously.

When Mayor Bellamy asked for comments on the motion (prior to it being adopted), no one spoke.

V. UNFINISHED BUSINESS:

A. DISCUSSION OF VARIOUS STRATEGIES PROPOSED IN THE DOWNTOWN MASTER PLAN RELATED TO PROJECT REVIEW PROCESSES

Planning & Development Director Judy Daniel said that this is the first portion of the conceptual overview of the Downtown Master Plan. She gave a brief overview of the process which started last spring. The committees that are looking at the Unified Development Ordinance (UDO) changes are reviewing the elements segment by segment. The first segment is this process steps. She explained that once the Downtown Commission subcommittee has looked at it, it goes to the Planning & Zoning Commission and normally they would go before the City

Council Planning & Economic Development Committee (PED); however, the PED Committee did not meet in November or December of 2009. They then moved the process steps forward to City Council review, since this is only a conceptual overview and no action is a part of this. This will come back to Council as a complete package.

Mayor Bellamy asked that in the future all items go before the PED Committee prior to coming before the full Council.

Urban Planner Julia Cogburn said that this is consideration of various strategies proposed in the Downtown Master Plan related to project review processes.

Earlier this year, Asheville City Council adopted in concept the Downtown Master Plan, following almost a year of public forums and meetings. At the time of adoption, Council directed staff to begin looking at the implementation of the various elements contained in the plan. Five subcommittees have been established by the Downtown Commission (DTC) to work on this implementation. One of these subcommittees, the Downtown Master Plan Urban Design Subcommittee (UDS), is charged with reviewing the elements of the Master Plan that will result in amendments to the Design Guidelines for Downtown and amendments to the Unified Development Ordinance (UDO).

The UDS began its work by looking at the review process recommendations in the plan. Strategy 6 of the plan calls for making downtown project review "transparent, predictable, and inclusive of community input." Staff identified eleven action steps contained in the plan that target this goal for project review. These eleven action steps are noted on a matrix included with this report. The matrix notes the element, describes current practice on each issue, lists any current UDO reference(s), suggests a UDO amendment to enact the change, provides staff commentary as appropriate, and details the recommendations/comments of the Urban Design Subcommittee and the Downtown Commission on each issue. The matrix also contains suggestions on variance and appeals processes which were not clarified in the Downtown Master Plan.

The proposals for change summarized in the matrix were reviewed by the DTC on November 13, 2009. While there was general acceptance of most of the Committee recommendations, there was not agreement among all members present regarding Action Step 6D, as noted on the matrix. These proposals were present to the Planning and Zoning Commission (P&Z Commission) on Thursday, November 19th, and their recommendations are included in the matrix. At this meeting, City Council has the options of directing staff whether or not to proceed with these proposals and draft them into code amendments for review and approval or make any changes to the proposals before drafting the code amendments.

The staff will be bringing the recommendations of this Committee to the Council over the next several months as the Committee completes its work. Each report will include the Committee recommendations and the comments/recommendations of the Downtown Commission and the Planning and Zoning Commission. When the Council has had the opportunity to review all of those recommendations, and request any changes to those recommendations they may choose; the staff will bring the drafted code amendments to Council for a vote. At this time it is anticipated that the work of this Committee will require several more months.

This action supports the City Council Strategic Operating Plan goal of completing the Downtown Master Plan process and beginning implementation of the plan.

Pros:

- The recommendations are the first step in implementation of the review process elements of the Downtown Master Plan.
- The recommendations have been reviewed in detail and deliberated by a subcommittee appointed by the Downtown Commission.

- One of the recommendations suggests Council have discretion over the largest of projects in the downtown "core." This differs from the master plan recommendation that Council only review on technical merits.

Cons:

- One of the recommendations suggests Council have discretion over the largest of projects in the downtown "core." This differs from the master plan recommendation that Council only review on technical merits and reservations regarding that element were expressed by some members of the Downtown Commission.

The Planning & Zoning Commission, Downtown Commission and Design Action Committee recommendations are presented on the matrix.

Ms. Cogburn then went into detail of the recommendations. She said the process elements include (1) First Review of Urban Design Subcommittee – Process Elements; (2) DTMP Strategy 6 – DT project review to be "transparent, predictable, and inclusive of community input."; (3) 11 Action Steps Identified by staff; (4) Suggestions on Variances and Appeals – Silent in Plan; and (5) Matrix created.

For Action Step 6A1, the following applies:

- Recommendation - large projects require early developer sponsored meetings
- Current practice – highly recommend that the developer meet with representatives of the neighborhood
- Suggestion - Level II and III project meetings be mandatory at design phase of project; Level I projects recommend meetings
- Suggestion – DTC recommends meetings should require certain notification – posting; advertising; letter to owners within 200 feet
- Meeting to be developer organized and run; staff attends to provide information on process
- Consensus agreement on most proposals from DTC, P&Z Commission, and staff
- Disagreement about advertising: DTC supports, staff and P&Z Commission do not recommend required advertisement

For Action Step 6A2, the following applies:

- Recommendation – All official review meetings should have advertised opportunity for public attendance and input
- Current practice – All official review meetings are advertised; DTC does not list projects being reviewed in the advertisement of their meeting
- Consensus agreement – UDS and DTC with proposed recommendation. Would require project listing in DTC advertisement

For Action Step 6C1, the following applies:

- Recommendation – Revise project level definitions to alter the thresholds for downtown proposals.
  - Level III – Above 175,000 square feet or above the Intermediate Height Zone (145 feet)
  - Level II – 20,000 to 175,000 square feet and up to the Intermediate Height Zone

- Level 1 – less than 20,000 square feet

- Current practice – UDO levels same for all districts.
- Consensus agreement of UDS, DTC, and P&Z Commission with proposed recommendation. Still evaluating threshold levels.

For Action Step 6C2, the following applies:

- Recommendation – Require formal written findings detailing how a project does or does not meet requirements
- Current practice – Provide formal written reports on all reviews
- Consensus agreement of UDS, DTC, and P&Z Commission with proposed recommendation. Formalize by placing in ordinance

For Action Step 6C3, the following applies:

- Recommendation – Level I reviews should be handled at staff level including design review
- Current practice – Same as recommendation
- Consensus agreement of UDS, DTC, and P&Z Commission to continue current practice

For Action Step 6C4, the following applies:

- Recommendation – Level II review to TRC first, then to DTC, then to P& Z Commission (final reviewing body)
- Current practice – Projects go to DTC first, then to Technical Review Committee (TRC) (final reviewing body)
- Consensus agreement of UDS, DTC, P&Z Commission with proposed recommendation.

For Action Step 6C5, the following applies:

- Recommendation – Level III projects reviewed by TRC first, then to DTC, then to P&Z Commission, final review by Asheville City Council
- Current practice – Projects go to DTC first, then to TRC, then P&Z Commission, and to Council as a Conditional Use Permit (CUP).
- Consensus agreement of UDS, DTC, and P&Z Commission with proposed recommendation. Significant discussion on type of review to be conducted by Council.

For Action Step 6D, the following applies:

- Recommendation – Apply the CUP process only to projects on conditional use permit listing for Central Business District (CBD) (not reviewing based on size)
- Current practice – All Level III projects are treated as CUPs allowing City Council the ability to evaluate a project more broadly and add conditions

- No Consensus - DTMP found CUP problematic, did not like quasi-judicial process. Called for more stringent rules with greater certainty in approval.

- Significant discussion by UDS and DTC on review of largest projects: Should there be some discretion for Council? If no discretion is review repetitive?

- UDS recommended:
  - Level III projects in the "core" to require conditional zoning approval (not quasi-judicial but is a legislative decision).
  - Projects outside the "core" also go to Council but would only be reviewed on technical merits.

- DTC – no consensus; mixed views.
  - Concerns expressed about not following a central premise in the DTMP.
  - Others felt that Council needs to have wide latitude in reviewing the largest projects, particularly in the traditional downtown.

- P&Z Commission consensus agreement on DTC proposal

For Action Step 6E, the following applies:

- Recommendation – Large development proposals with phased components should submit a master plan

- Current practice – May submit a master plan but it is not required

- Consensus agreement of UDS, DTC, and P&Z Commission to require a master plan when phasing a project

For Action Step 6I, the following applies:

- Recommendation – Establish a time limit between submission and written findings for each project review step

- Current practice – DTC recently adopted bylaws change:
  - Review limited to 120 days without developer concurrence.
  - TRC required to take action within 10 days of review of plans. Level I projects have 10 day turnaround. Council and P&Z Commission generally take action within two meetings on an item

- Consensus agreement of UDS, DTC, and P&Z Commission that with this change it is unnecessary to do anything but codify the DTC review limit of 120 days

For Action Step 6J, the following applies:

- Recommendation – Allow project sponsors to choose immediate project review by Council if: project review has extended past time allotted; design approval has been denied for not meeting standards; in lieu of making a contribution to Community Benefits Fund

- Current practice – No process to skip to Council in project review

- Consensus agreement of UDS, DTC, and P&Z Commission that not necessary to do anything at this time with bylaws change by DTC and no Community Benefits Fund

For variances, the following applies:

- Recommendation – Not addressed in DTMP
- Current practice – Variances from UDO requirements are heard by the Board of Adjustment (BOA). The DTC can modify guideline requirements as they are voluntary in compliance. Council can grant modifications to certain UDO requirements as part of a CUP or Conditional Zoning review
- Consensus of UDS, DTC, and P&Z Commission to allow staff to flex up to 10% of some standards – setbacks; openings; expanses of wall. All other variances would go to P&Z Commission. *Exception* – alternative compliance to Tree Commission

For appeals, the following applies:

- Recommendation – Not addressed in DTMP.
- Current practice – Appeals from staff go to the BOA. There are no appeals from DTC as compliance is voluntary. Appeals from P&Z Commission go to Council. Appeals from Council go to courts.
- Consensus agreement of UDS, DTC, and P&Z Commission that appeals from staff or DTC go to P&Z Commission. Appeals from P&Z Commission go to Council. Appeals from Council go to courts.

Next steps include: (1) Get Council direction on these issues; (2) Begin drafting ordinance amendments; and (3) Return through process for review and approval of ordinance amendments.

Ms. Cogburn responded to various questions/comments from Council noting direction from Council on the individual issues; some being, but are not limited to, how does this coincide with Council looking at an overall revamping of the UDO; with a substantial change in the review process tied in with more stringent regulations (for not such a subjective review process), it seems difficult to adopt the segments in phases; recommendation to be consistent regarding the core area and the traditional downtown area; concern about setting the 145 ft. height level is a de facto limit (and the square footage limit) because builders will stay at that limit rather than going through Council approval; concern of raising the Level III review from 100,000 to 175,000 square feet; concern that people expect City Council to listen and make decisions and projects outside the core area would only be a Council review on technical merits; how as the 10% number arrived at for flexing variances; are there appeal provisions for citizens with standing or special damages; is there some process available for appeals at various levels of the process even though a quasi-judicial decision is not being made; what kind of review is the Planning & Zoning Commission level for a Level II project; question if the Downtown Review Commission limit of 120 is short enough; concern that a project would have to go through four different committees even though the standards are laid out; request that not so many ordinances are brought back to Council for review at one time; request staff use visualization tools when bringing the rest of the segments to Council; request for a clear sense of how the parcels connected to Pack Square Park will be considered with the core threshold of 175,000 square feet; Strategy 6C1 and 6D appear to be in conflict; is it possible for Council to review projects in concept prior to the Technical Review Committee so that if Council does not approve of the project it will save the developer time and money from proceeding further in the process; and is there an appeal process whereby an appeal from the Planning & Zoning Commission goes straight to the Courts, by-passing City Council.

When Ms. Daniel asked to come back to Council in early May with an update, Mayor Bellamy asked that the review go through the PED Committee first.

It was the consensus of Council to instruct staff to begin the process of drafting the ordinance amendments, based on comments by Council, and then take it through the PED Committee, prior to coming before the full Council.

B. ASHEVILLE ENERGY INDEPENDENCE INITIATIVE

Vice-Mayor Newman explained the Asheville Energy Independence Initiative, which is a community campaign to create jobs, promote stewardship, and save money for businesses and families in Asheville. This topic was discussed by Council last year in conceptual form when we were going to the state legislature asking for legislative authorization to even consider having such an initiative. The legislature has taken steps to grant authorization to cities for these type of energy efficiency initiatives.

He said that Asheville has never been afraid of being a leader in supporting clean energy with citizens and political leaders from Asheville and Western North Carolina who developed and championed the passage of the North Carolina Clean Smokestacks Act in 2002, which committed our state to the strongest clear air standards in the nation. As a result of passing that legislation the Progress Energy power plant here in Asheville is 95% cleaner than it was prior to the technology improvements required by that Act. Asheville has also been a leader by committing ourselves to reduce our energy use by 80% at a rate of 2% per year on our public facilities. We have been very successful in meeting those commitments and we have saved taxpayers a lot of money in the process. The initiative to reduce energy and carbon pollution from our public facilities is one of the things he is most proud of that we have accomplished over the past several years. We all know that our citizens want Asheville to be a national leader in promoting clean renewable energy and this proposal represents what many people believe to be the most powerful way to create an initiative that our entire community can participate in.

He briefly reviewed with Council the following PowerPoint:

Opportunity and need: (1) There are compelling arguments –from national security, to global warming to job creation– for our country to free ourselves from dependence on polluting fossil fuels; (2) Buildings consume 39% of all energy in the United States and 68% of electricity; (3) There are proven technologies to reduce energy use in a cost-effective manner; (4) Innovative financing models make implementation of energy efficiency measures simple and scalable; and (5) In 2009, NC Legislature provided authority to local governments.

Asheville's Triple Bottom Line: (1) People—Improve public health by investing in clean energy technologies that reduce pollution from fossil fuel power plants and create new jobs in the green economy; (2) Planet—Make Asheville a national leader in improving the environmental performance of our homes and businesses; and (3) Profits—Put professionals in the construction trades back to work and save families and businesses in Asheville money by reducing their utility costs.

Using a chart, he showed the cost comparison of electricity technologies of energy efficiency, solar water heating, landfill gas, pulverized coal, wind, nuclear and solid waste methane.

Progress Energy requests significant rate increases. From WRAL.COM posted Jun 6, 2008. Raleigh, N.C. — Citing the need to cover the soaring cost of fuel for power plants, Progress Energy has asked the state to approve a 16.2 percent rate increase. The Raleigh-based utility filed a petition Friday with the North Carolina Utilities Commission to increase rates by about $424 million. If approved, the increase would raise the average monthly bill to $112.57 from the current $98.86. The Utilities Commission will likely have a public hearing on the request in the fall. If approved, it would take effect Dec. 1.

The program design concept: (1) Partnership between the City of Asheville and property owners who want to invest in energy efficiency improvements on their homes or places of business; (2) City issues bonds or other financing instrument to create Asheville Energy Independence Fund; (3) Property owners access funds ($5,000- $20,000 for residential) to finance energy efficiency improvements; (4) Repayment through 10-15 year special assessment on property tax bill; (5) Program should be revenue-neutral (or better) for government, taxpayers and participating families and businesses; (6) Participation by property owners is voluntary; (7) Only property owners who participate pay the assessment; (8) Assessment revenues should be sufficient to repay principal and interest on municipal debt as well as administrative costs for managing the program; and (9) Energy savings should be equal to or greater than costs for paying the special assessment.

Energy efficiency technologies that have less than a 10-year payback:

Technology	ROI	Typical Payback Period
LowFlow Showerheads	100- 200%	1 year or less
Sealing ductwork	50- 100%	1- 2 years
Weather-stripping	35- 40%	2- 3 years
Programmable thermostat	50-75%	2-3 years
Attic insulation	15- 25%	4 - 6 years
CFLs	50-75%	2-3 years
LEDs	10- 15%	6- 10 years
Motion-sensors	25- 50%	2- 4 years
Solar thermal systems	10- 20%	5- 10 years
HVAC upgrade	10- 20%	5- 10 years
Geothermal	8- 15%	7- 12 years

Process for property owners to participate: (1) Interested property owners fill out an application; (2) Energy audit performed to identify opportunities for cost-effective energy efficiency measures; (3) Property owner applies for funding and receives approval; and (4) Energy improvements for the home/business are installed.

Benefits for homeowners and business owners: (1) Eliminates upfront cost of energy project; (2) Special assessment transfers with property ownership; (3) Fixed repayment rate for 10- 15 years; and (4) Reduction in annual utility expenses should be larger than cost of assessments.

Opportunities for Job Creation:

Oct. 2008 -- 176,600 jobs in Buncombe County
Oct. 2009 -- 168,400 jobs in Buncombe County
Net loss -- 8,200 jobs

Construction
Oct. 2008 – 10,800 jobs in Buncombe County
Oct. 2009 – 9,100 jobs in Buncombe County
Net loss -- 1,700 jobs – 15.7% decline

- Based on projections from Sonoma County economic analysis, investment of $50 million in energy efficiency initiative will generate 563 new jobs. 382 of the jobs would be in construction trades. The initiative would create enough jobs to re-employ 22% of the positions lost in the construction sector during the recession.

- Investment of $50 million in the PACE model was also projected to generate $3.3 million in additional state and local tax revenues. The new tax revenues are primarily through

increased sales taxes (ex. purchase of equipment and materials from home improvement retailers) and income taxes as people return to work and begin paying taxes again.

Benefits for City of Asheville: (1) Improvement to Asheville's older housing stock and commercial facilities; (2) Pressure to construct additional power plants, which require utility rate increases, is reduced; (3) Program is essentially self-funding; (4) No liability to General Fund. City should charge enough interest to cover debt repayment and administrative costs; and (5) Strengthen Asheville's position as a leader for developing clean energy and green jobs.

Advantages of Assessment vs. Loan: (1) Assessment runs with property rather than individual. People defer energy investments because they do now know how long they will live in their home; (2) Provides City with strong security interest to assure repayment; and (3) Simple, low-cost method of collecting funds.

Case Study: The Jones Family: (1) After energy audit, the Jones family applies for and receives $10,000 from Energy Independence Fund. Installs solar thermal system ($6,500) attic, insulation ($700), energy efficient windows ($2,400) and more efficient lighting ($400). Total investment = $10,000; (2) Homeowner receives several credits and rebates, total = $4,895 (a) Solar tax credits ($1,950 federal+$1,400 NC) = $3,350 total; (b) Energy efficiency tax credit (for building envelope– windows and insulation)- $930; and (c) Progress Energy rebate for windows ($240) and insulation ($375) -- $615; (3) Homeowner repays $10,000 over a 15 year period at 6.25% interest = $85 per month/ $1020 per year; (4) In year one, homeowner reduces energy costs by $700 (assumes annual energy costs are $2000 and achieves 35% reduction; (5) Over 15 years, home owner receives $18,912 in energy benefits and tax credits (assumes 4% annual increase in cost of electricity/ natural gas); (6) Over 15 years, homeowner pays $15,420 to repay special assessment taxes, for a net benefit to homeowner of $3,492; and (7) After year 15, homeowner continues to have lower energy payments but no longer makes any special assessment payments.

Environmental benefits: (1) Retrofitting 1,000 homes like the Jones' would reduce electricity use by 3,850,000 kWh per year and reduce natural gas use by 231,000 Therms; and (2) Carbon reduction equivalent of taking 1,000 cars off the road or planting 40 acres of trees. (Assumes each home uses 1,100 kWh per year of electricity and 660 Therms of natural gas and that each are reduced by 35%)

Start Small – Think Big: (1) Recommend launching Asheville Energy Independence with a pilot program. Monitor and evaluate results; (2) If successful, scale-up the program in 2011-2012; and (3) If want to make a real impact on carbon footprint, peak power demand and job creation, we need to invest $50 million or more in Asheville Energy Independence over the next three to five years (a) 2000 homes at $15,000 each = $30 million; and (b) 500 business at $40,000 each = $20 million.

Resources for further information include: (1) www.progress-energy.com/custservice/carres/efficiency/programs/heip/index.asp; and (2) www.pacenow.org.

Vice-Mayor Newman also presented Council with the Sonoma County Energy Independence Program: Employment and Economic Impact Analysis and Estimation. This is an analysis of the potential for this type of initiative to create jobs.

Vice-Mayor Newman's proposal for consideration is to (1) Request for City Council to approve Asheville Energy Independence Initiative in principal; (2) Direct City Manager to develop a pilot program to be implemented in 2010. Ideally, project can progress enough so that some work can be completed this calendar year to take advantage of strong national incentives for energy efficiency investments; (3) Work with staff and Sustainable Advisory Committee on Energy & the Environment (SACEE) to flesh out program details; (4) Explore whether Buncombe

County may be interested in partnering in the program; and (5) Evaluate results of pilot program prior to extending or expanding the project.

The following individuals spoke in support of the Asheville Energy Independence Initiative:

President and Co-Owner of Asheville Geothermal
Representative of 1600 Members of the Sierra Group
Ms. Grace Curry, Asheville resident and member of local Sierra Club
Chair of the Board of Directors of the Blue Ridge Sustainability Institute and a Senior Advisor to the Institute
Ms. Michelle Smith, Asheville homeowner
Member of Build Smart Alliance, employee of Sundance Power Systems and Local Renewable Energy and Asheville resident
Building Scientist/Energy Auditor and Greenbuilding Consultant
Board Member of Green Building Council
Employee of the N.C. Dept. of Commerce in Sustainable Economies and Asheville Resident
Representative of Biltmore Farms
Representative of Green Opportunities
Buncombe County Commissioner Holly Jones

Councilman Smith said that what this program will do is create the conditions for a truly green economy in Asheville and in western North Carolina. As the County and the surrounding areas mimic our success it will be our local businesses that are strong enough and well positioned to meet those needs as they begin to implement this same program. This will have a ripple effect for years to come for our local businesses. In tandem with our high tech earth science corridor and the other green infrastructure we hope to implement in the future, Asheville is going to be a national leader in this green economy. The job growth is only the beginning for us. This project is the beginning of something that is very crucial to our economic future.

Councilman Russell explained that we will definitely need some additional funding sources because we have a lot of other programs, debt service, and master plans to be funded. However, anything that could potentially work, be revenue neutral to the City and create this type of outcome is exciting.

Councilwoman Manheimer is supportive of the concept if staff putting together a plan that Council can review to see if it is possible to implement this program and she is supportive of the goal. She would need to understand the difference of how would the financing work, e.g., why wouldn't people get a home equity line; and, what kind of protection is the City afforded if someone were to default on repayment. Those are the type of questions that Council will to discuss to ensure that we are protecting our City's finances and our citizens who rely on the City maintaining a strong financial position. However, she felt this recession is calling on a new day for private/public partnerships that create jobs and create a new economic outlook.

Councilman Davis felt this is an exciting initiative, but he is cautious as well. He is supportive of the program, but he felt the details of the program will require a lot of staff time to research.

Councilman Bothwell was supportive of this initiative and noted that the houses that are most in need are usually the ones in worse shape and are the older homes that are more likely to be low income houses. Although the intent is not particularly an affordable housing issue, this would address it in some ways. He felt positive that we will find models for this because towns as small as 1,600 people have working models.

Mayor Bellamy wanted to be clear that staff will be doing research on this concept only and felt this should be a key agenda item for the Finance Commission to look at on an on-going basis. She could not, however, support investing $50 Million at this time because Council must look at all the capital needs of the City. Council heard at their retreat that the capital needs of the City is $270 Million and that doesn't include a performing arts center and other projects that the community wants Council to support. She did support staff researching this concept. She questioned if the $250,000 from the Department of Energy for the competitive grant for community projects process might be available, and perhaps some money from the Community Development Block Grant funds. Keeping our limited budget in mind, Council has been asked to clean up downtown, expand greenways implement different master plans and support a lot more issues that impact our City. She felt that in the future we need to look at a true bond program (not just for energy efficiency) because there are a lot of needs in our community. As we go forward with this concept, as it comes back to Council, the community needs to understand that this will be a pilot program. The pilot program must be successful and we need to make sure we are good stewards of the City's tax dollars. She asked that Council, in the future, hear from Mountain Housing Opportunities on their rural rehabilitation program is a model for review.

Councilman Bothwell moved to (1) Approve the Asheville Energy Independence Initiative in principle; (2) Direct City Manager to develop a pilot program to be implemented in 2010. Ideally, project can progress enough so that some work can be completed this calendar year to take advantage of strong national incentives for energy efficiency investments; (3) Work with staff and SACEE to flesh out program details; (4) Explore whether Buncombe County may be interested in partnering in the program; and (5) Evaluate results of pilot program prior to extending or expanding the project. This motion was seconded by Councilwoman Manheimer and carried unanimously.

C. SIX-MONTH REVIEW OF THE ROADSIDE SOLICITATION POLICY

Police Chief Bill Hogan said that City Council established a policy for granting approval of roadside solicitation requests on May 12, 2009, and resolved to review this policy 6 months after its implementation.

Asheville City Council established a policy for granting approval of roadside solicitation requests on May 12, 2009 (Resolution 09-87) in accordance with N.C.G.S. 20-175 which authorized roadside solicitation under certain circumstances. Since the adoption of this policy, the City of Asheville has received two requests for roadside solicitation. These requests were from the Asheville Firefighter's Association (AFFA) for Fill the Boot events in conjunction with the Muscular Dystrophy Association (MDA). These events were held in May and September of 2009. There were no safety issues or problems identified by the Asheville Police Department during these events.

The Public Safety Committee reviewed this update on November 17, 2009, and agreed to make no changes to the current policy.

Regarding City Council's Strategic Operating Plan, by adopting a policy to address roadside solicitation requests under G.S. 20-175, this resolution assisted in making Asheville a safer city based upon metrics of similarly sized cities, by establishing due process to address the safety of this activity.

Pro:

- By continuing a process to address the safety of this activity, approved roadside solicitation will continue to be conducted with reduced risks to solicitors and the motoring public.

Cons:

- There has not been an increase in the first 6 months of this policy; however, Council may see an increase in requests for roadside solicitation from a variety of organizations in the future.
- Standing in the roadway, even with a vest, is an inherently dangerous activity.

City staff recommends that City Council continue the roadside solicitation policy currently in place.

- In order to increase the safety of those participating in roadside solicitation, staff would like to suggest the City require advanced signage that warns motorists that a solicitation is taking place and to slow down since pedestrians are in the roadway.
- The City may wish to produce the signage to be used and rent or loan it to an approved organization to notify oncoming traffic that they are approaching an intersection where solicitation is taking place.

Councilman Davis moved to continue the roadside solicitation policy with the City requiring advanced signage. This motion was seconded by Councilman Russell and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-3 – RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on the Board of Adjustment, they made the following recommendations: (1) appoint David Brown (Regular member) to fill the unexpired term of Councilwoman Manheimer, to serve until January 21, 2011; (2) reappoint Kristy Carter and Phillip Harden (Alternate members) to serve a three-year term respectively, term to expire January 21, 2013; and (3) appoint Douglas Hattaway (Alternate member) to serve the unexpired Alternate term of David Brown, term to expire January 21, 2011. All appointments are until their successors have been appointed.

Councilman Russell moved to make the appointments as recommended by the Boards & Commissions Committee as noted above. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 311

B. CIVIC CENTER COMMISSION

It was the consensus of Council to instruct the City Clerk to re-advertise for the vacancy on the Civic Center Commission.

C. RESOLUTION NO. 10-4 – RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Asheville-Buncombe Community Relations Council, they recommended appointing Sharon West.

Mayor Bellamy moved to appoint Sharon West (to replace Craig White) to serve a three-year term, term to expire December 31, 2012, or until her successor has been appointed. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Bothwell voting "no" due to a misunderstanding in the voting process procedure.

RESOLUTION BOOK NO. 32 – PAGE 312

D. RESOLUTION NO. 10-5 – RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on the Downtown Commission, they made the following recommendations: (1) appoint Michael McDonough to fill the unexpired term of Harry Weiss, to serve until December 31, 2011; and (2) reappoint Guadalupe Chavarria to serve an additional three-year term, term to expire December 31, 2012. Both appointments are until their successors have been appointed.

It was the consensus of Council to instruct City Clerk Burleson to re-advertise the three remaining vacancies, particularly looking for architects or design professionals.

Councilman Davis moved to make the appointments as recommended by the Boards & Commissions Committee as noted above. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 313

E. RESOLUTION NO. 10-6 – RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on the Sustainable Advisory Committee on Energy & the Environment, they made the following recommendations: (1) reappoint Sasha Vrtunski and Jane Mathews, to serve a three-year term respectively, terms to expire December 31, 2012, or until their successors are appointed; and (2) interview for the remaining position.

After a brief discussion, it was the consensus of Council to instruct City Clerk Burleson to re-advertise for the one position, particularly looking for diversity on the Committee.

Councilwoman Manheimer moved to reappoint Sasha Vrtunski and Jane Mathews, to serve a three-year term respectively, terms to expire December 31, 2012, or until their successors are appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 314

F. RESOLUTION NO. 10-7 – RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Firemen's Relief Fund, they recommended reappointing Pat Leckey.

Councilman Russell moved to reappoint Pat Leckey to serve an additional two-year term, term to expire January 1, 2012, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 315

G. RESOLUTION NO. 10-8 – RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on the Greenway Commission, they made the following recommendations: (1) reappoint Glen Locascio to serve an additional three-year term, term to expire December 31, 2012, or until his successor is appointed; and (2) interview for the remaining two positions.

It was the consensus of Council to interview Stephen Jones, Bill Jones, M. James Grode and Sandy Tarantino.

Councilman Smith moved to reappoint Glen Locascio to serve an additional three-year term, term to expire December 31, 2012, or until his successor is appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 316

H. RESOLUTION NO. 10-9 – RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Metropolitan Sewerage District Board of Directors, they recommended reappointing Mayor Terry Bellamy.

Councilman Russell moved to reappoint Mayor Terry Bellamy to serve an additional three-year term, term to expire January 19, 2013, or until her successor has been appointed. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 317

I. RESOLUTION NO. 10-10 – RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE RIVERFRONT REDEVELOPMENT COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on the Riverfront Redevelopment Commission, they made the following recommendations: (1) appoint Joe Ferikes and Robert Camille (both representing the riverfront property or business owner) to each serve an initial one-year term, terms to expire January 1, 2011, or until their successors are appointed; and (2) interview for the remaining one position.

It was the consensus of Council to instruct City Clerk Burleson to re-advertise for the one position.

Councilman Russell moved to appoint Joe Ferikes and Robert Camille (both representing the riverfront property or business owner) to each serve an initial one-year term, terms to expire January 1, 2011, or until their successors are appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 318

J. RESOLUTION NO. 10-11 – RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for vacancies on Transit Commission, they made the following recommendations: (1) reappoint Hanna Raskin to serve an additional three-year term, term to expire December 31, 2012; (2) appoint Georgia Shannon (to replace Andrew Goldberg) to serve

a three-year term, term to expire December 31, 2012; (3) appoint Paul Van Heden (to replace Karen Austin) to serve a three-year term, term to expire December 31, 2012; and (4) appoint Kevin Jenkins to serve the unexpired term of Josh O'Conner, term to expire December 21, 2010. All appointments are until their successors have been appointed.

It was noted that when Josh O'Connor returns from his tour of service that if he wishes he will be placed in the next available seat on the Transit Commission.

Councilman Davis moved to make the appointments as recommended by the Boards & Commissions Committee as noted above. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 319

J. RESOLUTION NO. 10-12 – RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Tree Commission, they recommended reappointing Laura Uberbacher and Bill Hascher.

Councilman Russell moved to reappoint Laura Uberbacher and Bill Hascher to each serve a three-year term respectively, term to expire December 31, 2012, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 320

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following claims were received by the City of Asheville during the period of November 26 – December 23, 2009: Steven Weinrib (Sanitation), Cyndy Howze (Water), Shirnell Langford (Transit), Jeffrey Harris (Transit), Bill Carter (Streets), Eleanor Jones (Streets), Kathleen Campbell (Transit), Richard Jackson (Water), Mike Gratton (Streets), Marcello Bargellini (Sanitation), John E. Willard (Police), Progress Energy (Water) and Eric Woon (Fire). The following claims were received by the City of Asheville during the period of December 23 – December 31, 2009: Lael Kmecza (Streets), Thomas H. Jones (Fire), Louise Kistler (Streets), Lisa Bruet (Water), Fannie Bishi (Streets), Ronald Gates (Streets), Timothy Cutshaw (Transit) and Kaye Coxe-Andrews (Water). These claims have been referred to Asheville Claims Corporation for investigation.

Rev. Christopher Chiaronmonte spoke about homeless camps.

Mr. Gene Hampton spoke on Asheville's economic development.

Ms. Patricia Pinner asked for Council's help in obtaining municipal water for 14 homes on Chapel Hill Church Road and Gilmore Drive.

Mr. Aaron Penland urged Council for additional assistance in providing clean water to residents on Chapel Hill Church Road which CTS continues to put hazardous chemicals in the ground.

After discussion about the City's former and present commitment to partner with Buncombe County in extending water lines to the Chapel Hill Church Road area, it was the consensus of Council to instruct City Attorney Oast to prepare a letter to elected and appointed officials, including Congressman Shuler, Senators Burr and Hagan, the local delegation to the N.C. General Assembly, the Buncombe County Commissioners, the NCDENR (N.C. Dept. of

Environment and Natural Resources sending them the City's analysis for water line extensions to that area and noting the City's offer for partnership in order to extend water lines into the Chapel Hill Church Road area.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:42 p.m.

Magdalen Bouleson
CITY CLERK

MAYOR

Tuesday – January 19, 2010 - 5:00 p.m.
First Floor North Conference Room – City Hall

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy led the discussion on the direction of where Council would like to go with some of their strategic partnerships in 2010 and began conversations about the larger issues looming over our City. In preparation of the annual City Council retreat, Council received a white paper prepared by City Manager Jackson and the Executive Management Team dated January 4, 2010, entitled Asheville NC 2010: A Financial Crossroads highlighting some facts facing our City. City Manager Jackson then briefly highlighted some of the key observations from the document.

At Mayor Bellamy's request, it was the consensus of Council to first discuss things they support as a Council, possible funding options and then move forward with the public input process outlined below in the staff report. Mayor Bellamy felt it would be a disservice to City staff, and staff and Council liaisons to the various boards & commissions members to spend a lot of time on issues that there is not consensus of Council. It is very difficult to talk to other partners without having a menu of supported items with possible funding options.

Staff Report provided to Council: "At its annual planning retreat held January 8-9, 2010, the Asheville City Council received a paper entitled *Asheville, NC 2010: A Financial Crossroads*. The paper focuses on issues and challenges facing Asheville as it seeks to address the city's financial structure while meeting the community's expectations and vision for Asheville's future. That vision is largely captured within the city's portfolio of 16 active master plans, which were led by and developed with widespread public input.

"One of the conclusions of the paper asserts that involving key partners, community leaders and citizens in identifying solutions to Asheville's financial constraints is essential to addressing those challenges. An item was included on the retreat agenda for this purpose, but time constraints led City Council to add this as a topic to the Jan. 19 worksession agenda. The purpose of this memorandum is to introduce this topic and to suggest a plan for pursuing public input and community partnerships.

"Reaching out the public and community leaders to seek their input on alternatives for Asheville's future has proven successful in the past. At the 2006 Goals for Asheville forum, more than 300 citizens participated in establishing and prioritizing community goals. Staff is proposing a similar structure along with formal meetings with identified partners including the North Carolina legislative delegation and the Buncombe County Commission.

"A proposed schedule for implementing a public input process is included below:

Partners & Outreach Activity	Timeframe	Leadership
Community Forum Series Conduct a series of three community forums in different parts of the city where the paper could be presented and citizens would be invited to provide their input on solutions; invite community leaders and key agencies to attend and participate	Late February-early March	City Council and city staff
North Carolina Legislative Delegation Provide paper to NC State Legislative Delegation and schedule legislative visit to Raleigh	January-February	City Council
City of Asheville Boards & Commissions Distribute paper to all boards and commissions members and ask that discussion be scheduled at each body's next meeting	January-March	City Council and staff liaisons to Boards and Commissions
Buncombe County Commission Provide paper to the Buncombe County Commission and schedule discussion at next joint meeting	February-March	City Council
Asheville Area Chamber of Commerce Provide paper to the Asheville Area Chamber of Commerce Board and schedule discussion at next joint meeting	February-March	City Council

"For each outreach opportunity, staff would prepare a video documentary highlighting the paper's content for presentation. Staff would also compile the feedback and input provided at each meeting into a single report for City Council's consideration.

"To launch the community forum series, staff would recommend hosting the first forum in a central location, such as the Asheville Civic Center, and would structure the event like the Goals for Asheville forum where citizens break into small focus groups to discuss the issues and challenges and brainstorm solutions. The remaining two meeting could be held in different parts of the city. These meetings would be widely advertised and promoted through the city's communications tools and local media outlets. In addition, as with past efforts, comments would be encouraged in writing or through electronic communications for citizens who cannot attend meetings.

"For the purpose of City Council's worksession discussion, staff is seeking Council's input and direction on the following questions:

(1) Is Council generally supportive of the concept of the outreach plan?
(2) Do the sequence of events and schedule meet Council's expectations?
(3) For the public input piece, is Council comfortable hosting three forums?
(4) What will the role of the Mayor and Council be in making contact with key partners and arranging meetings?
(5) Are there other key partners or groups that should be included on the list?
(6) Are the different or additional strategies we should consider?"

Throughout discussion, each Council member stated the priority of the following possible funding options: property tax revenues; sales tax revenue; occupancy tax revenues; utility revenues; revenues from other sources like fees for services, licenses and permits, the motor vehicle tax, investment earnings and intergovernmental revenue; bond referendum; product development funds; prepared food and beverage fee; federal and state grant funds (American Recovery & Reinvestment Act, N.C. Dept. of Transportation, Community Development Block Grants, etc.); increase of 2.5% or 5% of water revenues; and earmarking by Representative Shuler.

When Mayor Bellamy also asked Council to identify additional information they would like to see from staff in order to make a decision on what they would support, some comments/items requested consisted of: options for a more fair apportionment of the sales tax; request for a graph to show how much sales tax is collected from inside the city limits; detailed information on each of the funding tools available; chart of where the commuters into Asheville come from; are there ways to have differential rates or user fees for commuters into Asheville; is there some way to have non-City residents pay for the use of police services; challenge staff to see about creative user fees; can we pursue additional 911 fees for non-City residents; investigate 911 cost recovery; would it be feasible to add a tax to people who work in the City but who do not live in the City; information on the City subsidizing the volunteer fire station in Upper Hominy (close to Haywood County); information on the Metropolitan Sewerage District participation in financing sewer lines into annexed areas; water rate adjustments; areas that City taxpayers are bearing the burden for – annexation; investigate naming rights for the Civic Center and other City venues; look for ways for consolidation; creation of a GIS map of the master plans so you can see how the different plans fit together; what the water system would look like with an additional percentage of water revenues; and list of low-hanging fruit opportunities with Buncombe County.

Vice-Mayor Newman supported talking with Buncombe County about some strategic initiatives that the City has that we think are in the interest of everyone in the County and ask them if they would be willing to dedicate some funding to some of those priorities over a multi-year period. Some potential partnership areas include regional greenways; the riverfront redevelopment area; downtown investments; parks, recreation and cultural activities; energy independence initiative; and regional planning issues. He also felt it would be appropriate to begin discussions again with our legislators on the voluntary annexation issue.

Councilman Davis supported quality of life issues; however, the City has critical needs having to do with basic City services, e.g., police, fire, sidewalks, capital improvements, etc. He felt Buncombe County would have a serious problem if Asheville falls into neglect and supported building those relationships.

Councilwoman Manheimer said that when we do fundraising we need to put together a package for what we want to do in the next zero-five years with a price tag and the bundle of funding options. Then we could go to the different partnerships and ask for their buy-in and let them know what's in it for them. Or, she wondered if it would be more worthwhile to get the partnerships interest items first so we can package them together. She felt we cannot do this alone and we are dependent on the different partnerships to participate with us.

Councilman Smith felt that going to our partners and clearly stating our priorities with a unified voice is essential to be able to move forward. His priorities would be public safety and jobs/community development. He felt we need to look beyond just our relationship with Buncombe County and our state legislators and recognize that a rising Asheville tide lifts all regional boats.

Councilman Bothwell felt that since we have a lot of commuters from Buncombe, Haywood and Madison counties who come into Asheville we should try to facilitate their use of transit to get into the City. He suggested we look for some partnership opportunities from the government entities in those counties.

Vice-Mayor Newman agreed that we should identify revenue strategies that Council is either supportive of or open to; and list the key service and infrastructure priorities the funds would be used for. Because, from a community and political standpoint there will be varying levels of enthusiasm for doing the revenue strategies depending on what the infrastructure or service priorities actually turn out to be.

Councilman Russell expressed concern about the $5 Million gap facing Council prior to the next fiscal year. He felt we have some structural expenditure items that we need to control

and we need to gain reliable revenue to take care of the basic services before we start looking at something that could potentially increase our annual budget. He felt Council should focus on creating a more reliable fair revenue stream prior to creating a list of nice, but not necessary things.

Mayor Bellamy gave a scenario where Council filled the gap of $5 Million with no raises for City employees, use of Fund Balance, cuts into public safety for downtown officers, community policing, closing of a senior center, cutting back on the hours of buses, less garbage collection, no street sweeping, etc. and felt our taxpayers would not want to live in a community like that. We need to stress to our residents that Asheville is the product that people sell. We are one of the safest cities of our size in America and a place where people want to live and work in our community. Not providing some of our services will impact tourism and we must make our community and partners aware of that fact.

Councilwoman Manheimer wondered about (1) the City and County blending fire and police; (2) creating a separate entity for our water system; and (3) the City's operation of the Civic Center and the Municipal Golf Course. Even though we manage our water system really well, perhaps the County and our legislators would look favorably on the way the water system could be run.

Mayor Bellamy advocated pursuing an additional percentage from our state legislators from the water revenues (that would not be earmarked just for water-related projects) to be earmarked for the first two years for roadway improvements or whatever the biggest needs are would not only address our short-fall, but address long-term needs while not impacting the City taxpayers.

In response to Councilwoman Manheimer, City Manager Jackson said that staff will provide Council, as a result of the budget process, a list of capital projects which are aligned with the master plans than we can fund. Every year we provide Council with a list of unfunded priorities outlining exactly where those waterline projects are and where we think there are opportunities to leverage and make best use of the 5% water revenues.

Mayor Bellamy heard support for beginning conversations with our state delegation regarding short and long term goals sooner rather than later.

It was the consensus of Council that the first key partnership contact should be the Buncombe County Commissioners. Other partnerships include N.C. legislative delegation, Tourism Development Authority Product Development Fund, N.C. Dept. of Transportation, and the City's boards and commissions. Community forums would be scheduled at a later date.

City Manager Jackson summarized that staff needs to (1) continue to merge and integrate master plans and pursue the GIS mapping; (2) identify Buncombe County partnership opportunities; (3) instruct staff liaisons to proceed to communicate with City boards/commissions; (4) delay community forums until after working on relationships and Council has an action plan. In working toward that action plan, develop a list of immediate capital improvement needs, taking into consideration the master plans, but identify unfunded immediate priorities that Council may go to the legislators with as a package; (5) develop a short session state legislative package to include, among other things, the voluntary waterline extension policy; and (6) develop a federal legislative package regarding opportunities for funding support.

When City Manager Jackson suggested staff take the list of other revenue options to the Finance Committee for review, it was the consensus of Council to have staff bring those back directly to Council and let the Finance Committee work on the fees and charges.

Mayor Bellamy felt there needed to be one additional worksession by Council to determine the initiatives they support as a Council and what they want to accomplish with those

relationships. Some partnerships with Buncombe County include the Tourism Development Authority Wayfinding Project, cleanliness campaign and nuisance court. She asked for Council support of herself, Vice-Mayor Newman and Councilman Davis to work on the partnership with the Buncombe County Commissioners. She stressed that these Council-supported initiatives will be want Council can carry forward to their individual boards.

Mayor Bellamy adjourned the meeting at 7:09 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – January 26, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY, 2010, AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2010, as "Black History Month" in the City of Asheville. She presented the proclamation to Elder Alfred Blount with Tried Stone Missionary Baptist Church, who briefed City Council on some activities taking place during the month and was pleased to note that they are getting ready to celebrate their 82nd anniversary.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL RETREAT HELD ON JANUARY 8-9, 2010; THE REGULAR MEETING HELD ON JANUARY 12, 2010; AND THE WORKSESSION HELD ON JANUARY 19, 2010

At Mayor Bellamy's request, it was the consensus of Council to amend the minutes of the City Council retreat held on January 8-9, 2010, as follows: "It was the consensus of Council for Mayor Bellamy to place on a future Council meeting agenda consideration of approval of the RICH Task Force, Mayor's Committee on (Dis)abilities and Mayor's Committee on Veterans in order for these programs to receive City staff resources."

B. RESOLUTION NO. 10-13 - RESOLUTION APPOINTING COUNCILMAN GORDON SMITH TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: Councilman Gordon Smith be and he is hereby appointed as the elected representative to the Americans with Disabilities Act Compliance Committee to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 32 – PAGE 321

C. RESOLUTION NO. 10-14 - RESOLUTION APPOINTING COUNCILMAN JAN DAVIS TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Councilman Davis be and he is hereby appointed to serve as the ex-officio non-voting City Council member on the Citizens/Police Advisory Committee to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 32 – PAGE 322

D. RESOLUTION NO. 10-15 - RESOLUTION APPOINTING COUNCILMAN GORDON SMITH TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE BOARD

Summary: Councilman Gordon Smith be and he is hereby appointed to serve as the City Council Planning & Economic Development Committee member to the HUB Community Economic Development Alliance Board, until such time as he is no longer a member of the City Council Planning & Economic Development Committee.

RESOLUTION BOOK NO. 32 – PAGE 323

E. RESOLUTION NO. 10-16 - RESOLUTION APPOINTING VICE-MAYOR BROWNIE NEWMAN AS CHAIRMAN TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: Vice-Mayor Brownie Newman be and he is hereby appointed as the City Council representative, to serve as Chairman, to the Police Officers and Firefighters Disability Review Board to serve a term according to the length of his Vice-Mayor term of office.

RESOLUTION BOOK NO. 32 – PAGE 324

F. RESOLUTION NO. 10-17 - RESOLUTION APPOINTING COUNCILMAN JAN DAVIS TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: Councilman Jan Davis be and he is hereby appointed as the ex-officio non-voting City Council representative on the Buncombe County Tourism Development Authority to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 32 – PAGE 325

G. ORDINANCE NO. 3823 - BUDGET AMENDMENT FROM VARIOUS CONTRIBUTIONS TO SUPPORT RECREATION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of $8038, for contributions to support recreation programs.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description of each is listed below.

$6831.00 from the Asheville Parks and Greenway Foundation to increase the operating budget in the Recreation Division to support cultural art programs, therapeutic recreation, youth summer playground program, youth athletics and senior citizen programs.

$1,207.08 from miscellaneous donations to support youth recreation programs community centers.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

The City's Fiscal Year 2009/10 operating budget for Parks and Recreation will increase by $8873. This increase is funded by $6831 in contributions from the Asheville Parks and Greenway Foundation and $1207 from miscellaneous donations. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to adopt budget amendments authorizing the City Manager to increase the budgets for 1) WC Reid Center for Creative Arts by $3,790, 2) Therapeutic Recreation by $1,353, 3) Summer Playground Program by $900, 4) Youth Athletics $520, 5) Senior Citizen Program by $268, and community centers by $1,207.08.

ORDINANCE BOOK NO. 26 – PAGE 30

H. RESOLUTION NO. 10-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ASSIGN THE LEASE HELD BY PALACE BASEBALL LLC FOR THE USE OF MCCORMICK FIELD TO DEWINE SEEDS – SILVER DOLLAR BASEBALL LLC FOR THE CONTINUED OPERATION OF MINOR LEAGUE BASEBALL IN THE CITY LIMITS OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to assign the lease held by Palace Baseball, L.L.C. for the use of McCormick Field to DeWine Seeds –Silver Dollar Baseball, L.L.C. for the continued operation of minor league baseball in the city limits of Asheville.

On July 1, 2005, the City entered into a lease with Asheville Tourist Baseball Club, Inc. for the use of McCormick Field to operate a minor league baseball program. On October 7, 2005, the lease with Asheville Tourist Baseball Club, Inc. was assign to Palace Baseball, L.L.C.

On January 5, 2010, Palace Baseball, L.L.C. entered into an asset purchase agreement with DeWine Seeds – Silver Dollar Baseball, L.L.C. Palace Baseball, L.L.C. wishes to assign the lease for the use of McCormick Field to DeWine Seeds – Silver Dollar Baseball, L.L.C. for the continued operation of minor league baseball in the city limits of Asheville. The Parks, Recreation and Cultural Arts Department is committed to working with DeWine Seeds –Silver Dollar Baseball, L.L.C. to make minor league baseball available in the community.

This action complies with the Parks, Recreation, Cultural Art & Greenways Master Plan in that it continues a partnership within the community to take advantage of existing facilities and provide recreation services to the community.

Pro:
- DeWine Seeds –Silver Dollar Baseball, L.L.C. is committed to keeping minor league baseball in Asheville.

Con:
- None

Assignment of the lease will have no impact on the budget as all financial terms will remain the same.

Staff recommends City Council adopt a resolution authorizing the City Managers to assign the lease held by Palace Baseball, L.L.C. for the use of McCormick Field to DeWine Seeds – Silver Dollar Baseball, L.L.C.

Mayor Bellamy said that because the City owns McCormick Field she felt it was important to note that the City will continue the relationship with DeWine Seeds – Silver Dollar Baseball LLC for baseball in our community.

RESOLUTION BOOK NO. 32 – PAGE 326

I. RESOLUTION NO. 10-19 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A FEDERAL TRANSIT ADMINISTRATION GRANT TO PURCHASE THREE 30-FOOT DIESEL BUSES AND TWO 30-FOOT LOW FLOOR HYBRID DIESEL-ELECTRIC BUSES AND AUTHORIZING THE MAYOR TO EXECUTE THE APPROPRIATE DOCUMENTS TO ACCEPT THE GRANT, IF IT IS AWARDED TO THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) grant to purchase three 30-foot diesel buses and two 30-foot low floor hybrid diesel-electric buses and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

As previously shared with City Council, the City of Asheville's Transit System fleet consists of a total of 21 buses. 16 of these buses were purchased in 1996 and five were purchased in 2006. Since the typical life cycle for the existing buses is about 10 years, 16 buses are overdue for replacement. Five low floor hybrid diesel-electric buses have been ordered with an expected delivery date during November 2010 and five diesel buses are currently going through the requisition process. The subject grant would provide funding for three diesel buses and two low floor hybrid diesel-electric buses. Assuming the subject grant is approved, only one bus would remain to be replaced.

The Federal Transit Administration (FTA) has announced the availability of discretionary Section 5309 Bus and Bus Facilities grant funds in support of the Department of Transportation's Livability Initiative (Livability Bus Program). The Livability Bus Program will be funded using $150 million in unallocated discretionary bus and bus facilities program funds to finance capital projects to replace, rehabilitate, and purchase buses. Funds may not be used for operating expenses or preventive maintenance. Through the Livability Bus Program, the Federal Transit Administration (FTA) will invest in projects that fulfill the six livability principles that serve as the foundation for the DOT-HUD-EPA partnership for sustainable communities. These principles include providing more transportation choices, promoting equitable, affordable housing, enhancing economic competitiveness, supporting existing communities, coordinating policies and leveraging investments, and valuing communities and neighborhoods. The deadline to apply for the subject grant is February 8, 2010.

The total cost to purchase the five buses is $2,400,000. Thanks to Congressman Heath Shuler's office, the City has already received $532,000 to be used to help purchase two hybrid diesel-electric buses. Therefore, the grant application would total $1,868,000 ($2,400,000 - $532,000). If awarded, the grant would fund 80% of the cost, which equals $1,388,000, the City would fund half of the 20% local match, which equals $240,000, and City staff would request the North Carolina Department of Transportation to provide the additional half of the 20% local match. Staff recommends using the Transit's Capital Reserve Fund to provide the local match. This reserve only allows us to fund five buses, instead of the six that need replacement. City staff has been aggressively looking for funds to replace the aged fleet and a plan is moving forward in

the proposed Capital Improvement Program (CIP) for Fiscal Year 2010-11 to fund the subject five buses. This grant opportunity enables us to speed up the process.

This action complies with the current City Council's Strategic Operating Plan by helping to achieve short-term and long-term energy goals and reducing city carbon emissions, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to fully leverage funding for transportation improvements. This action also complies with the capital improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- The subject grant, if awarded, would enable the City to replace most of its aged transit system fleet (15 out of 16 buses) that would produce savings in maintenance costs and fuel costs.
- The subject action would help reduce the City's carbon emissions.
- The Federal Transit Administration (FTA) would fund 80% of the subject project cost.
- The North Carolina Department of Transportation (NCDOT) would fund 10% of the subject project cost.
- The City of Asheville's local match has been identified and would not require any additional allocation of funds.

Con:

- A 10% local match in the amount of $240,000 is required.

The total anticipated cost of the subject project is $2,400,000. The City has already received $532,000 for two hybrid diesel-electric buses through the efforts of Congressman Heath Shuler's office. The grant application would total $1,868,000, with 80% to be paid by Federal funds, 10% by State funds, and 10% by City funds. The City's 10% match, which totals $240,000, is already included in the Transit Capital Reserve Fund.

City staff recommends City Council to adopt a resolution authorizing City staff to apply for the Section 5309 Bus and Bus Facilities Livability Initiative Program Grant to purchase three 30-foot diesel buses and two 30-foot low floor hybrid diesel-electric buses and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

Mr. Paul Van Heden, member of the Transit Commission, suggested Council take advantage of this opportunity and acquire six buses instead of five, which would mean an additional $40,000.

After a brief discussion about why staff was recommending five buses, noting that the City's match for five buses is already included in the Transit Capital Reserve Fund and the additional $40,000 would have to come out of the City's Fund Balance, it was the consensus of Council to proceed with staff's recommendation as we will be pursuing additional grant funds in the future to replace the last bus.

RESOLUTION BOOK NO. 32 – PAGE 327

J. ORDINANCE 3824 - ORDINANCE AMENDING THE WATER POLICIES ORDINANCE

Summary: This is the consideration of an ordinance authorizing the changes in the Water Policies Ordinance.

The Water Policies were last updated and adopted by City Council in November 2007. Since then, Water Resources Staff have reviewed the Water Policies and determined that some sections need to be updated to coincide with current departmental procedures, engineering design standards, and State / Federal laws that the department is required to follow and enforce. Changes to the Water Polices include:

1. I. General, B. Definitions: added a definition for ISO, or International Organization for Standardization. The department is ISO 14001 certified.

2. I. General, D. Contracts: updated this section to be compliant with City of Asheville Purchasing contracting requirements.

3. II. Water Availability: updated the application process to align with current departmental procedures.

4. III. Connection Policy: updated wording to align with current departmental procedures and Water Engineering Standard Specifications and Details.

5. IV. Extension Policy, B. General Specifications, 5.: add clarifying language to define the Pump Station Maintenance Fee and how it is calculated.

6. V. Meters, E. Metering Requirements: changed this section to read:

   "Metering options may be found in the Water Engineering Design Standards Manual. All metering shall comply with Section VI: Cross-Connection Control Policy."

7. VI. Cross-Connection Control Policy: replaced all verbiage in this section to comply with current State and Federal laws as pertains to backflow and cross connection control.

8. X. Water Shortage Response Plan: renamed this section (former title: Water Use Restrictions) and replaced all verbiage with the same wording in the Water Shortage Response Plan to be compliant with State and Federal laws. The State required Water Resources to update this section of the policies. The updated wording in this section has been approved and found compliant with all applicable laws.

9. XII. Interruption of Service, B. Pressure Fluctuations: added "The City of Asheville shall not be liable for any damages to a customer's plumbing or property caused by high pressure, low pressure, or by fluctuations in pressure in the City's water mains." This is our current operating practice.

10. XIII. ISO 14001:2004 / Safety Policies and Procedures: added this entire section:

    A. The City of Asheville Water Resources Department is ISO 14001 Registered by a third party organization. Contractors are expected to abide by the ISO 14001:2004 Standard while working for or on behalf of the City. Contractors are also expected to abide by all local, state, and federal laws and regulations while conducting business for or on behalf of the City.
    B. Water Resources staff may inspect any job site at any time. If a job site is found out of compliance with the ISO 14001:2004 Standard or any local/state/federal law, it shall be shut down until the job site is brought in compliance.
    C. The Director may be contacted for any disputes.

11. XIV. Water Engineering Standard Specifications and Details: added the following section to inform interested parties where they can find Water Engineering requirements since the Standard Specifications and Details are too extensive to include in the policies:

"Refer to the Water Resources Water Engineering Standard Specifications and Details for more requirements."

This action is part of City Council's Strategic Plan to implement practical water system management and to improve infrastructure installation and maintenance.

Pro:

- Adoption of the change in the Water Policies Ordinance will ensure that the Water Policies are compliant with required State and Federal laws and up-to-date with current departmental procedures.

Con:

- Failure to adopt the change in the Water Policies Ordinance will keep clauses in effect that are not relevant to current procedures or compliant with State and Federal laws.

The changes to the Water Resources Policies do not change any fees, charges, or operating procedures that would affect revenues or expenditures for the department.

Staff recommends City Council adopt the ordinance authorizing the changes in the Water Policies Ordinance to become effective upon adoption.

ORDINANCE BOOK NO. 26 – PAGE 32

K. RESOLUTION NO. 10-20 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A WORKSESSION ON (1) TUESDAY, FEBRUARY 9, 2010, AT 2:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL; AND (2) TUESDAY, MARCH 9, 2010, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH J.L.S. COMPANY LLC FOR THE KIMBERLY AVENUE RESURFACING PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of a resolution to award the construction contract for the Kimberly Avenue resurfacing project to J.L.S. Company, LLC, of Arden, NC, in the amount of $539,995.00.

This is the last of the ARRA projects funded through the French Broad River Metropolitan Planning Organization (MPO). The grant agreements and budget amendments were approved by the Asheville City Council on August 25, 2009. Once this resolution is adopted, the contract documentation will be forwarded to the N.C. Dept. of Transportation (NCDOT) for final reviews and authorizations prior to city contract execution.

The Kimberly Avenue resurfacing project will provide milling, repair, resurfacing, and pavement markings on Kimberly Avenue from Edwin Place to Gracelyn Road/Griffing Boulevard. It will include the addition of a bicycle climbing lane on the northbound side of Kimberly within the project limits. The contract specifies that work may begin as soon as February 1, 2010, and must be completed by October 15, 2010.

A formal request for bids was issued on December 7, 2009, and bids were opened December 30, 2009. The engineer's estimate for the project was $567,176.16, and the disadvantaged business enterprise (DBE) goal was 10%. The lowest bid was provided by J.L.S. Company, in the amount of $539.995, which was 4.8% below the engineer's estimate of project cost. The project's 10% DBE participation goal was met in the bid. This is a unit price contract, not a lump sum contract.

Bidder	Address	Bid Amount
J.L.S. Company	**Arden, NC**	**$539,995.00**
Moore & Sons Site Contractors	Mills River, NC	$562,552.50
Young and McQueen Grading Co., Inc.	Burnsville, NC	$579.975.05
APAC Atlantic, Inc.	Candler, NC	$670,642.85

This project supports the City Council's strategic plan goals of proactively pursing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pros:

- Improves Asheville's transportation facilities
- Provides long term investment in the City's infrastructure

Con:

- Project management and contract administration will consume staff time and possibly city funds

The cost of the construction contract for the Kimberly Avenue resurfacing project is $539,995. In addition to this amount, it is estimated that there will be $81,000 in construction administration costs, which is based on a 15% MPO allowance for project inspection and materials testing costs. The total cost for the project is thus estimated at $620,995.

Of this total, approximately $550,000 in ARRA funds is available. This amount will cover the $539,995 construction contract and a portion of the $81,000 in contract administration costs, leaving a balance of $70,995 to be funded by the city.

Grant Revenue:	
ARRA Funding:	**$550,000**
Project Costs:	
Construction Contract	$539,995
Contract Administration	81,000
Total Project Costs	**$620,995**
Balance to be Funded by the City:	**$70,995**

Funds to cover the $70,995 in remaining construction administration costs (that are currently not covered by the ARRA grant) are already included in the existing city budget. Specifically, the construction administration costs will be cover4ed with fund balance proceeds that were previously appropriated in anticipation of cases where total project costs might exceed the amount of available ARRA funding. It is possible that additional ARRA funds may be indentified to cover the construction administration costs. If such funds are indentified, no fund balance will be used for this project. An update on the actual amount of fund balance required to support ARRA projects will be presented in the next quarterly financial report.

City staff requests City Council approve the resolution to award the construction contract for the Kimberly Avenue resurfacing project to J.L.S. Company, LLC, of Arden, NC, in the amount of $539,995.00.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 10-21. This motion was seconded by Vice-Mayor Newman and carried unanimously.

RESOLUTION BOOK NO. 32– PAGE 329

IV. PUBLIC HEARINGS: None

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 10-22 - RESOLUTION ADOPTING THE WATER SYSTEM MASTER PLAN AS PREPARED BY JORDAN, JONES & GOULDING IN MAY 2009

Water Resources Director Steve Shoaf said that this is the consideration of a resolution to officially adopt the Water System Master Plan as prepared by Jordan Jones & Goulding (JJG) in May 2009.

A Water System Master Plan is typically updated every 5 – 10 years. The City of Asheville Water Resources Department's Master Plan was last updated in 1995. In June 2007, the Water Resources Department partnered with Jordan, Jones & Goulding (JJG) to update the Water System Master Plan. In September 2008 JJG presented a draft Master Plan to the City Council and highlighted the projections for future growth and projects to improve the water system to meet that demand. JJG completed the final update of the plan in May 2009, and is now presenting the following projections and recommendations to the Asheville City Council:

- Buncombe County Growth – In 2007, Buncombe County population was 243,565. In 2012, 2017 and 2037, the population is projected to be 264,326, 285,088 and 368,135, respectively. The major growth is projected to be in the southern part of Buncombe County.
- Model Development – JJG developed a model to project future needs for treatment plants, pipes, pump stations, and valves. Model Development will also provide GIS integrated water computerized hydraulic model and maps.
- System Evaluation – with future growth projections, the water treatment plant capacity will be needed to be increased around the year 2025.
- Capital Improvement Plan – between now and 2037, JJG projects 14 pipeline installations, one pump station replacement, one new pump station, and additional water treatment plant capacity at a total estimated cost of $60,449,000. This amount does not

included recommended annual costs for pipe replacement due to age or any line extensions that the City accepts from developers.

This project is part of the City Council strategic plan to improve City infrastructure and sustainability through long-term planning.

Pro:

- Adoption of the Water System Master Plan will help to ensure that Asheville builds the water infrastructure to accommodate current demands and future growth while making the best use of financial resources.

Con:

- Failure to adopt the Water System Master Plan will not prepare the Water Resources Department for future growth.

The cost to update the Water System Master Plan was $550,000 in 2007. There is no additional cost for City Council to officially adopt the plan. The updated Master Plan recommends additional long-term improvements that will require financial planning to implement. The projected cost of the Master Plan's proposed projects is $60,449,000 spread over the next 27 years. City staff has started to incorporate the plan's recommended projects into the five-year Capital Improvement Program. Revenue generated from the CIP Fee will be used to fund a majority of these projects. Additional funding sources may be required to implement the most costly improvements recommended in the plan by JJG.

City staff recommends that City Council officially adopt the Water System Master Plan Update as prepared by Jordan, Jones & Goulding (JJG).

Mr. Eric Nease, representing Jordan, Jones & Goulding, provided Council with a graph showing the Buncombe County population growth, along with the projected growth to 2037.

Using a PowerPoint, he explained the system overview as (1) 21.4 Million Gallons Per Day (MGD) annual average day demand; (2) 1,625 miles of pipe; (3) 3 Water Treatment Plants; (4) 40 pump stations; (5) 31 storage tanks; (6) 12 Pressure Reducing Values (PRV); (7) 37 pressure zones; and (8) elevations 1,950 to 3,700.

He then provided an overview of pressure zones and a system overview.

Model development includes (1) treatment plants, pipes, pumps, and value locations based on the City GIS (mapping system); (2) updated pressure zone boundaries; (3) actual pump data used to simulate pumps; (4) system controls included in model; and (5) model verified to simulate actual system data.

System evaluation includes (1) total system demand for 2037 is 41 MGD; (2) exceeds current treatment capacity of 27 MGD; (3) additional water treatment capacity needed in 2025 $\pm$; (4) pipes evaluated for velocity; (5) tanks evaluated for ability to drain and re-fill; and (6) pumps evaluated for capacity.

Using charts, he showed the PRV relocation, areas of recommended improvements, and concord area options.

Using a table, he showed the growth Capital Improvement Plan summary showing a total cost of $60,449,000 for 14 pipeline installations, one pump station replacement, one new pump station, and additional water treatment plant capacity. This amount does not include recommended annual costs for pipe replacement due to age.

Throughout discussion, Mr. Nease and Mr. Shoaf responded to various questions/comments from Council, some being, but are not limited to: have studies been analyzed to determine if conservation efforts reduce usage; explanation of 21 MGD usage even though we have lost industry water users in the past decade; for a system Asheville's size what factors are taken into consideration of unaccounted-for water; thoughts on using Bee Tree Reservoir (since it is more of a back-up plant) for recreation opportunities; how are we partnering with Buncombe County on the maintenance of their two facilities and extension of water lines; regarding the new $40 Million new water treatment facility in the future, is that taking into consideration we have the Bent Creek property and that would be the location of the new facility; how does this study support the Brown & Caldwell Study; why are two major lines outside the City limits included in these recommendations; and has there been any analysis about how much land is needed to build a new water treatment facility on the Bent Creek property.

In response to Mayor Bellamy, Mr. Shoaf confirmed that in 2025 or 2033 the Council at that time will need to consider whether to build a water treatment facility on the Bent Tree property, so we need to keep that land for that purpose whenever it comes back to the City.

Mayor Bellamy felt we need to talk about growth and how and where we grow and the resources that are going to be needed to support that growth. Vice-Mayor Newman has talked about land use planning and our ability to use our water system as an opportunity for people to come into the City without an involuntary annexation. We are seeing the impact of growth outside the City limits and its impact on rate payers. Discussions need to continue, about our asset of water, with our state legislators and the Buncombe County Commissioners with the two major lines outside the City limits in the future costing over $2 Million.

Councilman Newman hoped we would get into more detail as the Bent Creek property gets to be closer under the City's management. He felt it was appropriate to plan for the new water treatment facility, but if there is more property than is needed for that facility there may be other values that we might want to use that land for. Also, he didn't want to be dismissive of the potential for different policies that we create to affect future demand because there is quite a bit we can do through education and rate policies.

Mr. Alan Ditmore spoke about how the projected population and consumption are only guesses.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-22. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 330

B. RESOLUTION NO. 09-23 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A 90-DAY EXTENSION AGREEMENT WITH WNC COMMUNITY MEDIA CENTER (FORMERLY KNOWN AS URTV INC.) FOR THE MANAGEMENT OF PUBLIC ACCESS

Administrative Services Director Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to sign a 90-day extension agreement with WNC Community Media Center (formerly URTV, Inc.) for the management of public access.

At its meeting on October 13, 2009, the City Council directed staff to negotiate a 90-day extension to URTV's, now known as the WNC Community Media Center, agreement for the management of public access, including terms that (1) address compliance with open meetings and public records law and (2) specify the funding amount and payment terms for the duration of

the agreement. City Council agreed that an extension would provide time for Council to work through unresolved concerns expressed by the Boards and Commissions Committee in its July 20, 2009, letter to the WNC Community Media Center. At the same time, staff would review the materials submitted by the WNC Community Media Center in its request for a longer-term management agreement. The additional time will also allow staff to evaluate how the transition to a State-wide franchise agreement will impact the City's relationship with the WNC Community Media Center.

The 90-day extension agreement includes clauses that address public records, open meetings and compensation, as directed by Council. The agreement also includes a section to clarify the WNC Community Media Center's board structure and membership.

Staff is seeking City Council direction on the City's role in making appointments to and defining the number of members on the WNC Community Media Center board. In the past, pursuant to a City resolution, board membership was set at 11 members, and the City and the County each appointed two members to the board. It is staff's recommendation that the management agreement be structured in a manner that is consistent with other contracted services. Following that model, the City Council would not appoint members to the contractor's board. Instead, the contractor would be held accountable for its performance according to the terms in the contract. If City Council continues to appoint members to the board, the WNC Community Media Center has requested that the total board membership be increased to 13.

The WNC Community Media Center has reviewed and agreed to the terms of the extension agreement. During the 90-day extension, at City Council's direction, staff will work to develop a longer-term management agreement for Council consideration in March 2010.

Pros:

- The extension agreement provides a foundation for beginning to formulate a longer term contract for managing public access television in Asheville.
- The agreement addresses concerns expressed by City Council regarding open meetings and public records.
- The agreement also clarifies the organization's board structure and the city's payment terms for management services.
- The extension period will allow for additional time to resolve any concerns City Council may have with the conduct of the WNC Community Media Center's board and/or the organization's operations.

Con:

- The process by which City Council will work to address concerns regarding the WNC Community Media Center's board or operations is currently undefined, which may make negotiating a long-term agreement beyond the 90-day extension challenging.

Under the proposed agreement, the City will pay the WNC Community Media Center $30,000 in P.E.G. fees, which is one-half of the total budget allocation, for managing public access for a full year. By the time the 90-day extension agreement expires, the WNC Community Media Center will have managed public access for more than six months of the fiscal year. P.E.G. fees are collected from cable subscribers and must be spent on public, government, or education access activities.

Staff recommends that City Council approve the resolution authorizing the Mayor to sign an extension agreement with the WNC Community Media Center for management of public access. Staff further recommends that the clause allowing City Council to appoint two board members to the WNC Community Media Center be removed from the agreement or that Council clarify its direction for the total number of members allowed on the board.

Ms. Bradley said that said that there have been some questions as to whether the WNC Media Center's Board is a public body. She thought that what adds to some of that confusion is the fact that we make board appointments to that organization. If Council would like to continue to appoint members to the WNC Media Center Board, the Board is requesting an increase from 11 to 13 due to quorum problems. Staff would like clarification on whether Council wants to continue to appoint members in this agreement and also in terms of negotiating a longer term agreement.

She also asked for policy consideration from Council if they are supportive of this 90-day extension agreement and if so, could this agreement be in effect from today through 90 days and then Council would come back to Council to look at negotiating a longer term agreement in the March timeframe.

Councilwoman Manheimer said that her firm has represented URTV in the past and although that attorney is no longer with the firm as of the end of December, she was not sure of the on-going relationship. Therefore, out of an abundance of caution, Vice-Mayor Newman moved to excuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Smith and carried unanimously. Councilwoman Manheimer then left the Chamber.

At Vice-Mayor Newman's request, it was the consensus of Council to hear public comments prior to a motion being made.

The following individuals spoke in support of an agreement with WNC Community Media Center:

Operations Manager of WNC Community Media Center
Rev. Christopher Chiaronmonte
Director of Programming at the WNC Community Media Center (also provided Council with a graphic explaining the name change)
Two individuals who have a show on URTV

Mr. Alan Ditmore felt that the membership fees should be reduced. He also felt the Board is too powerful relative to elected officials and the members. He did not support self-perpetuating boards with no outside accountability.

In response to Councilman Bothwell, Ms. McGlohon said that the issue is whether or not the URTV Board is a public body. By removing Council's authority to appoint members to the Board it lessens the impact and the appearance that this is a public body. She felt that is the reason why staff is recommending that Council consider not appointing members to this body. However, whether Council continues to appoint members to the URTV Board or not, the issue of whether or not it is a public body will not go away.

In response to Vice-Mayor Newman, Ms. Bradley said that we are essentially contracting with a non-profit agency to provide management services and they have by-laws by which they have a board and structure and they appoint members. The complicating factor is layering in our involvement with appointing members to the Board. If the City chose not to do that, they would continue to operate like a non-profit agency. We could structure that arrangement like we do with other agencies for contracted services.

Ms. Bradley said that Council does not have to decide on whether to appoint members to this Board or not as it's not essential to this 90-day extension agreement. When staff comes back to Council in March they will provide additional information on the pros and cons of appointing members or not.

In response to Councilman Davis, Ms. Bradley said that there is some question now about our ability to force them to comply with the Open Meetings Law and Public Records Law as a public body. What we have tried to do under the terms of the contract is to say we want you to follow the intent of the law and your performance under this contract requires that you follow the intent of those laws but not that you are forced to do so as a matter of law as a public body.

Councilman Davis, liaison to the WNC Media Community Center, spoke about a meeting with the Board he attended in which they reviewed their audit in an open meeting. He recommended Council extend the 90-day management agreement. He wondered if an ad hoc committee should be appointed to help staff craft a longer-term agreement. He felt that even though Council has limited accountability with the Board, other than appointing members and providing P.E.G. fees, and did not want to give up that limited accountability up.

Councilman Davis moved to authorize the Mayor to sign a 90-day extension agreement with WNC Community Media Center (formerly URTV, Inc.) for the management of public access, or sooner if possible. This motion was seconded by Councilman Smith.

In response to Councilman Davis, Buncombe County has not stepped away from making their appointments to the Board.

Mayor Bellamy felt that City Attorney Oast did a good job in capturing the concerns raised. She noted that if the public is unable to obtain records from a board that reports to City Council, they can make a public records request to the City Clerk for those records. At Mayor Bellamy's request, it was the consensus of Council to amend the agreement in order to provide language that they provide all meeting minutes to the City Clerk. Councilman Davis also noted that WNC Community Media Center's meeting minutes are also posted on-line.

In response to Councilman Bothwell, Ms. McGlohon said that staff has been asked to bring a permanent agreement back to Council in March, so this extension agreement will not be perpetual. It was the consensus of Council that that language be incorporated into the resolution.

Ms. Bradley clarified that staff is asking that the effective date of the agreement be effective 90-days from tonight, but that they will come back in March and be on the road of having a longer-term agreement before the 90-day extension agreement would expire.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The motion made by Councilman Davis and seconded by Councilman Smith to adopt Resolution No. 09-23 carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 331

At this time, Councilwoman Manheimer re-entered the Chamber and continued participation in the Council meeting.

VI. NEW BUSINESS:

A. UPDATE ON THE 2025 PLAN IMPLEMENTATION

Planning & Development Director Judy Daniel said that the 2025 Comprehensive Plan was adopted by the City Council in October of 2003. In June of 2009 the Planning and Economic Development Committee asked for a review of this Plan to benchmark progress toward the goals outlined in the Plan. A comprehensive review of the Plan goals led to the development of a matrix that reflects the progress toward each goal and its strategies.

Ms. Daniel provided Council a summary matrix of those findings. The full content of the 7 section, 66 page matrix of finding is posted on the Planning and Development Department website. She also provided a summary of goal achievement. The full 2025 Plan (430 pages divided into 7 documents) is also posted.

The timeline since inception includes (1) 2001 City Plan Advisory Committee formed by City Council; (2) 2003 City Development Plan 2025 Adopted – October; (3) 2005 City Development Office Merged into Office of Economic Development (OED); (4) 2008 Downtown Master Plan Process Initiated; (5) 2009 Downtown Master Plan Adopted by City Council; and (6) 2009 PED Request Review of 2025 Plan.

The 2025 Plan represents a bold, ambitious, and visionary commitment by the citizens and leadership of the City to becoming a greener, cleaner, safer city with a strong economic base. The Plan's 96 goals with 486 strategies for achieving those goals set high standards for achievement. To the City's credit, only seven years after adoption, with fifteen years remaining on the timeline – achievement or major progress has been reached on 87% of the goals of the City Plan, and 60% of the goals of the Center City Plan. This is an excellent result 7 years into a Plan looking 25 years into the future.

The 2025 Plan laid out standards in the following areas: Smart Growth Development Tools, Public Participation and Intergovernmental Cooperation, Land Use and Transportation, Air and Water Quality, Economic Development, City Services, and the Center City Plan. Within the Center City Plan there are goals for Economic Development, Housing, Physical Environment, and Transportation. Interestingly, there are almost as many strategies for the Center City (242) as for the entire residual City Plan (244). The primary reason for the less successful implementation rates for the Center City Plan was the elimination of the entity that was to be the primary implementation driver in Downtown, the City Development Office, due to changing City policies. The commitment of a subsequent City Council to a new Downtown Master Plan reinvigorated these goals, and the intent of much of the Center City Plan was included and expanded in the Downtown Master Plan, now being implemented.

The seven sections of the 2025 Plan envision and require participation from all City Departments and multiple other government entities and the local organizations. Many of the goals have practical, easily achieved strategies and these have seen the greatest progress. Some of the more visionary goals have strategies require substantial action outside the control of the City and those have seen less progress. Some are ongoing goals that will always need to be monitored. Some of the strategies require substantial funding that has not been available, or participation of organizations that are no longer active, or reflect changing directions of Council policies.

As of this date, it can be definitively stated that the 2025 Plan is moving toward success – with major strides made since 2003. This is clearly not a Plan that has "sat on a shelf". All City Departments, all subsequent City Councils, many related organizations and outside organizations have and continue to, contribute to that success. That success, however, does not include a number of the most important and visionary goals the City set for itself. There are still a number of areas of the Plan that have seen limited success. Some of these will need funding, but others can still be achieved through the ongoing commitment of the City Council, Asheville's committed and dedicated residents, and the continuing commitment and hard work of the City staff.

The commitment to this ongoing work is the primary reason that staff reports to the Council reflect the relationship any subject matter to both the Council goals, and the 2025 Plan. Statistically, implementation success of the Plan is as follows:

	Goals / Strategies	Achieved or Major Progress
Section 1 Smart Growth Vision		
Development Tools	8 / 39	80%

Section 2 Communication		
Public Participation and Intergovernmental Cooperation	3 / 5	100%
Section 3		
Land Use	13 / 72	82%
Transportation	9 / 45	62%
Section 4		
Air/Water Quality	12 / 16	85%
Section 5		
Economic Development	8 / 14	90%
Section 6 City Services		
Fire	5 / 12	100%
Police	8 / 8	100%
Streets	3 / 5	90%
Solid Waste/Recycling	2 / 2	100%
Water	3 / 3	100%
Sewer	5 / 5	100%
Schools	1 / 4	75%
Parks, Recreation, Open Space	3 /14	90%
CITY PLAN TOTAL	**83 / 244**	
Section 7 Center City Plan		
Economic Development	6 / 74	68%
Housing	3 / 47	55%
Physical Environment	10 / 56	54%
Transportation	7 / 65	59%
CENTER CITY PLAN TOTAL	**26 / 242**	

Achievements include (1) Practical, necessary, achievable strategies; (2) Ongoing commitments and monitoring; (3) Bold action by City Council; (4) Ongoing participation and push for action by citizens; and (5) Volunteer actions.

Challenges include (1) Limited funding for some goals; (2) Required actions from outside entities; (3) Action organizations disbanded or never formed; and (4) Visionary goals with long range action required.

2025 Plan through 2009 for the City Center Plan include: (1) *Significant Challenges* (a) Loss of City Development Office; and (b) National/Regional Economy; and (2) *Significant Achievements* (a) Adoption of Downtown Master Plan; (b) Downtown Master Plan Implementation Committees; and (c) Near Completion Pack Square.

Challenges Looking Forward: 2010 to 2025 (1) Consider Plan update by 2015 – differential visionary and ongoing goals; (2) Continue building cooperative relationships with local and state government to achieve some visionary goals; (3) Unified Development Ordinance/Zoning goals require substantial staff time (or consultants) for research and processing; (4) Some transit goals depend on both added density along transit corridors and supplemental funding; and (5) Some goals face ongoing fiscal constraints.

Overall much to celebrate and much more to do - *If visionary, a Plan never fully meets all goals, but it should achieve success in many goals and keep working on or modify the boldest goals.*

When Mayor Bellamy asked if we will have more restrooms downtown, Ms. Daniel replied that she will work on that.

Mayor Bellamy thanked Ms. Daniel for this update and looked forward to continuing updates.

B. RESOLUTION NO. 10-24 - RESOLUTION ADOPTING REVISIONS TO THE HOUSING TRUST FUND GUIDELINES

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing revisions to the Housing Trust Fund Guidelines.

Community Development Division staff and Council's Housing and Community Development Committee have been reviewing and revising the Housing Trust Fund's policies and procedures since June. The purpose of the review was to ensure that available resources are strategically targeted, and that the Trust Fund aligns with the City's strategic housing goals.

The Committee notes the following issues:

- The Guidelines have not been revised since the release of the Affordable Housing Plan;
- City budget constraints have reduced the annual allocation to the Fund;
- The need for newly affordable rental housing is a clear priority arising from the 2009 Housing Needs Assessment and Market Analysis.
- Lessons learned in the Fund's operations need to be translated into the Fund's application and underwriting processes.

The review is now complete, and the Housing and Community Development Committee recommends 21 changes to the policy and procedures. These are summarized below, and are incorporated into the proposed revised application guidelines.

Eligible projects, eligible applicants, eligible uses:

1) Grants will not be made from the Fund.
2) Loans for homeownership housing will be for construction only.
3) Soft second mortgages will be discontinued.
4) Applications for manufactured housing are to be considered provided that units are on a permanent foundation and titled as real property.
5) Rehabilitation loans are to be considered for the conversion of market rate developments to affordable housing provided that the displacement of current residents remains minimal and that the impact on the available workforce housing stock is negligible.
6) Public Housing Agencies and State/Local governments to be listed as eligible applicants.
7) Affordable units pledged in exchange for density or conditional zoning are not eligible for HTF financing. However, if the total number of affordable units pledged for density or conditional zoning and for Housing Trust Fund financing equals 20% of all units, an application can be considered for those additional Housing Trust Fund units.
8) A minimum of 20% affordable units of the total project units being developed is required for consideration of HTF financing.

Priorities for use of the fund:

9) Rental Housing will be prioritized over homeownership with the goal to award a minimum of 75% of available HTF funds to rental projects (as averaged over the most recent three year period).
10) Multi-family housing is to be prioritized over single-family housing.
11) Larger scale projects requiring less subsidy per unit will be prioritized.
12) Program resources will be targeted to the income demographic(s) identified in the new Housing Needs Assessment as being in the most need of assistance.
13) Higher priority will be given to applications that create 1-bedroom and efficiency units as noted in the Affordable Housing Plan.
14) Higher priority will be given to projects developed along transit corridors.
15) Higher priority will be given to projects that meet the highest level of energy efficiency as determined by an independent rating system.

Terms and Conditions:

16) The affordability period for non-construction loans is to be equal to the term of the loan repayment.
17) A tiered interest rate structure will be based on the number of affordable units provided as shown in the following Table.

Number of Affordable Units	Interest Rate
1-9	4.50%
10-19	3.00%
20-29	2.50%
30+	2.00%

18) The maximum housing-for-sale sales price is to be eliminated and qualification is to be based on the cost to the buyer after subsidy. The final cost to the buyer, as measured by the monthly PITI (principal, interest, taxes and insurance for all primary and secondary financing sources) is not to exceed 30% of the buyer's household income and the buyer's total household income cannot exceed the 100% of the area median income (100% AMI)
19) Maximum loan amounts are to be based on per-unit subsidy rather than a predetermined amount as shown in the following Table:

Per Unit Subsidy Requested	Maximum Loan amount
More than $20,000	$0.00
$15,001 to $20,000	$150,000
$10,001 to $15,000	$200,000
$5,001 to $10,000	$300,000
Less than $5,000	$500,000

Application Review Process:

20) A minimum score must be achieved before an application is reviewed by HCD for funding.
21) Staff will score applications to determine that projects meet the minimum threshold. Additional review by an outside expert/consultant to provide a commercial underwriting analysis will be performed if determined necessary and advisable by the CD Director.

These changes directly support the City's Strategic Operating Goals of: (1) Affordable: Many of the recommendation directly support recommendations made in the 2008 Affordable Housing Plan; all are intended to continue to make housing affordable for Asheville citizens; and (2) Sustainable: These proposed changes prioritize development located near to transit lines, higher urban development densities, and encourage higher standards of energy efficiency.

Pros:

- The proposed changes align the Housing Trust Fund policies with the strategic plans developed by the City of Asheville;
- The proposed changes prioritize projects that meet the greatest housing needs of the community;
- The proposed standards encourage increased leveraging of the Housing Trust Fund resource;
- The proposed changes will prioritize longer periods of housing affordability.

Cons:

- The proposed changes reduce the amount of funds available per unit;
- The proposed changes will eliminate the participation of the Housing Trust Fund in the long-term financing of single-family housing.

The proposals do not affect the amount of funding contributed from the City's General Fund to the Housing Trust Fund.

City staff recommends City Council adopt a resolution adopting the proposed changes to the Housing Trust Fund policy.

Mr. Staudinger responded to various comments/questions from Council, some being, but are not limited to: how did staff come up with the percentage of affordable units required for consideration of financing; when staff looked at adjusting the interest rates based on the number of affordable units, why did they use units instead of a percentage of units; request to proofread the guidelines for possible errors; suggestion to have only the definition of eligible projects (not eligible projects and ineligible projects); how often do we subordinate a loan; has the City ever had to foreclose on a loan or been involved in foreclosure proceedings; does the subordination issue come before Council or does staff make that decision; and how do we enforce affordability over the term of the loan with houses.

When Councilwoman Manheimer expressed concern about subordinating our loans, Mr. Staudinger said that the next portion of review that staff will be doing is reviewing some of our specific underwriting policies as we look again to reflect the changing economic times and look at what is happening in the real estate market in general. That will be part of the work staff will bring to the Housing & Community Development Committee this year.

Mr. Alan Ditmore expressed various concerns about the Guidelines.

Rev. Christopher Chiaronmonte felt the Guidelines do not meet the basic needs of the poor.

Mayor Bellamy noted that single room occupancies are allowed in the City of Asheville, but we need individuals who want to operate them.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-24. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 332

C. INVOCATIONS AT COUNCIL MEETINGS

At Mayor Bellamy's request, it was the consensus of Council to delay this item in order to give City Attorney Oast sufficient time to provide Council the necessary information, as he is currently defending the City in a lawsuit. This matter will be rescheduled on a future meeting.

D. RESOLUTION NO. 10-25 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Newman said that the term of Phyllis Stiles, as a member on the Greenway Commission, expired on December 31, 2009.

There also currently exists a vacancy by Rev. Russ Pierce, whose term will expire December 31, 2010.

At the January 12, City Council meeting, it was the consensus of Council to interview M. James Grode, Stephen Jones, Bill Jones and Sandy Tarantino.

After Council spoke highly of the candidates, M. James Grode received 5 votes; Stephen Jones received 4 votes; Bill Jones received 2 votes; and Sandy Tarantino received 1 vote. Therefore, Stephen Jones was appointed to serve the unexpired term of Rev. Pierce, term to expire December 31, 2010 and M. James Grode was appointed to serve a three-year term, term to expire December 31, 2012. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 333

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the homeless in Asheville.

Mr. Alan Ditmore commended on invocations at Council meetings and felt Asheville should preserve their southeastern leadership on friendliness to religious diversity.

Mr. John Kleckner, local artist, provided Council with information on his evolution of an art project and hoped to work with the City.

Ms. Leesa Kulba asked that staff provide large plan documents as soon as possible to the public to review prior to the Council meeting it is scheduled to be discussed.

The following claims were received by the City of Asheville during the period of January 1-14, 2010: Michelle Ward (Water), Kenneth Woody (Water), J. Michael Baldwin (Streets), Carolyn Termini (Parking Services), Darlene Dixon (Streets), Barbara Sullivan (Transit), Tom Brotherton (Streets), Kevin Minish (Sanitation), Sears Holding (Water), Barbara Melton (Parks & Recreation), Nathan Monroe (Police) and Deborah Arnold (Water): These claims have been referred to Asheville Claims Corporation for investigation.

City Clerk Burleson said that she would attach to the minutes as Exhibit "A" the abstract containing the number of legal votes in the Primary Election, City of Asheville, held on October 6, 2009. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville held on November 3, 2009.

Closed Session

At 7:19 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is

contained in G.S. 143-318.11(a)(5); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 8:02 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Vice-Mayor Newman and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:02 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

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Asheville Municipal Primary
OCTOBER 6, 2009
ABSTRACT OF VOTES
FOR
Buncombe County
STATE OF NORTH CAROLINA

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the Clerk of Superior Court. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina (GS 163-176).

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This is the 13th day of October, 2009

Jones P. Byrd

This day personally appeared before me, Jones P. Byrd Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My notarial seal this the 13th day of OCT, 2009.

Notary Public
(Seal)

My Commission (if any) Expires: 8/24/10

Exhibit A

SUMMARY REPT-GROUP DETAIL

Buncombe County, NC
2009 Primary Election
October 6, 2009

OFFICIAL RESULTS

Run Date:10/13/09 12:51 PM

	TOTAL VOTES	%	ELECTION DAY	ONE STOP	ABSENTEE	PROVISIONAL	TRANSFER
PRECINCTS COUNTED (OF 41)	39	95.12					
REGISTERED VOTERS - TOTAL	61,958						
BALLOTS CAST - TOTAL	7,152		5,846	1,230	24	39	13
VOTER TURNOUT - TOTAL		11.54					
ASHEVILLE MAYOR CITY OF ASHEVILLE							
Seats: 1							
Robert W. Edwards	1,159	17.06	1,036	118	3	2	0
Shad Marsh	285	4.19	213	65	4	2	1
Denise C. Pendleton	168	2.47	139	27	1	1	0
Terry M. Bellamy	5,183	76.28	4,176	949	15	33	10
ASHEVILLE CITY COUNCIL CITY OF ASHEVILLE							
Seats: 3							
Larry D. Chastain	317	1.92	276	36	2	3	0
Ryan D. Croft	1,037	6.27	932	99	3	3	0
J. Neal Jackson	1,274	7.70	1,119	146	4	4	1
Esther Manheimer	3,284	19.86	2,673	588	8	9	6
Kelly M. Miller	0		0	0	0	0	0
Carl Mumpower	2,338	14.14	2,038	282	8	8	2
CØsar Romero	406	2.46	320	80	4	1	1
Gordon Smith	3,592	21.72	2,862	688	13	19	10
Cecil Bothwell	3,742	22.63	2,936	763	11	24	8
Jenny Bowen	545	3.30	424	108	6	5	2

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	ASHEVILLE MAYOR CITY OF ASHEVILLE				ASHEVILLE CITY COUNCIL CITY OF ASHEVILLE									
	Robert Edwards	W. Shad Marsh	Dennis	C. Penleton	Terry	M. Belamy	D. Chastain Larry	Ryan D. Croft	J. Neal Jackson	Esther	Kelly M. Miller	Carl Mumpower	Cesar Romero	Gordon Smith	Cecil Bothwell	Jenny Bowen
01.1 STEPHENS LEE CENTE	6	6	3	120	10	9	32	55	0	30	6	52	63	24		
02.1 MONTFORD COMM CTR	8	9	4	277	5	6	38	165	0	36	20	218	226	17		
03.1 ST MARKS LUTHERAN	22	13	10	185	4	15	28	118	0	47	21	151	173	23		
04.1 N ASHEVILLE COMM C	23	10	2	200	10	14	27	166	0	67	9	128	106	11		
05.1 ST EUGENE'S CHURCH	87	18	14	285	8	91	86	249	0	184	15	173	190	9		
06.1 TRINITY PRESBYTERI	47	9	7	82	16	45	43	59	0	71	10	60	73	5		
07.1 KENILWORTH PRES CH	24	6	7	187	6	21	26	122	0	46	18	152	168	14		
08.2 SHILOH COMMUNITY C	23	4	3	118	7	26	39	57	0	50	9	80	69	23		
08.3 FAITH TABERNACLE C	11	3	3	119	10	16	47	28	0	38	10	55	72	26		
09.1 MURPHY-OAKLEY CENT	66	10	4	103	11	57	53	48	0	87	10	86	75	26		
10.1 W C REID REC CENTE	6	1	1	110	10	6	34	37	0	26	8	63	40	20		
11.1 ASHEVILLE SENIOR C	6	6	2	82	6	2	21	31	0	29	11	39	44	16		
12.1 HALL FLETCHER SCHO	25	11	5	117	16	16	21	66	0	38	16	112	108	12		
13.1 GRACE BAPTIST CHUR	26	15	5	129	12	18	28	60	0	54	11	128	116	16		
14.2 ASHEVILLE PRE-SCHO	14	8	10	101	6	20	26	55	0	50	8	78	77	19		
14.3 PAUL AMOS REC CENT	8	2	3	33	4	4	10	11	0	16	6	21	21	3		
15.1 VANCE ELEMENTARY.	56	8	6	170	9	41	40	127	0	84	16	153	140	19		
16.2 W ASHEVILLE LIBRAR	69	8	10	168	15	61	58	78	0	95	21	167	151	17		
17.1 BETH ISRAEL	21	6	3	156	8	14	24	111	0	56	8	113	99	6		
18.2 TC ROBERSON HIGH S	72	7	6	174	7	75	72	139	0	141	8	67	98	9		
19.1 SKYLAND FIRE DEPT	17	1	2	43	3	14	13	23	0	46	3	18	21	3		
20.1 ASHEVILLE APOSTOLI	6	2	1	54	3	3	10	32	0	12	3	39	50	4		
21.1 HAW CREEK ELEMENTA	55	10	3	167	12	63	63	96	0	110	16	105	102	18		
22.2 IRA B JONES SCHOOL	67	11	6	318	12	52	51	263	0	154	14	177	208	20		
23.3 EVERGREEN CHARTER	40	4	3	85	3	36	28	79	0	59	7	52	53	9		
24.1 CROSSROADS ASSEMBL	53	3	3	62	7	42	40	49	0	72	7	36	43	10		
25.1 CHARLES C BELL SCH	52	8	1	118	13	43	42	65	0	99	5	73	76	13		
26.1 ASHEVILLE SCHOOL	27	1	4	73	8	14	26	37	0	45	8	58	54	12		
28.1 COVENANT REFORMED	20	9	4	180	9	23	22	119	0	46	5	136	138	12		
29.2 NEW HOPE PRES CH	47	10	5	147	21	61	57	101	0	109	11	76	82	9		
43.2 HAZEL 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
44.1 LOWER HOMINY 1	29	0	1	33	10	19	15	26	0	40	5	15	23	9		
45.1 ENKA MIDDLE SCHOOL	0	0	0	1	0	1	1	0	0	1	0	0	0	0		
54.2 LUTH CH OF NATIVIT	3	0	0	4	0	4	3	3	0	4	0	2	2	1		
55.1 LIMESTONE 2	0	0	0	3	0	0	0	0	0	2	0	0	0	0		
62.1 RICEVILLE 2	1	0	0	4	0	1	1	3	0	1	0	3	1	0		
71.1 WOODLAND HILLS	4	0	0	16	0	5	2	12	0	9	0	8	9	0		
ONE STOP	118	65	27	949	36	99	146	588	0	282	80	688	763	108		

ABSENTEE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PROVISIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRANSFER	0	1	0	10	0	0	1	6	0	2	1	10	8	2
TOTALS	1159	285	168	5183	317	1037	1274	3284	0	2338	406	3592	3742	545

MUNICIPAL ELECTION
NOVEMBER 3, 2009
ABSTRACT OF VOTES
FOR
ASHEVILLE
STATE OF NORTH CAROLINA

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk (GS 163-300). One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina (GS 163-182.6).

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This is the 10th day of November, 2009

This day personally appeared before me, JOE BYRD
Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My notarial seal this the 10 day of NOV, 2009.

(Seal)

My Commission (if any) Expires: 8/21/10

Exhibit B

	STATISTICS		ASHEVILLE MAYOR CITY OF ASHEVILLE			ASHEVILLE CITY COUNCIL CITY OF ASHEVILLE						
	REGISTERED	VOTERS - TOTAL	CAST - BALLOTS	CAST - TOTAL	Terry Mumy	Mr. Bellamy	Robert Edwards	WRITE-IN	Cecil Bothwell	Ryan D. Croft	J. Neal Jackson	Esther Manheimer	Carl Mumpower	Gordon Smith	WRITE-IN
01.1 STEPHENS LEE CENTE	1837	219	198	16	1	104	12	85	89	52	121	94
02.1 MONTFORD COMM CTR	3361	555	512	21	13	365	29	108	297	67	374	230
03.1 ST MARKS LUTHERAN	2777	423	366	37	9	263	45	76	237	91	255	199
04.1 N ASHEVILLE COMM C	1421	359	289	60	4	160	52	77	253	116	196	135
05.1 ST EUGENES CHURCH	2407	560	387	140	5	182	138	175	329	262	200	248
06.1 TRINITY PRESBYTERI	1496	298	196	86	2	126	88	89	141	138	130	90
07.1 KENILWORTH PRES CH	1782	373	304	52	6	225	45	70	212	85	217	192
08.2 SHILOH COMMUNITY C	2389	285	221	61	1	96	81	134	124	122	117	83
08.3 FAITH TABERNACLE C	1559	205	181	21	1	96	32	104	94	66	92	47
09.1 MURPHY-OAKLEY CENT	2834	364	239	112	5	139	113	127	181	156	177	94
10.1 W C REID REC CENTE	1566	189	181	7	0	79	22	82	65	55	101	65
11.1 ASHEVILLE SENIOR C	1599	181	158	15	2	107	20	61	75	41	101	56
12.1 HALL FLETCHER SCHO	1865	266	224	34	3	170	35	52	127	63	180	107
13.1 GRACE BAPTIST CHUR	2221	273	208	57	1	156	46	52	124	99	167	100
14.2 ASHEVILLE PRE-SCHO	2120	260	193	54	3	128	53	92	125	104	137	70
14.3 PAUL AMOS REC CENT	1293	93	60	30	1	33	18	33	29	52	42	17
15.1 VANCE ELEMENTARY	2085	386	291	71	8	182	87	107	201	149	230	121
16.2 W ASHEVILLE LIBRAR	2583	423	283	115	9	193	115	109	178	177	238	156
17.1 BETH ISRAEL	1780	307	239	52	6	154	49	53	178	97	163	112
18.2 TC ROBERSON HIGH S	3982	491	305	165	1	125	175	190	250	301	137	150
19.1 SKYLAND FIRE DEPT	1126	106	79	26	0	23	40	45	59	80	21	19
20.1 ASHEVILLE APOSTOLI	958	133	97	30	0	80	22	30	63	48	68	48
21.1 HAW CREEK ELEMENTA	2518	424	281	119	3	135	134	153	225	205	170	154
22.2 IRA B JONES SCHOOL	2219	568	415	121	5	218	126	160	346	244	268	196
23.3 EVERGREEN CHARTER	914	260	176	71	3	81	85	93	127	153	94	74
24.1 CROSSROADS ASSEMBL	2202	240	134	92	1	56	109	120	92	153	65	56
25.1 CHARLES C BELL SCH	2338	331	198	115	4	100	109	130	146	205	125	80
26.1 ASHEVILLE SCHOOL	1585	177	117	48	0	68	36	55	80	85	79	62
28.1 COVENANT REFORMED	2808	337	266	47	1	192	37	63	199	89	213	127
29.2 NEW HOPE PRES CH	2702	463	320	123	5	139	160	163	252	266	151	132
31.1 BILT FOREST TWN HA	1327	97										
32.1 BLACK MOUNTAIN 1	402	156										
33.2 BLACK MTN PRI SCHO	1167	240										
33.3 BLACK MTN ELEM SCH	1839	362										
34.1 BLACK MOUNTAIN 3	1206	278										
35.1 BLACK MOUNTAIN 4	1719	382										
36.1 BLACK MOUNTAIN 5	547	233										
42.1 HAZEL 1	92	0										

	STATISTICS		ASHEVILLE MAYOR CITY OF ASHEVILLE			ASHEVILLE CITY COUNCIL CITY OF ASHEVILLE						
	REGISTERED	VOTERS - TOTAL	BALLOTS - TOTAL	Terry Mayo Bellamy	Robert Edwards	WRITE-IN	Cecil Bothwell	Ryan D. Croft	J. Neal Jackson	Esther Manheimer	Carl Mumpower	Gordon Smith	WRITE-IN
43.2 HAZEL 2	9	0	0	0	0	0	0	0	0	0	0	0	0
44.1 LOWER HOMINY 1	856	131	77	47	0	33	46	47	66	85	45	34	
45.1 ENKA MIDDLE SCHOOL	79	1	1	0	0	1	0	1	1	0	0	0	
54.2 LUTH CH OF NATIVIT	420	15	7	7	0	1	6	8	5	9	6	0	
55.1 LIMESTONE 2	186	7	6	1	0	2	1	1	2	4	2	4	
58.1 N BUNCOMBE MID SCH	45	1											
59.1 REEMS CREEK FD	179	13											
62.1 RICEVILLE 2	290	29	18	3	1	7	3	9	12	10	8	5	
64.1 1ST BAPT SWANNANOA	1901	656											
65.1 SWANNANOA 2	2649	1016											
66.1 SWANNANOA 3	1313	384											
67.1 WEAVERVILLE TWN HA	2198	228											
68.1 WEST BUNCOMBE 1	131	0											
69.1 WEST BUNCOMBE 2	397	7											
70.1 WOODFIN COMM CTR	2352	79											
71.1 WOODLAND HILLS	735	28	14	4	0	6	6	5	10	10	9	4	
ONE STOP	0	3357	2324	377	40	1693	355	528	1590	815	1618	1266	
ABSENTEE	0	0	0	0	0	0	0	0	0	0	0	0	
PROVISIONAL	0	0	0	0	0	0	0	0	0	0	0	0	
TRANSFER	0	2	1	1	0	1	0	0	2	0	1	0	
TOTALS	84366	17251	9566	2438	144	5919	2530	3487	6586	4754	6318	4627	

	Pct Name	1.1	2.1	3.1	4.1	5.1	6.1	7.1	8.2	8.3	9.1	10.1	11.1	12.1	13.1	14.2	14.3	15.1	16.2	17.1	18.2	19.1	20.1	21.1	22.2	23.3	24.1	25.1	26.1	28.1	29.2	44.1	54.2	55.1	62.1	71.1	???	Total
AVL City Council	Robin Cape	148	272	245	178	364	116	221	99	61	108	70	71	143	130	95	26	175	204	167	250	31	71	184	287	100	71	98	80	171	171	43	1	4	4	11	8	4478
	Holly Jones	3	1	4		1	1		1	1				2				1							2				1									18
	Kelly Miller			1															1	1	2			2				1	2	2							12
AVL Mayor	Robin Cape	3	3		2	2	1	3										1	1		1						1	1	2				2				23
	Shad Marsh	1	1	3				1			2		2	2	1	1			1	1					1			1									18
	Joe Minicozzi		7								1					2				2																	12
	Carl Mumpower						1	1			2							2	1	2	1					1												11
	Joe Dunn																							1	1						3							5

Tuesday – February 9, 2010 - 2:00 p.m.
Worksession

Present: Mayor Terry M. Bellamy, Presiding (excused from worksession at 4:04 p.m.); Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr. (illness)

CONTINUATION OF DISCUSSION REGARDING STRATEGIC PARTNERSHIPS

City Manager Gary Jackson said that City Council discussed the Financial Crossroads White Paper at its January 19 worksession. As follow-up and preparation for a continuation of this discussion at its February 9, 2010, worksession, he provided Council with the following requested specific background information from City staff to include:

1) Summary of local/state revenue options for the City of Asheville
2) Federal appropriations requests
3) Summary of Buncombe County/City of Asheville financial partnerships
4) Parks & Facilities 5-Year Capital Improvement Plan needs
5) Revenue generating ideas (city staff brainstorming ideas)

Federal Legislative Agenda

At the Jan. 19 City Council worksession, a request was made for staff to explore and provide information about City projects that could be submitted for Federal funding consideration. Since then, Congressman Health Shuler's office has issued its appropriations request form for Fiscal Year 2011 and asked that submissions be returned to his office by Feb. 16. Similar processes are expected to begin with Senator Burr and Senator Hagan in the coming weeks.

In response to the Jan. 19 request, and in preparation for the federal appropriations process, staff has compiled for Council consideration a list of projects that could be submitted to Federal representatives. She provided council with a chart of the Appropriations Bill, Project Name, Description, Project Cost and Strategic Plan Alignment.

Project names and project costs consist of: Mills River Solar Farm Project - $2 Million; Municipal Facilities Building Retrofits - $1 Million; Water Transmission Main Replacement - $7 Million; Radio Tower Infrastructure Project - $1.4 Million; Emergency Response Team armored vehicle - $303,000; Bulk Water Loaded Stations (Three Stations) - $132,000; Water System Threat Assessment Update - $100,000; Self-Contained Breathing Apparatus - $250,000; North Asheville Fire Station - $1 Million; Memorial Stadium - $2 Million; Recreation Center at Livingston Street Park (GIFT Project) - $4 Million; Asheville City Hall Restoration Project - $3.5 Million; Municipal Water and Utility Maintenance Facility - $10 Million; Obesity Management for Asheville Project Participants - $120,000; On-site Clinic Expansion for Asheville Project Monitoring - $250,000; Emergency Traffic Signal Preemption - $495,000; Asheville Transit Bus Replacement (1 hybrid diesel electric bus) - $600,000; Tunnel Road Sidewalk Project – Veteran's Walk - $3 Million; and Riceville Road Sidewalk Project – Tunnel Road to Bull Mountain Road - $700,000.

She ran this list past Congressman Shuler's office to get a feel of what the Congressman is interested in and the following are the projects most appealing: Mills River Solar Farm Project - $2 Million; Municipal Facilities Building Retrofits - $1 Million; Radio Tower Infrastructure Project - $1.4 Million; Asheville City Hall Restoration Project - $3.5 Million; Obesity Management for Asheville Project Participants - $120,000; On-site Clinic Expansion for Asheville Project

Monitoring - $250,000; Emergency Traffic Signal Preemption - $495,000; Asheville Transit Bus Replacement (1 hybrid diesel electric bus) - $600,000.

Last year, the City of Asheville submitted appropriation requests for:

- Asheville-Buncombe Regional Emergency Training Facility ($4,000,000): Buncombe County has moved forward with securing funding for this project to proceed.

- Asheville Transit Bus Replacement – Hybrid Buses ($7,875,000): In FY2010, Asheville was successful in securing $238,000 for Asheville Transit bus replacements with the assistance of Congressman Shuler. This was preceded by $294,000 secured in FY2009.

- Emergency Signal Preemption ($495,000): Asheville has not received funding for this request.

- Municipal Building Retrofits and CNG Vehicle Conversions ($1,749,000): Asheville did not receive funding for this request through the appropriations process. However, Asheville allocated Energy Efficiency and Conservation Block Grant (EECBG) funding for facility retrofits and has applied for another ARRA grant for CNG vehicle conversions.

Based on City Council's direction to submit projects, staff will proceed with developing full project proposals for submission by Feb. 16. These submissions would also be extended to Senator Burr and Senator Hagan.

Staff is seeking City Council's direction on identified projects as well as other projects Council would add to the list. She explained why she felt 3-5 proposals should be submitted.

Throughout discussion on the draft project list, staff responded to various questions/comments.

Mayor Bellamy suggested that in the future staff provide Council with a list of what our representatives have supported in the past in order to give Council an idea of what they might support.

Public Works Director Cathy Ball responded to Councilman Davis when he questioned if the Azalea Road Project would be a good project to add to this list.

Mayor Bellamy requested the project list include the funding of I-26 Connector and the realignment of the road along the river. These two projects will not only benefit Asheville and Buncombe County but our entire region. She also supported projects in the safe and homeland security areas as these seem to be the projects that have been traditionally funded.

After each Council member explained their thoughts on which projects should be submitted, it was the consensus of Council to mark their top five projects, have staff compile the votes and bring the total votes back to the formal meeting later in the day for approval. In addition, it was the consensus of Council to have staff prepare a cover letter, for the Mayor's signature, to send to our representatives attaching our federal appropriation list including language to (1) request for funding of the I-26 Connector; (2) realign of the road along the river; and (3) emphasis the importance of the Asheville City Hall Restoration Project.

Selected Revenue Options

Chief Financial Officer Ben Durant provided Council with the following selected revenue options:

Revenue Item	Estimate	Description
1 cent on Property Tax	$1.0 million	The tax rate is set locally as part of adopting the annual operating budget.
Population-based Sales Tax Distribution formula	$3.0 million	Sales taxes are currently distributed to Buncombe County and municipalities within the County based on an "ad-valorem" distribution method. If the alternative "population-based" distribution formula were used, the City would gain $3.0 million in additional revenue per year. Buncombe County is authorized to select the distribution method.
Additional half-cent sales tax	$3.2 million	General Assembly approval needed.
1% Hotel/Motel Tax	$1.5 million	(He provided Benchmark Data on Occupancy Tax)
1% Food & Beverage Tax (City)	$3.3 million	There are currently 4 counties and the Town of Hillsborough that levy a 1% prepared food & beverage tax. The counties are: Cumberland, Dare, Mecklenburg, & Wake. Staff compared the amount of revenue that each of these entities collects from this tax to their total retail sales and used that percentage to make an estimate of how much would be collected in the City of Asheville.

Revenue Item	Estimate	Description
Additional $5 Motor Vehicle Fee	$325,000	The City currently charges a $10 motor vehicle fee, with $5 earmarked for Transit. The City would need legislation to increase the vehicle tax, and it could only be increased by $20 (max of $30). Without special legislation, the maximum amount is $10 for cities that operate a transit system and $5 for those that don't.
Fee Recovery	$200,000	Based on fee change requests that have been proposed by departments, there is a potential for $200,000 in additional. Staff is currently analyzing additional opportunities to pursue enhanced or full cost recovery for specific services.

Mr. Durant then reviewed with Council a chart of several different surrounding area counties and cities of their percentage of ad valorem levy and their sales tax revenue vs. their percent of population and their sales tax revenue. For Asheville, the sales tax revenue for the percentage of ad valorem levy is $14,959,877 and the sales tax revenue for the percent of population is $18,442,694.

Mr. Durant also provided Council with a base list of revenue generating ideas (City staff brainstorming ideas) and partnership opportunities.

Mayor Bellamy felt that a necessary step in order for us to discuss different revenue options with our partners is to identify what the additional revenue would be used for. She supported several of the different revenue options presented as long as we identify the use, with

her preference being basic infrastructure. She wanted to be able to present a unified vision of what we need when we meet with our partners. For example, the City partnered with the Buncombe County Tourism Development Authority on the Wayfinding Project. Since that project is finished, we should have a list of what else would be a good fit for partnership with them on.

Councilman Bothwell felt a partnership possibility would be with the Towns of Black Mountain and Woodfin, since the County's formula of sales tax distribution would be beneficial to them as well.

Councilman Smith suggested the following three discussion items with the County Commissioners: (1) downtown shuttle to move people more easily around downtown and help alleviate some of the parking stresses; (2) parks; and (3) the Wilma Dykeman Riverway. He felt a portion of the County's sales tax could be used to create Buncombe County and Asheville as a greater destination.

Vice-Mayor Newman felt we need to identify those infrastructure pieces that there is a really strong case for regional participation. He supported focusing in on investments in downtown; regional parks, recreation and cultural assets that are clearly being used by non-City residents; and the riverfront (including Wilma Dykeman Riverway and greenway components).

Councilman Davis felt the creation of a Regional Parks/Sports/Facilities Commission would be beneficial to not only the City, but the County and surrounding municipalities. He felt the Commission would be a good opportunity for consolidation or an authority, but it has to have trust by contributing funds.

At Councilman Newman's suggestion, it was the consensus of Council to have staff provide additional information on the different structuring models for City-County partnerships.

Councilman Davis also wondered if transit might be included with a County partnership.

Mayor Bellamy said that since the largest part of our budget is public safety, she suggested some consolidation partnership with the County on some of those efforts.

Councilman Smith suggested a County partnership on some of the following ideas that will help them achieve some of their goals County-wide (1) how Asheville can create more density on the corridor (while creating more construction jobs) in order for the County to protect it's open space; (2) improving our downtown and parks infrastructure (recognizing they have a lot of infrastructure needs they have) and when Asheville prospers, so does the County. We have open space protection, job creation and infrastructure creation to begin conversations with the County.

Councilman Bothwell also suggested adding $2 more a ticket for events at the Civic Center, with City residents not paying the surcharge and if the County helps fund the Civic Center, then County residents would not have to pay the surcharge as well.

Councilwoman Manheimer felt that staff should identify the needs that we have that transcend the City of Asheville that we can sell to our partners and build a case for the funding needs and how it will help us all. Then it's City Council's job to make the sale.

Councilman Davis noted that if we receive funds through partnership opportunities, then we can so some reallocation of existing funds for our basic needs.

Councilman Smith asked for information on how the restaurants would be impacted with an additional 1% food and beverage tax.

At Vice-Mayor Newman's suggestion, it was the consensus to form a subcommittee of Council (Vice-Mayor Newman Chair, Councilwoman Manheimer and Councilman Davis) to work with the City Manager to discuss ideas of potential partnerships and come up with a 3-5 list that our partners see the benefit of them funding, not just one time but long-term, and bring it back to Council for review.

DOWNTOWN PARKING PLAN

Director of Transportation Ken Putnam provided Council with the following Downtown Parking Action Plan dated November 8, 2006:

Item	Description	Estimated Total Costs*
1	Evaluate adding levels to Rankin Street Parking Garage	N/A
2	Evaluate demo and reconstruction of existing parking garages	N/A
3	Evaluation of parking option in the Battery Park area	N/A
4	Determine highest and best use of the property the City owns on Haywood Street.	Unknown
5	Surface parking on North Lexington	$15,000
6	Surface parking on Cherry Street	$25,000
7	Evaluate possibility of new parking lot on Rankin Avenue across from the Civic Center	$13 M
8	Parking at or near the Senior Opportunity Center	Unknown
9	Parking at or near the Sheriff's Office/Ann Street	Unknown
10	Public/Public partnership on Cox Avenue and College Street to include public parking	$3.5 M
11	**Public/Private partnership on Biltmore Avenue to include public parking**	**$5 M****
12	Park side parking initiative	$10 M**
13	Determine feasibility of locating parking facility over I-240	Unknown

* Estimated total costs –These costs include previous expenditures and estimated future costs. Due to escalating construction costs these are subject to change.

** These are subject to change depending on financing options such as tax increment financing. This figure assumes $20,000 per parking space plus 20% contingency.

He also provided Council with the following status update of the Downtown Parking Action Plan items:

Item # 1 – Evaluate adding levels to the Rankin Avenue Parking Deck – City staff coordinated an initial review and determined that the project would not be feasible. Although the Rankin Avenue Parking Deck, which was constructed in 1988, was originally designed to be expanded by two levels, current building code requirements have changed significantly making this option cost prohibitive.

Item # 2 – Evaluate the demolition and reconstruction of the existing parking decks – Although this option might be the best one to increase parking, City staff does not recommend it until additional parking is available due to the loss of parking during the demolition and construction activities.

Item # 3 – Evaluate parking options in the Battery Park area – City staff has had initial discussions with AT&T regarding their surface parking lot that is bordered by O.Henry Avenue, Haywood Street, and North French Broad Avenue.

Item # 4 – Determine the highest and best use of the City-owned property on Haywood Street – City staff is currently reviewing a RFP for a public/private partnership that would include a hotel and parking deck. The Office of Economic Development has more detailed information.

Item # 5 – Surface parking on North Lexington Street – This project, which is located under I-240, is completed and includes a paved, surface parking lot with a total of 15 metered parking spaces and one handicapped parking space. Parking is prohibited from 8:00 pm until 6:00 am.

Item # 6 – Surface parking lot on Cherry Street – There is an agreement between the North Carolina Department of Transportation and the City of Asheville allowing the City to use the property between I-240 and Cherry Street for parking purposes. The City's skateboard park is also located on the subject property. Parking is currently allowed on most of the property although it has not been improved. There is a paved area between the skateboard park and Broadway. Due to complaints, City staff is currently exploring options to better control the subject area.

Item # 7 – Evaluate the possibility of a new parking deck on Rankin Avenue across the street from the Civic Center Parking Deck – Conceptual plans have been prepared; however, this project is currently on hold due to the possible project at 51 Biltmore Avenue.

Item # 8 – Parking at or near the Senior Opportunity Center – This project has been completed with the addition of a mixture of permitted and metered on-street parking along Grove Street. The monthly permits are available at a cost of $30 per month and currently the Griffin Apartments (a MHO project) buys 10 to 12 permits per month for their renters.

Item # 9 – Parking at or near the Sheriff's Office/Ann Street – City staff has not explored the subject item in great detail; however, initial contacts with the property owner have not been very favorable.

Item # 10 – Public/public partnerships on Coxe Avenue and College Street to include public parking – Buncombe County prepared plans to construct a parking deck along College Street adjacent to the Health Department and to construct a parking deck along Coxe Avenue adjacent to the Department of Social Services *(the old Sears building)*. The College Street Parking Deck has been completed and is used primarily by County employees and citizens that are called for jury duty. Public parking is also available. The County has decided not to construct the Coxe Avenue Parking Deck. During the entire planning and design process, City staff explored partnership opportunities with the County.

Item # 11 – Public/private partnership on Biltmore Avenue to include public parking – A project to include a hotel and a parking deck is currently ongoing. The project is located at 51 Biltmore Avenue and the construction plans have been completed. The City's finances are in place and the project is ready for the construction phase. We are still waiting for the private developer to secure financing. Options on the property are set to expire on June 30, 2010.

Item # 12 – Parkside parking initiative – This item would locate a parking deck on property bordered by Eagle Street, Spruce Street, Marjorie Street, and Davidson Street. City employees currently use most of this property for parking purposes. A potential public/private partnership might be with the anticipated performing arts center.

Item # 13 – Determine the feasibility of locating a parking facility over I-240 – City staff has not explored the subject item in detail yet. This project would be very difficult to pursue due to involvement with the Federal Highway Administration and the North Carolina Department of Transportation and it could be cost prohibitive.

Upon inquiry of Mayor Bellamy, there was discussion on whether the City can transfer some of our Parking funds to the General Fund, similar to how we can use some of our Water Funds to supplement some of our other basic needs. City Manager Jackson said that Chief Financial Officer Ben Durant will provide more detail on this as we get into the budget process.

Mr. Putnam answered various questions from Councilman Bothwell, some being, but are not limited to: what are the peak times for parking space deficiencies; has staff researched smaller parking spaces; and how does the rise of gas prices affect transit ridership.

Councilman Bothwell suggested a partnership opportunity with surrounding counties on satellite parking lots for those who live outside of Asheville but work in the City.

At the request of Vice-Mayor Newman, Mr. Putnam updated Council on the status of the Biltmore Avenue public/private project.

It was the consensus of Council to instruct City staff provide the following information at the March worksession: (1) a contingency plan if the Biltmore Project does not proceed due to the private sector not being able to fulfill its obligations; and (2) details on transferring funds from an enterprise fund into the general fund. It was also the consensus to have City Attorney Oast send a letter to the appropriate person asking for re-engagement of discussions regarding the AT&T parking lot.

CITY-OWNED PROPERTY/FACILITIES

At this time, Mayor Bellamy requested to be excused from the worksession. Prior to leaving, she supported moving forward with the Flying Frog property as soon as possible.

Vice-Mayor Newman then presided over the remainder of the worksession.

Economic Development & Civic Center Director Sam Powers explained the City-owned land initiatives. As an introduction, he said that (1) Background to the RFQ process: the opportunity to redevelop City owned property to advance Council's and the Community's strategic goals for Asheville; (a) Basis of staff presentation to Council, April 2006; (b) Underperforming city assets; (c) Consolidation opportunities for City services; and (d) Low hanging fruit; and (2) Method identified, May 2007 (a) RFQ/RFP process; and (b)Transparent, methodical, key for public-private partnerships.

Community benefits that could be realized (1) Leverage real estate for community benefit; (2) Minimize cost to taxpayers; (3) Property tax base increase; (4) Job creation; (5) Redevelopment that meets community goals; and (6) Vibrant and sustainable downtown.

The next step, defined the guiding principles that would inform the process is (1) Enhanced tax base; (2) Smart growth; (3) Realistic market opportunities; (4) Attract innovative developers; (5) Path to redevelopment next 2 to 4 years; (6) Focus City efforts to be results-oriented; (7) Transparent process; (8) Best use of public assets; (9) Economically and environmentally sound; (10) Workforce housing; (11) Potential public space; (12) Potential public parking; (13) Involve local businesses; (14) Support City's Minority Business Plan; (15) Cost-benefit of relocating municipal facilities; (16) Limit impact on tax payers; (17) Promote live-work-play downtown; (18) Market Assessment & Overview; and (19) Invite adjacent property owners.

The following is the City-owned land identified – Phase I:

Potential Redevelopment Site	Priority	Supported Market Uses	Development Timeframe

Ralph Street	1	Multifamily Workforce Housing	1.5 – 3 years
Choctaw Street	1	Multifamily Workforce Housing	1.5 – 3 years
Asheland Avenue	1	Multifamily Workforce Housing	1.5 – 3 years
Old Asheland Avenue	2	Multifamily Workforce Housing	1.5 – 3 years

The following is the City-owned land identified – Phase II:

Potential Redevelopment Site	Priority	Supported Market Uses	Development Timeframe
Haywood Street Properties at Civic Center	1	Upscale hotel, retail, limited office, structured parking	2 – 4 years
Eagle – Market Street Property	1	Office or multifamily residential	1.5 – 3 years
Office of Economic Development	1	Office or multifamily residential; ground floor commercial	1.5 – 3 years
Park Maint. Property	2	Multifamily residential, limited commercial	1.5 – 3 years

Long-term priorities include:

Potential Redevelopment Site	Priority	Supported Market Uses	Development Timeframe
Transit Operations Center	3	Multifamily residential	3 – 5 years
Parkside Property	3	Office; upscale hotel or residential condo; supporting commercial structured parking	5 – 7 years
S. Charlotte Street Properties	3	Corporate headquarters with complementing uses or multifamily residential and commercial	8 – 10 years

In Phase I, staff proceeded with RFQ for 2 properties; (1) Ralph Street; and (2) Choctaw Street. The following other two have been deleted from Phase I per Council's direction: (1) Old Asheland; and (2) Asheland

In Phase II, staff proceeded with the RFQ for 4 properties – Fall 2007; (1) Haywood Street at Civic Center; (2) Eagle-Market Street; (3) Office of Economic Development; and (4) Park Maintenance.

Long-term priorities include: (1) Transit Operations Center; (2) Parkside Property; and (3) S. Charlotte Street.

The facilities assessment is needed for the following (1) Ralph & Choctaw Street; (2) Asheland & Old Asheland; (3) Haywood Street at Civic Center; and (4) Eagle-Market Street. In addition to a facilities assessment for the following properties, redevelopment of these parcels require long-range planning and relocation of City facilities: (1) Office of Economic Development; (2) Park Maintenance; (3) Transit Operations Center; (4) Parkside Property; and (5) S. Charlotte Street.

The facilities assessment in the Winter of 2007 included (1) In December 2007, the "City of Asheville Facilities Assessment Report" was produced; (2) Reviewed the space needs for various city operations for the next 10 to 20 years; (3) Key highlights: (a) Identified space deficiencies in several departments; (b) Proposed operational consolidation (i) One stop shop for permitting; (ii) Consolidation of Street, Parks and Water Maintenance operations; and (iii) Consolidation of Vehicle Maintenance operations; and (4) Further defined the need for additional space/property to address long term vision.

Regarding the facilities master planning, (1) In August 2008, Jeff Richardson presented Facilities Master Planning to Council; (2) Framed as a three phase project; (a) Phase I: Critical needs assessment & recommendations; (b) Phase II: Comprehensive facility analysis; and (c) Phase III: Implementation planning for mid- and long-term needs; and (3) Key Outcomes of Facility Master Planning; (a) One Stop Shop at Public Works; (b) Oakley Police Center Development; (c) Relocation of Economic Development to City Hall; re-purpose of 29 Haywood Street for Police Department use; and (d) Anticipated relocation of Park Maintenance to the Armory at Shelburne Road.

In summary, the variables are (1) Impact of the Recession; (2) Lending Environment; (2) Constraints on City Resources: Financial and Manpower; and (4) Infrastructure Requirements of City Property.

Affirmation of Policy: (1) RFQ: Current Position; (a) DTMP Implementation; (b) RENCI 3D Modeling, community review; (c) Haywood Street: McKibbon Hotel Group, Feb. 2008; (d) Park Maintenance property: Mountain Housing Opportunities Feb. 2008; (e) Ralph and Choctaw Parcels: Mountain Housing Opportunities 2007; and (f) Asheland / Old Asheland: PED Recommendation, Fall 2009; (2) Facilities Master Planning: Current Position; (a) Armory at Shelburne Road is designated relocation for Park Maintenance function and other mid-term uses; and (b) Developing long range vision for future RFQ properties; and (3) Policy feedback.

There was a brief discussion by Council on the Haywood Street properties.

Vice-Mayor Newman recessed the meeting at 4:39 p.m. to reconvene at 5:00 p.m. in the Council Chamber.

Present: Mayor Terry M. Bellamy (arrived at 5:05 and excused at 7:55 p.m.), Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr. (illness)

PLEDGE OF ALLEGIANCE

Vice-Mayor Newman led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF A.C. REYNOLDS FOOTBALL TEAM IN WINNING THE STATE 4-A CHAMPIONSHIP

Vice-Mayor Newman recognized Head Coach Shane Laws, Kenny Cubra, Carson Gratton and Jake Whitaker, as well as the entire A.C. Reynolds football team, in winning the State 4-A Championship.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 26, 2010

B. RESOLUTION NO. 10-26 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to fund the transit planning program, Section 5303 Planning Grant of the Federal Transit Administration (FTA) Metropolitan Planning Organization (MPO).

The FTA MPO Section 5303 Planning Grant is an annual grant designated exclusively for transit planning. The funds are currently administered by the City of Asheville as a direct recipient of Federal Transit Funds. The funds are primarily used to pay the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning. In addition, the funds support grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses.

Fiscal Year 2009-10 anticipated funding totals $72,060. The grant will fund 80% of the anticipated funding, which equals $57,548, the City will fund half of the 20% local match, which equals $7,206. The North Carolina Department of Transportation will provide the additional half of the 20% local match.

The anticipated grant funding and the City's local match in the amount of $7,206 are currently budgeted in the Transportation Department's approved budget.

This action complies with the current City Council's Strategic Operating Plan in the green and sustainable focus areas by helping to develop a sustainable funding structure for the Asheville Transit system.

The Transit Commission supports the subject action.

Pros:

- The subject grant helps to fund an existing position.
- The subject grant enables the City of Asheville to use $64,854 in Federal and State monies for transit planning activities.

Con:

- A 10% local match in the amount of $7,206 is required.

The total anticipated grant funding for Fiscal Year 2009-10 is $72,060. The City is required to provide a 10% local match in the amount of $7,206. The anticipated grant funding and the City's local match in the amount of $7,206 are currently budgeted in the Transportation Department's approved budget. The City's local match is included in the approved General Fund Transfer *($872,831)* to the Transit Operations Division for the current fiscal year.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the NCDOT to fund the transit planning program, Section 5303 Planning Grant of the FTA MPO.

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C. RESOLUTION NO. 10-27 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF HOMELAND SECURITY, N.C. EMERGENCY MANAGEMENT, TO ACCEPT SUB-GRANTEE FUNDS FOR THE ASHEVILLE POLICE DEPARTMENT'S HAZARDOUS DEVICES UNIT X-RAY MACHINE

ORDINANCE NO. 3825- BUDGET AMENDMENT FROM THE U.S. DEPT. OF HOMELAND SECURITY, N.C. EMERGENCY MANAGEMENT, FOR THE ASHEVILLE POLICE DEPARTMENT'S HAZARDOUS DEVICES UNIT X-RAY MACHINE

Summary: The consideration of a (1) a resolution authorizing the City Manager to enter into an agreement with the US Department of Homeland Security, through North Carolina Emergency Management, to accept sub-grantee funds for Asheville Police Department's Hazardous Devices Unit X-ray machine ; and (2) a the budget amendment accepting funds in the amount of $57,000.

The purchase of a Digital X-ray Unit for the Hazardous Devices Unit (HDU) will enhance Asheville Polie Department's (APD) Bomb Squad by insuring we maintain NIMS III Standard and FBI Accreditation Standards.

This investment will support the State Homeland Security Strategy 2007-09 goals by enabling the local Bomb Squad Units to respond more effectively and efficiently on a regional basis, ensuring faster response to explosive incidents and other explosives related matters. This addresses a National Overarching Priority by implementing the NIMS III Standards to all bomb squads across North Carolina. In addition, it addresses a National Capability Specific priority by strengthening CBRNE detection and response capabilities.

The total grant fund award is $57,000.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities. The purchase and implementation of and X-ray unit by HDU will greatly enhance the safety of our Citizens, as well as those in surrounding communities due to the regional response capability of APD's HDU. This equipment will also increase the safety for the members of the HDU.

Pros:

- Increase safety for HDU members
- Increased safety for our communities

Con:

- Maintenance cost

The acquisition cost for the Digital X-ray Unit is fully-funded with the $57,000 NC Emergency Management grant; thus, there is no fiscal impact on the Police Department's capital outlay budget.

APD will be required to cover the annual maintenance and operating costs associated with the equipment, Those costs are currently estimated at $500 per year and will be programmed into the department's annual operating budget request.

The X-ray unit is expected to have a useful life of 10-15 years. APD will be responsible for the replacement cost of the X Ray unit at the end of its life cycle.

City staff recommends City Council (1) adopt the resolution authorizing the City Manager to enter an agreement and acceptance of funds as a sub-recipient with NC Emergency Management; and (2) adopt the budget amendment in the amount of $57,000

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D. RESOLUTION NO. 10-28 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HUNTLEY CONSTRUCTION COMPANY INC. FOR THE REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Huntley Construction Company, Inc., in the amount of $167,496.00 for the Reynolds Mobile Home Park Water System Improvements Project.

Grant Funds from the North Carolina Department of Environment and Natural Resources (NCDENR) North Carolina Water Infrastructure Act of 2005 (N.C.G.S. 150G) are available for this project and were approved by City Council on July 14, 2009, by Resolution No. 09-147.

The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Reynolds Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction and installation of approximately 2,360 Linear Feet of new 8-inch and 6-inch waterline and all necessary valves, hydrants, and service connections. In response to the Advertisement For Bids, the WRD received eight (8) proposals.

Companies responding were:

1. Huntley Construction Company, Inc. – Asheville, NC
2. Appalachian Environmental Services – Webster, NC
3. T & K Utilities, Inc. – Asheville, NC
4. Buckeye Construction Company – Canton, NC
5. MacKenzie Company – Asheville, NC
6. Spur Construction – Waynesville, NC
7. Terry Brothers Construction – Leicester, NC
8. Fallon Utility Contractors, Inc. – Asheville, NC

A review team, comprised of staff from multiple City Departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these bids and selected Huntley Construction Company, Inc., as the lowest responsible bidder at a bid of $167,496.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:
- This project will provide forty (40) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed grant money.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:
- Failure to award a construction contract would lead to forfeiture of the NCDENR grant and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the estimated construction costs of $167,496 for this project until reimbursement is received from the State. Funds for these upfront costs are already included in Water Resource's Fiscal Year 2009-10 Capital Improvement Program budget.

City staff recommends City Council approval of the City Manager to enter into an agreement with Huntley Construction Company, Inc., in the amount of $167,496.00 for the Reynolds Mobile Home Park Water System Improvements Project.

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E. RESOLUTION NO. 10-29 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SERVICE AGREEMENT WITH HERSEY METERS CO., LLC, FOR THE FIVE-YEAR AUTOMATED METER READING PROJECT

Summary: The consideration of a resolution updating the contract amount for Hersey Meters Co., LLC, and authorizing the City Manager to sign a service agreement with them for the five-year Automated Meter Reading (AMR) Project contingent upon City Council approval of funding for the remaining four (4) fiscal years for the purchase and installation of approximately 52,000 AMR Devices to complete installation throughout the water system.

In July 2009, the City issued a Request for Proposals on the Automated Radio Frequency Meter Reading System for the Water Resources Department. On August 17, 2009, proposals were received from the four (4) following companies:

9. Hersey Meters Co., LLC

10. Metron-Farnier, LLC
11. Neptune Technology Group, Inc., and
12. Vanguard Utility Service, Inc

On January 12, 2010, City Council authorized the City Manager to sign a service agreement with Hersey Meters to install approximately 52,000 AMR devices throughout the water system for a total project cost of $6,666,625.86. There was an error in the contract amount, and it must be corrected before executing the contract documents. The error occurred by including the total cost of new meters in the amount of $2,419,421 into the total estimated project cost for all four (4) bids received. The meters will be a separate purchase, thereby decreasing the total contract amount for the installation of the AMR's.

Hersey Meters is still the lowest responsible bidder but at a reduced contract amount of $4,234,859.86 as outlined below: This $4,234,859.86 amount equals the total project cost of $6,666,625.86 minus the new meter cost of $2,419,421.

Bid Tabulation for the Automated Meter Reading (AMR) Installation Project

Cost Breakdown	Hersey Meters Co., LLC	Metron-Farnier, LLC	Neptune Technology Group, Inc.	Vanguard Utility Service, Inc.
A. Total Up-Front AMR Bid Cost	$2,758,670.86	$3,877,160.00	$3,589,650.00	$3,329,235.00
B. Total Meter Exchange Cost	$883,544.00	$2,022,420.00	$1,265,295.58	$934,819.77
C. Total Meter Retrofit Cost	$450,060.00	$346,200.00	$432,750.00	$542,380.00
D. Performance Bond Pricing	$122,585.00	$127,500.00	$72,275.00	$40,000.00
E. Total Maintenance Cost	$20,000.00	$30,000.00	$35,054.70	$15,550.00
Total Estimated Contract Cost	$4,234,859.86	$6,403,280.00	$5,395,025.28	$4,861,984.77

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval will correct the contract amount to Hersey Meters and allow the City to proceed with the AMR program.

Con:

- Without approval, the City cannot proceed with signing an agreement with Hersey Meters for the correct contract amount.

The initial investment in the AMR program is still $2,890,576 in the current fiscal year, which is currently budgeted in this year's Capital Improvement Project fund. Previously, the $2.89 million was approved to be entirely allocated to Hersey Meters. Now, the $2.89 million will be divided approximately as follows: $1,790,000 for Hersey Meters AMR devices and installation and $1,100,576 for the purchase of new meters needed for the AMR installation. The department plans to request the remaining funds over the following four (4) fiscal years to make this a five-year project unless more funds are available to reduce the program length. The cost over the following (4) years will be approximately $1 - $1.5 million per year depending on the availability of funds and inflation.

City staff recommends City Council authorize the City Manager to sign a service agreement with Hersey Meters Co., LLC, for the five-year Automated Meter Reading (AMR) Project contingent upon City Council approval of funding for the remaining four (4) fiscal years for the purchase and installation of approximately 52,000 AMR Devices to complete installation throughout the water system.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE REGIONAL AIRPORT AUTHORITY UPDATE

Mr. David Hillier, Asheville Regional Airport Authority Director, was pleased to present Council with an update on the Asheville Regional Airport Authority. The Airport's mission is to be the premier airport of choice for Western North Carolina travelers, by providing an array of choices and amenities, distinctive customer service, value, and convenience.

He provided Council with the following facts: (1) land – 1,000 acres; (2) CY 2009 Traffic Statistics (a) operations – 66,437; (b) total passengers – 580,630; (3) Runway: 16-34 – 8,001' x 150'. Major uses consist of commercial aviation, corporate aviation, general aviation (landmark and odyssey) and military aviation.

He showed Council (1) a chart of passenger traffic growth from 2003-2009; (2) demographics within 30 miles of Asheville; and (3) 28 daily non-stop flights to 8 hub cities of Atlanta, Charlotte, Chicago, Detroit, Houston, Newark New Jersey, New York New York and Orlando on 4 commercial air carriers – Continental, US Airways, Air Tran and Delta.

Based on a 2007 economic impact study by the EDC of Asheville-Buncombe County, the Asheville Regional Airport provides the following:

Impact Type	Jobs	Annual Economic Impact	Annual Payroll
Direct	442	$68,090,925	$15,025,572
Indirect	1,624	$104,692,555	$36,112,858
Induced	364	$32,341,489	$10,487,239
Total	2,410	$205,124,969	$61,625,669

It is estimated that each additional daily flight of a 50-seat passenger jet generates approximately $9,125,000 in annual economic impact.

He then provided Council with a chart of revenue/expenses for Fiscal Year 2004 though 2010.

Some amenities and entertainment consist of (1) recharge station, (2) CNN/Muzak; (3) Massage Chairs; (4) Fee Wi-Fi; (4) Airport Art Program; (5) Promotions/Community; and (6) E-Newsletter and Fare Alerts.

2009 accomplishments consist of (1) upgraded baggage make-up; (2) upgraded baggage claim and rental car counters; (3) upgraded ticket counter; (4) new guest services center; (5) new regional boarding ramps; (6) new terminal advertising program; and (7) new fixed base operator.

2010 goals and objectives consist of (1) North GA Expansion Project; (2) Parking Lot and Terminal Roadway ($1.6 Million project to improve the flow of roadway traffic, repave the parking lots, enhance signage, lighting and landscaping); (3) new 22,000 square foot bulk hangar; (4) new entrance signage; (5) toll booth plaza ($500K Toll Plaza expansion project which when complete will provide a third exit lane from our parking lot); (5) General Aviation Roadway (paving Wright Brothers Way, putting in pedestrian sidewalks, and adding some wayfinding, a $1.7 Million investment); and (6) terminal renovation ($10.5 Million – of which $7.6 Million is from stimulus money – to be completed next summer).

Regarding environmental, (1) continued implementation of environmental practices with the adoption of an environmental policy; (2) installation of PC Air and Fixed Ground Power units; (3) installation of a new triturator (lav cart waste dumping facility); (4) implementation of a solar power energy project; and (5) seek additional federal and state environmental grants.

Air Service Development (1) develop a "Community Partnership Team" to help acquire additional air service to markets; and (2) additional marketing in the 11 county air service catchment area for Asheville to reduce leakage.

It is estimated that Asheville leaks more than 45% of its potential traffic to Atlanta, Charlotte, Greenville-Spartanburg, etc. Main causes are air fares and non-stop service.

Using a map, Mr. Hillier explained the catchment area. The Asheville Regional Airport serves 11 counties in Western North Carolina. Each county is geographically and economically unique.

Key objectives include (1) fund the future development program as a pay-as-you-go program; no local tax dollars or long-term debt financing are currently used or will be used in the future; (2) promote general aviation and commercial air travel from and to Asheville and Western North Carolina; (3) seek additional air service options for both the business and leisure traveler; and (4) seek aviation and non-aviation related business development opportunities.

On behalf of City Council, Mayor Bellamy thanked Mr. Hillier and the entire Airport Authority for their hard work.

B. PLANNING & ZONING COMMISSION UPDATE

Ms. Cindy Weeks, Planning & Zoning Commission Chair, provided Council with the following report on the Asheville Planning & Zoning Commission which is an appointed advisory board charged with providing advice and recommendations to City Council on issues related to land use and development:

"Over the past year, the Planning and Zoning Commission has reviewed thirteen (13) applications for rezonings, this includes straight rezonings, initial zonings of annexed properties, and conditional zonings.

"Of these thirteen, seven (7) were for conditional zonings or new zonings specifically for development that was impending and has since moved forward.

"Of the seven (7) development projects that we reviewed, four (4) would be considered "public" in that the developer was a governmental or quasi-governmental entity and therefore the resulting development will be tax exempt. These four were:

- Buncombe Intermediate School South: new construction, 106,646 sf
- Irene Wortham Adult Daycare Center: new construction, 7,169 sf
- WNC Agricultural Center: renovation of existing plus new construction, 14,706 sf
- Mission Outpatient Cancer Center: new construction, 229,521 sf

"Of the remaining three (3) projects, two (2) would be considered large development new construction projects that will provide significant new tax base and property tax revenue when fully constructed. The third project was a small drive through bank at Biltmore Park Town Square.

- Crowne Plaza Resort: expansion 61,500 sf, new construction 323,200 sf
- Westmore Apartments (affordable housing): 7 buildings, 72 units, approximately 88,000 sf

"There were other smaller (Level 1) development projects that were permitted that we do not see as well as continued build out of formerly approved projects, but there was certainly a decrease in both applications for larger new development and projects actually achieving financing and moving forward.

"We spent a great deal of time dealing with economic downturn UDO amendments; Responses to Current Economic Climate.'

"Twenty UDO amendments were reviewed and approved under this category. The most notable were as follows--

- Extension of time for zoning permits (will allow developers to work on the more difficult timeframes of banks)
- Increased opportunities for businesses to advertise (through flexibility in signage)
- Increased from 50% to 75% the rule of value for cost of renovations that requires new compliance with the UDO (which will encourage the reuse of existing buildings)

"The Planning and Zoning Commission felt these were very timely and in many cases were improvements to the UDO that would stand the test of time, even without economic challenges.

"The 3 key points of development are as follows:

- The market
- Acquiring permitting and securing vested rights
- Acquiring financing

"The City's rule as the permitting authority cannot be overstressed—without zoning approvals, developers cannot acquire financing. We can't do much about the market, but we can help developers acquire and keep their financing by making the permitting process more user friendly and we have done that.

"I want to point out specifically that we had two special meetings regarding the Stormwater Ordinance, culminating with our vote on the Stormwater Buffers on October 22, 2009.

"Our entire Commission wanted me to communicate to you that although we were not in unanimous agreement with the staff recommendation on the Buffers, we were in agreement and were supportive of 99% of the other Stormwater policy recommendations that were brought before us by staff.

"The Commission was proactive on the buffer issue. Although we did not endorse the staff recommendation, we did provide an alternative recommendation and achieved a 5-1 vote in favor of that.

"I am here tonight to report to you what our Commission asked me to communicate to City Council regarding our work on behalf of the City.

"First, we all wish to state publicly and without qualification that our main goal is evaluate development proposals and policy changes by honoring the variety of plans that have been adopted by City Council and by keeping in mind the wishes of City Council regarding how our City should grow.

"When I first was appointed to the Commission, it was immediately apparent to me that one of my primary roles was to help the City grow its most important source of revenue, which is property tax revenue.

"Quoting from **Asheville NC 2010: A Financial Crossroads**, the report provided to City Council for your January retreat...

'In North Carolina, property tax revenue is typically the largest source of municipal revenue.'

"Many of the points made in this report also refer to Asheville's challenges regarding annexation.

"In order to achieve the balanced growth of our City, and protect the environment, we need to seek to implement our adopted master plans and their themes of an anti-sprawl, in-filled urban core philosophy.

"This is referred to in the report as follows...

'...research supports the notion of inter-dependency between the urban economy and the rural economy, and further suggests dense growth in urban centers is beneficial to rural areas by allowing them to remain undeveloped.'

"This leads to a possible source of collaboration with our County leaders, which was suggested by Planning and Zoning Commission members as an area that needs attention and continued outreach.

"Along with helping the City to grow its income base, we have to pay attention to the needs of our citizens for balanced growth and quality growth, as well as the needs of our community in the residential, service, business, and recreational sectors.

"This is a responsibility the Planning and Zoning Commission takes seriously and we have taken it even more seriously since the economy has taken a turn for the worse and we have seen development slow to such a great extent.

"We have had a year that we have had time to consider policy with a more detailed analysis, without the benefit (and sometimes the distraction) of having a specific development proposal before us.

"In light of the economic changes, and our knowledge of some stalled, problematic, and unimplemented development plans throughout our community, this responsibility takes on a different meaning.

"We have done well as a City—our staff, our Planning Commission, and our City Council to respond to the economic challenges before us by permitting some changes to the UDO that will help development move forward without compromising ideals or compromising the integrity of our neighborhoods.

"But we have more work to do.

"Our Commission's specific recommendations were in response to three areas of focus in our discussion...

- the state of our national and our local economy
- the need for increased revenues
- the need to continue to implement the planning documents that have been formally adopted by this body

"Here are the specific recommendations from the Planning and Zoning Commission that I was asked to communicate:

"1. As mentioned previously, forge a stronger collaboration with County leaders to break down the barriers that inhibit our growth

"2. As a result of the economic realities we are facing, and to encourage a more universal view of how development affects our community, require that development proposals forecast how many jobs will be created during the course of construction and what the resulting tax revenues will be after the project is built.

"3. Cultivate a more positive relationship with our state legislative delegation. Set this as an objective, and approach it as a "campaign"...specifically we want our delegation to support legislation for the additional revenues we may need to invest in special projects that we agree are required for our community's continued growth and prosperity, for example, the Performing Arts Center.

"4. Give due process to developers who follow the rules and make sure to assess the work that the Planning Commission has already done before striking out on new agendas in the final public hearings.

"We respect that City Council is the final permitting authority on new development but we believe that there are rules in place, that the Planning and Zoning Commission has provided that first pass at the rules and that this should be considered as the starting point. On this point, having Maggie Burleson provide to you the minutes of our meetings has helped a great deal so far as recording the deliberations that we made in coming to our conclusions.

"5. Help bring competing factions to common ground--to the "middle ground." For example, City adopted plans well document that in order to Save Our Slopes, we must increase density in our urban core.

"No one likes change in their neighborhoods.

"We must help all factions understand that City review bodies are following City plans that have had broad community involvement and input. We must keep returning to this theme.

"We are excited about some of the challenges before us this year.

"We understand that we will be participating helping to make the UDO less complicated.

"We understand that we will be working on planning new development patterns on our transit corridors and helping to build these corridors so that ridership is increased.

"We are interested in re-examining the west Asheville Haywood Corridor and seeing if we can come up with a corridor plan that can apply to other corridors.

"We seek the guidance of City Council, we are energized by the new composition of members and we look forward to our continued work together."

Ms. Weeks asked, and Council agreed, to make the two new appointments effective April 1, 2010, as the Commission would like to invite the new members to the Commission's annual retreat in March and to an orientation meeting prior to officially taking office.

Upon inquiry of Mayor Bellamy, Ms. Weeks said that she will be possibly meeting monthly with Councilwoman Manheimer, liaison to the Planning & Zoning Commission, to discuss Council and the Commission's actions and to check in on the five specific recommendations. Mayor Bellamy said that would be a good opportunity for Councilwoman Manheimer to bring the Commission up to date on some of our partnerships, specifically with the County and State, and the work of the City Council Planning & Economic Development Committee.

On behalf of City Council, Mayor Bellamy thanked Ms. Weeks and the entire Planning & Zoning Commission for their hard work.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-30 - RESOLUTION AUTHORIZING THE CITY MANAGER TO WAIVE THE FORMAL BID REQUIREMENTS AND AWARD THE BID FOR FIVE 35-FOOT LOW FLOOR DIESEL BUSES IN ACCORDANCE WITH THE N.C. GEN. STAT. USING THE "PIGGY BACK" PROVISIONS FROM THE AWARD OF BID FROM THE CAPE FEAR PUBLIC TRANSPORTATION AUTHORITY, WILMINGTON, N.C., AWARDED ON JUNE 25, 2009

American Recovery & Reinvestment Project Manager Brenda Mills said that this is the consideration of a resolution authorizing the City Manager to waive the formal bid requirements and award the bid for five (5) 35 foot Low Floor diesel buses in accordance with the N.C. Gen. Statutes using the "piggy back" provision from the award of bid from the Cape Fear Public Transportation Authority, Wilmington, North Carolina, awarded on June 25, 2009.

In 2009, the City of Asheville received funding through the American Recovery and Reinvestment Act to purchase five diesel buses. On August 25 2009, Council approved a budget amendment for $2,590,439 that includes the purchase and covers 100% of the cost.

The City has the opportunity to acquire these buses through a "piggy backing" process. Staff recommends that we utilize a contract from the Cape Fear Public Transportation Authority, Wilmington, North Carolina, awarded on June 25, 2009 that will meet our operational needs. State statutes allow us to "piggy back" that bid. By doing so, the City avoids the cost increases and expedites the bidding process which can take between six months to one year.

The contract has been reviewed by the N.C. Dept. of Transportation and the Federal Transit Administration and complies with local, State and Federal regulations. Following the N.C. Gen. Statutes, an advertisement informing the Council's intent to utilize the "piggy back" option and waive the formal bidding process was posted on January 20, 2010.

The estimated cost of this project is $1,900,000. The City is funding this project using section 5340 (ARRA) of the Federal Transit Administration which provides 100% for capital

projects. According to the manufacturer, the buses will be delivered in approximately 18 months after the buses are ordered.

This action complies with the current City Council's Strategic Operating Plan by helping to achieve short-term and long-term energy goals and reducing city carbon emissions, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to fully leverage funding for transportation improvements. This action also complies with the capital improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- The City will replace five of its aged transit system fleet (10 out of 16 buses) that would produce savings in maintenance costs and fuel costs.
- The subject action would help reduce the City's carbon emissions.
- The Federal Transit Administration (FTA) would fund 100% of the subject project cost.

Con:

- None at this time.

No fiscal impact has been identified for this project. The Federal Transit Administration will fund 100% of the project.

City staff recommends City Council approve the resolution authorizing the City Manager to waive the formal bid requirements and award the bid for five (5) 35-foot Low Floor diesel buses in accordance with the N.C. General Statutes using the "piggy back" provision from the award of bid from the Cape Fear Public Transportation Authority, Wilmington, North Carolina, awarded on June 25, 2009 to Gillig, LLC.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-30. This motion was seconded by Councilman Smith and carried unanimously.

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IV. PUBLIC HEARINGS: None.

V. UNFINISHED BUSINESS:

A. INTERIM REPORT ON PARKING DECK RATES

Transportation Director Ken Putnam said that the purpose of the subject memorandum is to provide City Council an update *(interim report)* regarding the impact that the new variable parking rate structure is having on after hour's customers to the City's three parking decks *(The term "after hour's customers" refers to the activities that take place in the City's three parking decks after 7:00 pm on weekdays and on weekends).*

Prior to the equipment upgrade that was completed in the City's parking decks during September 2009, a flat $1.00 fee was charged to customers exiting the Civic Center Deck and the Rankin Avenue Deck and a flat $2.00 fee was charged to customers exiting the Wall Street Deck after 7:00 pm on weekdays and on weekends *(not including times when the special event*

fee was in effect) because the old equipment could not support variable rates. Some customers quickly learned that they could enter one of the City's parking decks anytime during the day and if they waited until 7:00 pm to leave, they would only pay either a $1.00 or $2.00 *(in the Wall Street Deck)* instead of the appropriate fee up to the daily maximum. Not only did this practice decrease potential revenues to the City, it created an unequal rate structure compared to daytime customers.

City staff began the process to replace the old equipment in late 2005. Originally, the equipment upgrade project was going to be included with the Haywood Street Parking Deck project. When that project did not materialize, City staff recommended and City Council approved the funds for the equipment upgrade project in Fiscal Year 2008-09. In addition, City Council approved the variable rate structure and eliminated the flat fee as a part of the Fiscal Year 2008-09 budget process. Given the downturn in the economic climate that began in late 2008 and continued in 2009, City staff decided that it would be a good idea to revisit the new variable rate structure before it was implemented. They met with the Asheville Downtown Association and the Downtown Commission and both groups agreed that City staff should move forward with implementation. City Council also agreed that City staff should move forward and as a result, the new rate structure became effective on September 8, 2009.

Within the first 30 days that the new rate structure became effective, citizens began sharing some concerns with City Council members. The primary concern included the conclusion that long-term customers *(nighttime workers)* were now being "forced" out of the parking decks and onto the streets where on-street parking is free after 6:00 pm. As a result, these long-term customers are now using on-street parking spaces that should be used by restaurant patrons and shoppers.

In order to analyze the primary concern in a fair, logical, and reasonable manner, City staff suggested that parking activity be monitored closely for a six-month time period between October 1, 2009, and March 31, 2010, and then compare the results with the same time period a year ago. City Council agreed with this suggestion and asked that an interim report be presented on February 9, 2010, and the final report to be presented on April 27, 2010.

Initial Findings:

According to our records, 47,100 after hour's customers used the City's parking decks between October 1, 2008 and December 31, 2008 compared to 46,700 after hour's customers between October 1, 2009 and December 31, 2009. The data indicates that the after hour's parking deck usage has virtually remained at the same level with a decrease of only 400 customers. Much of the decrease could be attributed to the major snowstorm that hit Asheville on December 18, 2009.

Under the old flat rate structure, the City would have received a minimum of $47,100 in revenue *(not accounting for the $2.00 fee in the Wall Street Deck)*. With the new variable rate structure, the City actually received $65,400 in revenue. It should be noted that 44% of the after hour's customers paid less than $1.00 to exit the parking decks. 65% of the after hour's customers *(44% + 21%)* paid less than $2.00 to exit. The total "stay" for these customers was less than three hours with the first hour being free. The remainder of the after hour's customers stayed in the parking decks for three hours or more *(93% stayed in the parking decks for a total time period of less than eight hours with the first hour being free)*.

Since the subject memorandum represents the interim report, no definitive conclusions and/or recommendations are offered at this time.

Mr. Putnam responded to Vice-Mayor Newman regarding discount rates in the parking garages.

On behalf of City Council, Mayor Bellamy thanked Mr. Putnam for this interim report and looked forward to the final report being presented on April 27, 2010.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-31 - RESOLUTION ADOPTING CITY COUNCIL 2010-11 STRATEGIC OPERATING PLAN

Director of Administrative Services Lauren Bradley said that this is the consideration of a resolution reaffirming City Council's Strategic Operating Plan for fiscal year 2010-2011.

2010-11 Strategic Operating Plan Update

At its January 2010 retreat, the Asheville City Council updated the City of Asheville's Strategic Operating Plan including a commitment to five key focus areas including:

- **Affordable** -*The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.*
- **Fiscally Responsible** - *The City of Asheville will create a stronger, more prosperous community with smart investments that accomplish lasting, tangible returns.*
- **Green & Sustainable** - *Asheville will be the southeastern leader in clean energy and environmental sustainability.*
- **Job Growth & Community Development** – *Asheville will support a dynamic and robust economy with balanced and sustainable growth.*
- **Safe** - *Asheville will be one of the safest and most secure communities when compared to similar cities.*

Performance Measurement and Reporting

During the 2009-10 fiscal year, City staff continued to provide City Council with quarterly management reports in order to provide information about performance tied to the organization's adopted strategic goals and related initiatives. Staff will continue these updates during the coming fiscal year.

At the January retreat, City Council discussed scheduling work sessions for each focus area contained in the strategic plan. Council would discuss the goals and objectives contained in each focus area through this process. Staff will be ready to provide updates and any requested information to City Council when these work sessions are scheduled.

Pros:

- Provide Council and City staff with an overall direction and goals of the organization
- Provide Council and City staff with measures of success

Con:

- None-noted

During the retreat, City Council agreed that it was important to balance the goals and objectives outlined in the strategic plan with the financial constraints of the city's budget and the current economy. Given current budgetary forecasts, some goals in the plan will not be fully realized during a single fiscal year. Those goals can be reconsidered during the next fiscal year and may roll from one strategic plan to the next with City Council's direction. For Fiscal Year

2010-11, the strategic plan will serve as a guide for funding decisions during the City's upcoming budget process, whereby projects and services can be prioritized and matched to available resources.

City staff recommends City Council adopt a resolution reaffirming the City of Asheville's Strategic Operating Plan.

Vice-Mayor Newman explained why he asked for an additional bullet under the "Safe" focus area in the first goal the following: "To implement strategies to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime."

Mr. Alan Ditmore felt the Strategic Operating Plan should not be in alphabetical order, but in order of priorities. He also felt that the City should not rely on what Raleigh defines as crime, but define crime on what Asheville's priorities are, e.g. highest level of violence, etc.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-31, as amended by the additional bullet to the Safe focus area outlined above. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 341

B. MOTION REAFFIRMING SUPPORT FOR THE MAYOR'S COMMITTEE ON (DIS)ABILITIES, THE MAYOR'S COMMITTEE ON VETERAN'S AFFAIRS AND THE RICH TASK FORCE

Mayor Bellamy said that this is the consideration of a motion to continue the Mayor's Committees for the 2010-2013 fiscal years with associated staff support for their success.

Definition: A "mayor's committee" is a group of citizens who come together to provide and promote awareness and education of various issues within the city. Additionally, members of the committees assist in developing community wide ceremonies and/r events.

Membership composition: The committees are currently self-appointed. This process allows service providers, interested citizens (city and county residents), volunteers, governmental employees (including city, county, state, and federal employees), and representatives from the served populations (veterans, people with disabilities, etc.) to attend and make recommendations on how to achieve the committees' goals.

Meeting frequency: Each committee meets on a monthly basis.

Mayor's Committee for Citizens with (Dis)Abilities

The mission of the Asheville Mayor's Committee for Citizens with (Dis)Abilities is to promote and advocate for equal and inclusive opportunities for people with disabilities in all aspects of society; and to recognize and cooperate with all people and organizations that contribute to this cause.

Highlights of the committee's activities:

* Participation in the city's Volunteer Handicapped Parking Enforcement Program.
* Awards presentation each fall to individuals and businesses for outstanding advocacy,

awareness and contributions.
* Community education, training and resources, such as an accessibility checklist and a resource list for businesses.
* Inclusive job fairs, therapeutic recreation events, statewide meetings, and celebrations of the Americans with Disabilities Act.

Meetings are held on the third Friday of each month at 10 a.m. in the Public Works Building on S. Charlotte Street. Meetings last about one hour.

Mayor's Committee for Veterans Affairs

In April 2007, Mayor Terry Bellamy created the Mayor's Committee for Veterans Affairs, a volunteer committee charged with providing advice to the mayor on events and issues of interest to active duty and retired service members and military veterans. This Committee honors our veterans who have served our community. The members of this Committee also support the efforts of the Memorial Day and Veterans Day.

She noted that Asheville is honored to have had four vessels named after us as a City. We also have an exhibit recognizing those exhibits on the first floor of the City Hall Building. We have a bi-annual celebration in Asheville recognizing the individuals who gave their lives, as well as the individuals from western North Carolina who volunteered their services to our country after individual vessels sank. The Committee, along with City staff, takes on the responsibility of planning that ceremony.

Goals of the committee include:

• Serving as the advisory board for the city's USS Asheville, Memorial Day event and the Veterans Day event.
• Advising the Mayor on how best to increase the participation of veterans in local government.
• Increasing awareness of education, employment and other community resources available to retiring and separating members of the military.
• Providing a forum for former members of the military community to express their views and interests directly to local government officials.

Meetings are held on the fourth Tuesday of each month at 1 p.m. in the training room on the sixth floor of City Hall. Meetings last about one hour.

Website maintained by the committee members: http://www.ashevilleveterans.com/

Mayor's R.I.C.H. Task Force

The Reaching, Inspiring, Character, and Hope (R.I.C.H.) formerly Mayor's Gang Prevention Task force, provides an opportunity for service providers to come together on a monthly basis to discuss issues impacting youth and young adults. In the beginning, R.I.C.H. only focused on gang related issues; however, the task force's efforts have expanded to the following:

1. Developing a comprehensive catalog of services for children, teens and young adults in order to increase parent's awareness of services available within Asheville and Buncombe County.

2. Increasing collaboration amongst service providers, including the efforts of the Gang Suppression Unit (which uses the High Point Model) and Mediation Center's/Buncombe County's Gang Prevention Task Force.

3. Developing a uniform application for services to make it easier for parents.

4. Supporting the school systems goal of reducing the drop-out rate and decreasing the achievement gap.

Meetings are held on the second Tuesday of each month beginning at 9:00 a.m. in Pisgah View's Administration Building.

Ms. Karen Harrington, Co-Chair of the Mayor's Committee on Disabilities, gave a brief description of the committee and explained why the committee is in existence. She outlined the following upcoming events (1) "A New Way of Listening" on March 7 at 7:00 p.m. at Jubilee Church; and (2) a booth at Bele Chere for awareness. They are looking for volunteers to help man the booth at Bele Chere. Ms. Harrington thanked with Council for their support and hoped they would continue to support this committee.

Mayor Bellamy said that City staff did an analysis of funding for the three committees as follows: (1) Mayor's Committee for Citizens with (Dis)Abilities – Budget: $500. She said that is for the annual recognition ceremony and that is leveraged by in-kind contributions; (2) Mayor's Committee for Veterans Affairs – Budget: $1,000. She provided $1,000 out of her travel budget for planning Veterans and Memorial Day activities as well as provide necessary event items for exhibits and things of that nature; and (3) RICH Gang Task Force – Budget: None. She said they do not have a need for a budget right now except for printing services for parent information on all the services available. We are also looking at a partnership with 2-1-1.

Mayor Bellamy requested ongoing staff support, which includes updating the City's website to include meeting minutes; sending out monthly meeting notices with agendas; providing printing for catalogues and event/ceremonies programs; and general cooperative support for the success of the transparent efforts of the committees and task force.

In response to Vice-Mayor Newman, City Manager Jackson said that there is not one person designated for all three committees. If Council supports the Mayor's request, he will have staff out of the City Manager's Office handle the Mayor's Committee for Citizens with (Dis)Abilities and the Mayor's Committee for Veterans Affairs. In term of the RICH Task Force, there is no staff report except for convening different agencies. If directed by Council, he would designate a staff person for support and allocate a budget.

In response to Vice-Mayor Newman, Mayor Bellamy said that the RICH Task Force will continue to operate as an on-going entity. At this time Ms. Jessica Dunlap sends out meeting notices and has taken the minutes of the RICH Task Force for the past three months. Ms. Dunlap also works with the Mayor's Committee for Veterans Affairs on planning the Veterans and Memorial Day celebrations; however, they have their own secretary.

Vice-Mayor Newman moved to support the Mayor's request through Fiscal Year 2010-11 to have the City provide ongoing staff support, which includes updating the City's website to include meeting minutes; sending out monthly meeting notices with agendas; providing printing for catalogues and event/ceremonies programs; and general cooperative support for the success of the transparent efforts of the Mayor's Committee for Citizens with (Dis)Abilities, the Mayor's Committee for Veteran's Affairs and the RICH Gang Task Force. This motion was seconded by Councilman Davis.

Mr. Alan Ditmore felt the City already has a large commitment to the veterans through the homeless initiative and anything else should be handled by the Department of Defense.

Mayor Bellamy asked for a friendly amendment to the motion that Council is to receive copies of the minutes from each of these committees and task force on a monthly basis.

Vice-Mayor Newman and Councilman Davis accepted Mayor Bellamy's friendly amendment. Said amended motion carried unanimously.

C. RESOLUTION NO. 10-32 - RESOLUTION AMENDING CITY COUNCIL'S RULES OF PROCEDURES

City Attorney Oast said that this is the consideration of an amendment to Council's Rules of Procedure regarding placing items on a Council Meeting agenda.

At Council's retreat on January 8 and 9, there was some discussion regarding the process for individual council members to have items placed on the agenda for a council meeting.

The rules have long provided that the mayor sets the agenda and that any council member may request that an item be placed on an agenda. Actual scheduling is subject to the length of agenda, availability of staff, and other logistical considerations. A form has recently been developed so that certain basic information about a request is provided. Previous Councils have had an informal policy that a council member could get an item placed on an agenda if he or she got two other council members to join in this request. This informal policy predated the committee structure that is now in place. The form has not been a part of the process until very recently.

The policy is a hybrid of these two informal polices and a formalization of existing practices, including the information form. Pursuant to this proposed amendment, items will be placed on the agenda if (1) the item has been reviewed by one or more committees of council as directed by the mayor, or (2) two or more council members join in the request. An additional change applicable to items following either route is the completion of the new form providing certain information about the request. The amended language appears in new paragraph (a1) as shown below:

"4. (a1) Any council member wishing to have an item placed on the agenda shall complete the "Agenda Item Request Form" in the appendix and submit the form to the city clerk. The mayor may direct the item to be placed on the agenda for the next available council meeting or may direct that the item be submitted to one or more council committees. Items that have been reviewed by a council committee shall be placed on the agenda for the next available council meeting. If three or more council members request that an item be placed on council's agenda without first going to a council committee, said item shall be placed on the agenda for the next available council meeting. Nothing herein shall limit council's ability to add items to the agenda pursuant to paragraph (c) below."

One effect of this change is that council members are limiting their individual right to get an item on the agenda. This would not prevent an individual council member from bringing an item up under "informal discussion and public comment" on the agenda, subject to time limits applicable to the public. This rule change would not limit or affect council's ability to add items to its own agenda, by majority vote, bypassing any committee. This is a power that most deliberative bodies have.

The placing of any item on the agenda by any means would be subject to compliance with applicable notice procedures set out in law or ordinance.

This amendment affects all Council-initiated agenda items and crosses all substantive areas of the strategic plan.

Pros:

- Ensures that items on agenda have substantive interest
- Recognizes role of committees

Con:

- Limits but does not eliminate the individual member ability to place items on agenda.

If Council is satisfied with the rule amendment as proposed, adoption of the resolution is recommended.

Vice-Mayor Newman felt that since we have the City Council Committee structure, if there is an issue that clearly should be reviewed by one of those Council Committees then we should take it through that Committee structure first prior to bringing it before the full Council.

Mayor Bellamy felt that the issue should be reviewed by a Council Committee first and the rule of three would be the exception.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-32. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 344

D. MOTION TO AGREE TO THE CONCEPT OF DOMESTIC PARTNER BENEFITS FOR CITY EMPLOYEES AND INSTRUCT CITY STAFF TO PROVIDE COUNCIL WITH IMPLEMENTATION SUGGESTIONS

Councilman Smith provided Council with the following PowerPoint on domestic partner benefits.

Why does Asheville provide benefits to its workforce? (1) To recruit quality employees; (2) To retain quality employees; (3) To increase productivity and morale; (4) To increase competitiveness; and (5) To value employees and their families.

Opportunity (1) improve recruitment and retention; (2) provide equal rights to our employees who are denied the option to marry; (3) strengthen families; (4) maintain Asheville's image as a safe, inclusive community that respects diversity; (5) compete with private sector employees; and (6) bolster economic resilience.

Why now (1) staff preparing health insurance report for the March 9 worksession; (2) Council direction imperative; (3) history of inaction; and (4) bolster staff morale.

The following governments in North Carolina offer domestic partner benefits: (1) Greensboro, Mecklenburg, Chapel Hill, Durham and Carrboro. Also, 270 of the Fortune 500 offer domestic partnership benefits, some being Kimberly-Clark, WNCCHS, Lowes, Barnes & Noble, Bank of America, Time Warren Cable, The Home Depot, Office Depot, BB&T, Progress Energy and The Grove Park Inn.

The Mecklenburg County Domestic Partner Benefits: Research and Review from December 15, 2009, states "Council legal staff, in collaboration with staff from the N.C. School of Government, has concluded there is no legal reason why a N.C. government cannot adopt policies designed to positively impact the recruitment and retention of a capable and diligent workforce."

Domestic partner benefits are the same benefits now offered to the spouses of married City employees: (1) medical, dental, vision, cancer, accident, life, prescription; (2) bereavement leave; and (3) family and medical leave.

Carrboro's legal definition of domestic partner is (1) are not related by blood closer than would bar marriage in North Carolina; (2) are not married or related by marriage; (3) share the common necessities of life; (4) are 18 years old or older; (5) are competent to enter into a contract; (6) declare that they are each other's sole domestic partner; (7) agree to be responsible for each other's welfare; and (8) agree to notify the town of any change in the status of their domestic partnership.

We offer domestic partnership benefits to (1) improve recruitment and retention (a) the Number One reason for offering domestic partner benefits is to attract and retain employees, according to a 2005 Hewitt Associates study; (b) in a time of salary freezes and job uncertainty, this is a way to let employees know we value them; and (c) with so many private employers offering domestic partner benefits, we could lose some of our best and brightest; (2) fairness (a) gay City employees are City employees: their families are families of City employees; (b) many of our employees work equal time for unequal compensation; and (c) reflect our historical commitment to treating our employees with respect and fairness; (3) strengthen families (a) the following groups have endorsed domestic partner benefits: The American Academy of Family Physicians, The American Psychological Association, The National Association of Social Workers; and The American Medical Association; and (b) The American Academy of Pediatrics found that offering domestic partner benefits can further strengthen families; (4) enhancing Asheville's reputation (a) passing domestic partner benefits reinforces Asheville's image as an inclusive community; and (b) gay tourists, who spend $64 Billion per year in the US alone travel to destinations that have a reputation for being safe and welcoming; and (5) economic growth and resilience (a) our City's commitment to equality will add to its economic resilience and potential for growth; (b) "A community's success in attracting and retaining high-tech business" depends upon "providing a safe, respectful, and congenial environment;" and (c) a Brookings Institute study shows a strong link between a thriving tech-oriented economy and diverse populations.

Same-sex domestic partners vs. comprehensive domestic partners (1) same-sex couples are not capable of accessing benefits available to opposite-sex couples; and (2) the cost of implementation will be lower if targeting only same-sex couples.

Regarding registering as domestic partners, program details to be determined by City staff include (1) employees may register their domestic partnership with appropriate department; (2) a fee may be charged for processing registration; (3) registration will include proof of partnership; (4) termination of the domestic partnership registration will terminate the benefits; and (5) current precautions against misuse of marital status will extend to the new same-sex policy.

Regarding financial impact, recruitment and retainment (1) to recruit quality employees; (2) to retain quality employees; (3) to increase worker productivity and morale; (4) to increase competitiveness; and (5) to value employees and their families.

The City of Asheville currently employs 1,101 full-time and 89 part-time employees. Only 30% of employees currently utilize spousal and/or family coverage (357 employees).

The Hewitt Associates 2005 report shows 95% of employers have a financial impact of less than 3% of their total health care costs. Mecklenburg County anticipates a financial impact of one percent or less.

Arguments for and against same-sex domestic partner benefits include (1) religious beliefs (a) people of faith hold many different religious beliefs regarding same-sex domestic

partners (i) personal religious views are not a valid basis for denying some municipal employees the benefits that are provided to other employees; and (2) financial impact (a) some argue that increased health care costs are not fiscally responsible (i) increased recruitment and retention reduces human resources costs; (ii) fairness is a core value of our City government; and (iii) maintaining the status quo will institutionalize discrimination against same-sex couples.

In conclusion, (1) same-sex domestic partner benefits improve recruitment, retention, competitiveness; (2) join other cities and counties in North Carolina; (3) opportunity to include all of our City employees' families; (4) improve Asheville's reputation as a safe, inclusive community that welcomes diversity; and (5) improve Asheville's economic prospects.

Councilman Smith asked Council to extend domestic partner benefits to City employees who choose to register their same-sex couples status on or before January 1, 2011. He asked that Council direct City staff to return with implementation suggestions during the March 9 worksession if that is doable for the City Manager.

He also provided Council with (1) the Charlotte/Mecklenburg report; and (2) AFFA report to Charleston Chamber of Commerce.

Councilwoman Manheimer moved to agree to the proposal in concept and instruct City staff to bring Council implementation suggestions. This motion was seconded by Councilman Bothwell.

The following individuals spoke in support of extending domestic partner benefits to City employees for various reasons outlined in Councilman Smith's presentation:

Ms. Kim Congre
Ms. Jerri Goldberg
Ms. Katie Beane
Mr. Hamilton Fuller
Mr. Jim Cavener
Ms. Katelyn Labrie
Mr. Alan Ditmore
Ms. Sharon Lewis
Mr. Michael Muller
Ms. Veronika Gunter
Mr. Alan Robinson
Mr. Bryon Greiner
Mr. Shannon Fields
Ms. Diane Walton
Mr. Dwight Buckner
Ms. Lin Orndorf

The following individuals spoke against the motion to extend domestic partner benefits to City employees for various reasons:

Dr. Keith Ogden
Mr. Tim Harrison
Mr. Mike Fryar
Ms. Leslee Kulba
Mr. Vernon Myers
Mr. Justin Parker

Councilman Bothwell was cognizant that there have been religious arguments made, but there is no one religious position. He felt that as a matter of fairness. We have a fairly large gay

and lesbian population in Asheville and they pay taxes. Now they are being forced to pay benefits for straight people. He supported the motion.

Councilman Davis had difficulty in supporting the motion because he didn't like the process to which this was brought before the Council, especially when the health insurance issue has not been brought before the Council yet. He has a lot of unanswered questions. He did note that some portions of the presentation do make a lot of sense to him. As an employer offering insurance, there is a cost associated with this, as well as a staff cost to just explore this issue. He did not have the necessary background information at this time to be able to support the motion.

Vice-Mayor Newman noted that the motion is to support the idea in principle, and he felt this is the right time to address it with a lot details to be worked out on how it will be implemented.

Councilwoman Manheimer too was interested in seeing the details and also the projected fiscal impact. Our community is known as accepting diversity and this is one trademark she is interested in furthering. She felt this is truly an issue of fairness.

In response to Mayor Bellamy, City Manager Jackson said that staff has not done research on this and will take direction from Council. If directed, staff will report back to Council at their March 9 worksession with an outline and preliminary schedule on the steps we will follow to move from where we are to where Council is steering us.

Human Resources Director Lisa Roth responded to several e-mail questions raised by Mayor Bellamy. Mr. Roth said that the City does not extend any benefits to any people who are in a domestic partner relationship, as Councilman Smith defines them. Our Equal Employment Opportunity Policy does prohibit us from discriminating in hiring and firing decisions based on sexual orientation. The City does abide by the Family Leave Act by the federal government. To her knowledge staff has not researched this issue in the past.

Mayor Bellamy could not remember a time in her 11 years on Council where the Council made political issues out of health care benefits. Ms. Roth responded that generally staff sees a need, researches it and brings it forward to Council; however, she felt this is clearly a policy decision for Council.

When Mayor Bellamy asked for a copy of Charlotte's resolution of adoption (since the information presented is based on a lot of Charlotte's research), Ms. Roth said that Charlotte adopted a resolution in December, with a year for policy implementation.

In response to Mayor Bellamy, Ms. Roth said that she has not done an analysis of everything that will be required in order to add domestic partner benefits to our health care plan. That is the type of research she will be bringing to Council on March 9. She won't have cost information or have the entire analysis done on March 9, but she can bring a project plan about what will be required in order to move this forward.

Mayor Bellamy noted that this issue was originally scheduled on March 9 at which time the health care plan for all employees will be discussed. At that time, there will be policy discussions about how we fund our insurance program for all employees. At this time we have a shortfall in our health insurance of $1.3 Million. She too had a concern about the process in the way it was brought before Council. In the past, as policy-makers when policies have been discussed, we take into consideration our experience, facts, figures and studies and not just one person's information. She felt this issue is larger than the number of people we are making this decision about. She asked for a friendly amendment to the motion that a personnel committee of staff formed so that the political process still stay out of the health care benefit process. She could not support the motion.

The motion made by Councilwoman Manheimer and seconded by Councilman Bothwell carried on a 4-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

At this time, Mayor Bellamy announced a 10-minute recess.

E. RESOLUTION NO. 10-33 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MOORE & SON SITE CONTRACTORS INC. FOR THE CLINGMAN AVENUE STREETSCAPE PROJECT

At 7:55 p.m. and at the request of Mayor Bellamy, Councilman Davis moved to recuse Mayor Bellamy for the remainder of the meeting. This motion was seconded by Councilman Smith and carried unanimously. At this time, Vice-Mayor Newman presided over the remainder of the meeting.

Director of Public Works Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Moore & Son Site Contractors, Inc. to construct the Clingman Avenue Streetscape project in the amount of $503,827 and execute all necessary change orders up to 20% of the contract price.

The City entered into an agreement with Mountain Housing Opportunities (MHO) in January 2004 that allowed MHO to manage the design of the project in coordination with the applicable Departments within the City. MHO partnered with the local firms Civil Design Concepts (CDC) and Kerns Land Planning & Design to design the project.

The City received two Enhancement grants from the N.C. Dept. of Transportation (NC DOT) to construct this project. The first was in February 2004 in the amount of $172,131. The second came in October 2005 for $235,120. Total Federal funds equal $407,251. Council approved allocating another $500,000 in City funds to the project as a part of the Fiscal Year 2007-08 Capital Improvement Program, bringing the total project funding to $907,251.

Approximately $109,057 of the $907,251 project budget has already been spent on construction plans and contract documents, leaving a balance of $798,193 in the project that is available for construction

MHO delivered the project to the City in early 2009 to begin the construction phase. City staff recently met with various stakeholders of the project to discuss options to improve the project. The group included MHO, the West End/Clingman Avenue Neighborhood Association (WECAN) and the biking community. The group agreed that the project should include a safe bicycle climbing lane, additional on-street parking, more landscaping, ADA compliant sidewalks and to stay on schedule. While the group didn't mutually agree on specific details, they were in full agreement that the current contract should not be delayed. The lower section of the project that contained the majority of the heavy construction, the group didn't have concerns with; therefore the contractor could work there until the final details are agreed upon on the upper section of Clingman.

This project complies with Council's Strategic plan in the Focus Area of (1) Sustainability, as it will address the City's aging infrastructure, as well as fully leveraging funding from the State for transportation improvements; and (2) Green, due to the improvements to the City's mutli-modal transportation options, and the unique stormwater bio-retention swale to capture and naturally filter storm run off. This action also complies with the Comprehensive Bicycle plan, with the exception of a short section near Hilliard Ave. Due to NC DOT time constraints, and existing on-street parking conditions, this section will be made to comply in the near future.

The project will provide many improved bicycle and pedestrian features, and include a roundabout at the intersection of Clingman Avenue and Roberts Street. It also includes new on-

street parking from Roberts Street to Clingman Ave. Extension, bike lanes on both sides from Riverview Street to Clingman Avenue Extension, and a bicycle climbing lane on the up grade side of Clingman Ave. from Clingman Avenue Extension to Clingman Place.

Pros:

- Approval of this action will allow for the completion of the Clingman Streetscape project, providing a gateway to a major entrance to the City's west side.
- Utilize Federal funds, administered by NCDOT, to upgrade City infrastructure, thus fulfilling two previously approved agreements with NCDOT.
- Create a more bicycle and pedestrian friendly facility for the Clingman community.

Cons:

- The City will have to fund all expenses over the Grant amount.
- The current plans do not extend the bicycle climbing lanes all the way to Hilliard Ave.

The cost of the construction contract for the Clingman Avenue Streetscape project is currently estimated to cost $503,827. Approximately $798,000 is currently available in the capital project budget to cover this cost, as well as the cost of any necessary change-orders up to 20% of the contracted cost.

Remaining project funds have been earmarked to cover other necessary project elements for which contracts have not been awarded at this time. Those elements include a small materials testing contract (estimated at $25,000 or less) and revisions to the upper portion of the project to allow for more parking and extending the bicycle land to Hilliard Avenue at an estimated cost approximately $150,000. Such contracts will be brought to Council for approval in the future as awards are made.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into a contract with Moore & Son Site Contractors, Inc. to construct the Clingman Avenue Streetscape project in the amount of $503,827 and execute necessary change orders up to 20% of the value of the contract.

Mr. Alan Ditmore suggested the concept of getting bicycles onto residential streets.

Ms. Claudia Nix, representing the Bike and Pedestrian Task Force, supported this action by Council. She felt it was important that pedestrians and bicyclists are considered in the development and design of all our streets.

Ms. Pattiy Torno, Board President for WECAN, said that the Board supports this action. However, item of concern include (1) maintaining the current character of the neighborhood; (2) maintaining the current level of on-street parking; and ()addition of a climbing on the east side of Clingman Avenue. A proposal that MHO has brought forward, and there is neighborhood support, is to reduce the size of the sidewalk on the east side of the street.

Mr. Mike Soule, representing Asheville on Bikes, supports the first phase of this project. He said it was important to consider all modes of transportation during road improvements and planning. The top of Clingman Avenue still remains an issue as it's problematic for pedestrian infrastructure; however, they believe there are options.

Mr. Mike Fryar felt that all bikes on the City's streets should be street legal and not racing bikes.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-33. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 346

F. RESOLUTION NO. 10-34 – RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Civic Center Commission, they recommended appointment of Mr. Joel Storrow.

Councilman Davis moved to appoint Joel Storrow to serve the unexpired term of Mr. Brian Woods, term to expire June 30, 2012, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 347

G. RESOLUTION NO. 10-35 – RESOLUTION APPOINTING A MEMBER TO THE RIVERFRONT REDEVELOPMENT COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that after a review of all applications received for a vacancy on the Riverfront Redevelopment Commission, they recommended appointment of Ms. Pattiy Torno.

Councilman Smith moved to appoint Pattiy Torno to serve a three-year term to the Riverfront Redevelopment Commission, term to begin immediately and expire on January 1, 2013, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 348

H. BOARD & COMMISSIONS

It was the consensus of Council to instruct the City Clerk to arrange interviews for Mike Hahn and Curry First for a vacancy on the Asheville-Buncombe Community Relations Council.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Bruce Hazzard, Rachael Bliss, Matt Sprouse, Bill Allison and Tony Fraga for vacancies on the Downtown Commission.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Susan Garrett, Sherry Ingram and Dane Barrager for vacancies on the Sustainable Advisory Committee on Energy & the Environment.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Susan West, Amanda Warren and Ashley Black for vacancies on the Asheville-Buncombe Historic Resources Commission. It was also the consensus of Council for City Attorney Oast to provide Council with a report on the possible change to the membership size of the Board for discussion by the City Council Boards & Commissions Committee.

It was the consensus of Council to instruct the City Clerk to arrange interviews for Joe Minicozzi, Mark Brooks, Holly Shriner and Russ Towers for vacancies on the Planning & Zoning Commission.

It was the consensus of Council to instruct the City Clerk to readvertise for the vacancy on the Public Art Board.

I. MOTION APPROVING THE FEDERAL APPROPRIATIONS FOR FISCAL YEAR 2011

Vice-Mayor Newman stated at the worksession earlier in the day Council gave direction to staff to tally the top priorities for City Council's federal appropriations for Fiscal Year 2011. Those top priorities are Asheville City Hall Restoration Project, Municipal Facilities Building Retrofits, Mills River Solar Farm Project (which City Attorney Oast said that Vice-Mayor Newman did not have a conflict of interest), Asheville Transit Bus Replacement – 1 Hybrid Diesel Electric Bus, and Radio Tower Infrastructure Project.

Mr. Alan Ditmore felt that Council should position the list by priority and the list should be longer than 5 priorities.

Councilman Bothwell moved to approve the federal appropriations list outlined above by Vice-Mayor Newman for Fiscal Year 2011. This motion was seconded by Councilman Davis and carried unanimously.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following claims were received by the City of Asheville during the period of January 15-February 4, 2010: David Miller (Police), Dorinda Watford (Transit Services), Erica Harrison (Sanitation), Derick Tickle (Water), Vincent A. Curtis (Building Safety), Peter Kotyay (Police), Rebecca Gustina (Parks & Recreation), Patrick E. Fairman (Fire), Danny Smith (Water), Travis Haralson (Water), Jennifer Barnes (Water), Purcell Todd (Fire), Joe Swiger (Water), Andrew Messick (Water), Joel Rudel (Water), and Mary Wickes (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

Mr. Alan Ditmore felt that Council should focus on workforce housing and not parking garages.

Rev. Christopher Chiaronmonte urged Council to repeal the panhandling ordinance and in it's place adopt a non-harassment ordinance.

Mr. Daniel Bridges spoke to Council about handicap parking volunteers. City Manager Jackson said that he would investigate the concern regarding handicapped parking enforcement and report back to Mr. Bridges and Council.

Mr. John Kloeckner spoke to Council about an art project he is trying to get started. City Manager Jackson said that he would coordinate with Councilman Smith (liaison to the Public Art Board) and Mr. Kloeckner to schedule a presentation before the Public Art Board.

At the request of Councilman Bothwell, City Manager Jackson said that he would prepare a memorandum to Council reporting on the banking relationships of the City and the feasibility and process for converting to local banks.

VIII. ADJOURNMENT:

Vice-Mayor Newman adjourned the meeting at 8:41 p.m.

Magdalen Bowlerson
CITY CLERK

MAYOR

Tuesday – February 23, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 9, 2010

B. RESOLUTION NO. 10-36 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH WILBUR SMITH ASSOCIATES FOR ENVIRONMENTAL ANALYSIS, ENGINEERING, AND DESIGN FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY TRANSPORTATION PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Wilbur Smith Associates in the amount of $556,692 to conduct environmental analysis, engineering, and design for a portion of the Wilma Dykeman Riverway transportation project.

This project is funded from a federal appropriation from the United States Department of Transportation (USDOT). No local match is required. In June of 2009 the City of Asheville received authorization from the N.C. Dept. of Transportation (NCDOT) to proceed with the process of procuring a consulting firm Wilma Dykeman Riverway Project. Staff released a request for proposals, and through a competitive process selected the firm of Wilbur Smith Associates (WSA). WSA will be assisted by the firms of LandDesign, MACTEC Environmental, Matthews Architecture, Blue Ridge Archaeological Consultants, and others.

The consultants will deliver a federally approved environmental document, and a preliminary design for the project. This will put the City in a position to begin acquiring right-of-way and seeking funding for construction.

This project will focus on Riverside Drive and Lyman Street, which are the city-maintained streets in the corridor. The project extends from Broadway near UNC-Asheville to Amboy Road, and will build on the previously developed conceptual design and economic development plan contained in the Wilma Dykeman Riverway Master Plan. The Riverway will balance the needs of motorists, cyclists, pedestrians, and transit riders, and will pay special attention to plans for economic development and redevelopment, flood protection, historic

properties, aesthetic considerations, pedestrian accommodations, and greenways development. The project will also include a significant public involvement component.

Pros:

- Executing this contract is one of the steps toward following through on the commitment to pursue this federal appropriation.
- No local matching money is required.
- Implementing the Wilma Dykeman Plan is one of the strategic goals of the City.

Cons:

- Administering a study of this size and following through on implementation will require staff time.

This project supports the City of Asheville's Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan. It also supports the French Broad River MPO Long Range Transportation Plan.

On April 24, 2009, the City entered into a municipal agreement with the NCDOT to receive $590,357 in federal funds from the USDOT. The reimbursement rate is 100%. No local matching funds are required. City Council established the budget for this project in a grant fund on August 21, 2007.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with Wilbur Smith Associates in the amount of $556,692 to conduct environmental analysis, engineering, and design for a portion of the Wilma Dykeman Riverway project.

RESOLUTION BOOK NO. 32 – PAGE 349

C. ORDINANCE NO. 3826 - BUDGET AMENDMENT TOWARD THE COMPLETION OF THE OAKLEY RESOURCE CENTER PROJECT DECKING AND ACCESS RAMP

Summary: The consideration of a budget amendment, in the amount of $2,500, to the City of Asheville's Capital Project Fund from Carolina First Bank toward the completion of the Oakley Resource Center Project decking and access ramp.

The City of Asheville began working on a project in 2009 to replace the Oakley Police Resource Center located at 711 Fairview Road. The goal of the project was to partner with AB Tech to replace the old structure with a sustainable structure that accented and complimented the neighborhood and to do so as economical as possible. Costs associated with the project have been higher than anticipated. The City of Asheville reached out to the local community for financial support to assist in the completion of the project. Carolina First Bank donated $2,500 to the City of Asheville to be used in completing the project.

This action conforms to the City Council's Strategic Operating Plan under Goal 2 - Fiscal Responsibility; Objective G: Provide leadership in buying local products and services and Goal 5 – Sustainable; Objective H : Expand partnerships with UNC-A, AB Tech and other institutions to achieve common goals, including health and wellness, workforce development, and sustainable economic development.

Pro:

- Revenue to cover some of the cost of the materials to complete the construction of the Oakley Police Resource Center while keeping the cost to the City of Asheville at a minimum.

Con:

- None noted.

This action will not have any impact on the operating budget of the police department. There will be no re-occurring charges associated with the acceptance of these funds. These funds will reduce the amount of capital funds spent by the City of Asheville on the Oakley Resource Center.

City staff recommends City Council adopt the budget amendment in the amount of $2,500 to the City of Asheville Capital Project Fund for the Oakley Police Resource Center.

ORDINANCE BOOK NO. 26 – PAGE 36

D. RESOLUTION NO. 10-37 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR THE FISCAL YEAR 2009-10 N.C. DEPT. OF TRANSPORTATION STATE MAINTENANCE ASSISTANCE PROGRAM GRANT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE DOCUMENTS IF AWARDED

Summary: The consideration of a resolution authorizing City staff to apply for the Fiscal Year 2009-10 N.C. Dept. of Transportation (NCDOT) State Maintenance Assistance Program (SMAP) in the amount of $931,660 and authorizing the City Manager to execute the appropriate documents to accept the grant when it is awarded to the City of Asheville.

The SMAP is a recurring annual grant designated exclusively to assist transit systems with their non-Federal share of net operating costs. Operating costs, as defined in the Federal Section 5307 program, are those costs necessary to operate, maintain, and manage a transit system. These costs include driver salaries, fuel, preventive maintenance, and Americans with Disabilities Act service costs.

The SMAP funds are based on the Fiscal Year 2009-10 approved State budget and carryover funds from Fiscal Year 2008-09. The total funds available for Fiscal Year 2009-10 are $33,958,183. These funds are allocated among eligible systems based on the existing formula approved by the N.C. Board of Transportation. The formula is based on performance including unlinked passenger trips per vehicle revenue hour, cost per trip, local commitment, and equal share among small urban, urban, and regional transit systems.

The SMAP Fiscal Year 2009-10 allocation for the City of Asheville is $931,660. In order for the City to receive the grant, its annual support to the transit system must equal or exceed the Fiscal Year 1992-93 funding level, which was $813,485. The City satisfies that requirement with a current budgeted amount of $1,120,947 ($872,831 from the General Fund and $248,116 from the Parking Enterprise Fund). It should be noted that the City's current funding level equates to 21.8% of the total transit system budget.

The anticipated grant funding and the City's annual contribution are currently budgeted in the Transportation Department's approved budget.

This action complies with the current City Council's Strategic Operating Plan in the green and sustainable focus areas by helping to develop a sustainable funding structure for the Asheville Transit system.

The Transit Commission supports the subject action.

Pro:

- The subject grant is a recurring operating support that assists with transit operating expenses in the amount of $931,660.

Con:

- Without the grant, the City would need to provide the additional $931,660 from the General Fund.

The total anticipated grant funding for Fiscal Year 2009-10 is $931,660. The anticipated grant funding and the City's local contribution in the amount of $1,120,947 are currently budgeted in the Transportation Department's approved operating budget for Fiscal Year 2009-10.

City staff recommends that City Council adopt a resolution authorizing City staff to apply for the Fiscal Year 2009-10 N.C. Dept. of Transportation State Maintenance Assistance Program in the amount of $931,660 and authorizing the City Manager to execute the appropriate documents to accept the grant when it is awarded to the City of Asheville.

RESOLUTION BOOK NO. 32 – PAGE 350

E. RESOLUTION NO. 10-38 - RESOLUTION ADOPTING REVISIONS TO THE CITY OF ASHEVILLE WATER DISTRIBUTION SYSTEM DESIGN STANDARDS

Summary: The consideration of a resolution authorizing revisions to the City of Asheville Water Distribution System Design Standards.

The Water Distribution System Design Standards was last updated and adopted by City Council on March 28, 2000. The current version of the Water Distribution System Design Standards is combined as part of the Asheville Standard Specifications and Details Manual. City staffs from multiple departments and a stakeholder group, consisting of local design professionals have participated in focus groups to review the current manual. From these reviews it was determined that some sections of the design standards needed to be revised to coincide with current departmental procedures, and industry standards and practices, to simplify requirements and procedures to aide the development process, to ensure sustainability, and to reduce future maintenance expenditures of new waterline construction. It was also determined that the water design standard should be separated from the overall Asheville Standard Specifications and Details Manual, which contains the design standards for other types of construction. The stand alone document will be named the City of Asheville Water Design and Construction Manual.

Council received the current Water Distribution System Design Standards and the proposed Water Design and Construction Manual which contained specific information on changes, deletions and additions to the water standards.

Pros:

- Ensure that the design and construction standards are compliant and up-to-date with current departmental procedures and industry standards
- Simplify requirements to aide the development process
- Ensure sustainability and
- Reduce future maintenance expenditures of new waterline construction.

Cons:

- Result in standards that are not compliant or up-to-date with current departmental procedures and industry standards
- Keep requirements that are unnecessary and cumbersome to development and
- Allow practices that add costs to future maintenance expenditures for waterline repair.

The changes incorporated in the Water Design and Construction Manual do not change any fees, charges, or operating procedures that would affect revenues or expenditures for the department. The expense of developing the updated Water Design and Construction Manual consisted of staff time and input from stakeholders.

Staff recommends City Council adopt the resolution authorizing the changes in the Water Design and Construction Manual to become effective March 1, 2010.

RESOLUTION BOOK NO. 32 – PAGE 351

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ALCOHOLIC BEVERAGE CONTROL BOARD UPDATE

Alcoholic Beverage Control Board Chairman Charles Worley said that the Asheville ABC System has implemented many changes since 2004. Building renovations, site acquisitions and store relocations have taken place in response to population growth patterns and business activities.

The Board initiated a strategic planning study in 2005 and updated that plan in 2008 to determine how to best serve their customers. The relocation of the Tunnel Road store and the construction of a new store on Leicester Highway were completed last year. We also completed the purchase of a parcel located on south Sweeten Creek road to accommodate the growth in that area of the city. These three locations incorporate the new vision and "branding" for Asheville's ABC system going forward. In total six of the eight original stores have been renovated or relocated. Evaluation of all store locations is ongoing as we continue in our efforts to enhance the customer shopping experience. We are focused on improvements in store merchandising and operational efficiencies while modernizing our facilities. Currently our operating results reflect the economic slowdown and rising unemployment in the area, the state's struggle with its budget shortfall and increases in the excise and sales taxes on liquor added burden on sales. However, the Asheville ABC Store System is very strong financially and we continue to execute our strategic plan to meet the needs of the citizens of Asheville.

In the last five years, they have:

- Renovated existing stores and opened new locations for customer convenience and accessibility. We have reinvested capital resources in the renovation or replacement of six of our nine locations. The ABC Board is committed to having our system grow with its market.

- Developed a "Branding" campaign that was incorporated into our new store design that identifies our system with Asheville. The new store design provides a fresh, welcoming atmosphere for customers while updating and unifying the ABC brand. The new prototype design was utilized for the Tunnel Road and Leicester Highway stores incorporates energy-efficient features and a sustainable design that is easily adapted to various site locations.

❑ Developing in partnership with several ABC Boards across the state a Public Education Media Program. Our focus is to air several underage drinking prevention messages during the prom and graduation timeframe for local high schools.

❑ Developed product information training programs for employees. We identified that it was critical for individual store staff to be knowledgeable about both current and new products. Utilizing training materials provided by product distributors, management developed a program and shared with individual managers in a formalized way. Customers have shown an appreciation for the product knowledge our representative's share with them when making decisions about purchases.

❑ Enhanced our emphasis on customer service to promote a pleasant shopping environment for customers. Managers encourage employees to speak to customers; to be friendly and to suggest products. This practice occurs system wide and is a part of the employee review process. Customers remember how they are treated in retail establishments and we make every attempt to insure a positive shopping experience for them.

❑ Increased the use of creative store displays. ABC management encouraged staff to develop in conjunction with the product distributors, to creation of their own displays. Competition among stores encourages participation and customers appear to appreciate the different "themes" that are created in each campaign.

❑ Provided informational material to customers by having new stores equipped with information booths where information can be displayed. Touch screen computers have been placed in several stores to provide product specific recipes or entertainment tips. Throughout the system coupons and recipes are on display in the information booths as well as colorful flyers used to promote select products. Store employees are encouraged to offer suggestions to customers that have questions about holiday entertaining or general product questions.

❑ New Inventory Management and Financial Software System was implemented to meet the growing needs of the enterprise. Implemented in three critical phases over eighteen months this new platform creates the solid base the organization requires as we continue to grow.

Mr. Worley also presented the Council with information ABC distribution of income from 2004-2009.

In response to Mayor Bellamy, Mr. Worley said that they would be happy to give Council their recommendation on the impact of the proposed legislation for our system.

On behalf of City Council, Mayor Bellamy thanked Mr. Worley and the entire ABC Board for their hard work on this Board.

B. PUBLIC ART BOARD UPDATE

Mr. Kenn Kotara, 2009 Public Art Board Chair explained the mission of the Public Art Board is to provide public art of the highest quality with public participation.

He outlined the key accomplishments – (1) Re-installation of the *Energy Loop* in new downtown plaza; (2) Repair, restoration, re-installation and re-dedication of *Art Deco Masterpiece* (Urban Trail Station #7); (3) Repair, restoration, and re-installation of the *Flat Iron* sculpture (Urban Trail Station #8); (4) Re-installation of Urban Trail sculptures in Pack Square Park; (5) Collaboration with Black Mountain College Museum and Arts Center on the lecture and visit with Kenneth Snelson; and (6) Collaboration with Asheville Art Museum on lecture Public Art in Asheville as part of Christo & Jean Claude exhibit.

He then outlined the following key goals for 2010: (1) City Council adoption of new Public Art Board ordinance, policy, and implementation guidelines; (2) Acquisition of five new public art pieces in Pack Square Park; (3) Launch the first Art on Transit bus graphics program; (4) Launch the Urban Trail audio tour (early 2010); (5) Host the regional Public Art 360 Conference (Fall 2010); and (6) Identify new opportunities for permanent and temporary public art.

In response to Mayor Bellamy, Mr. Kotara said that the Public Art Board does not have a member on the aesthetics committee for the I-26 Connector.

On behalf of City Council, Mayor Bellamy thanked Mr. Kotara and the entire Public Art Board for their time and energy on this Board.

C. QUARTERLY REPORTS

Public Safety Committee Chairman Report

Councilman Russell, Chair of the Public Safety Committee, said that the purpose of this memorandum is to provide you with information highlighting the activities of the Public Safety Committee during the second quarter of FY 2009-2010. Please consider that this only includes the months of October and November, as the December committee meeting was cancelled due to the holidays.

- Gun Buy-Back Program: Prior to the Christmas holidays the City of Asheville took steps to initiate a Gun Buy Back program. The Committee successfully secured funds from Eblen Charities ($5,000), Asheville Housing Authority ($5,000), and the APD's Community Outreach fund ($5,000) to implement this program. Through the four community meetings in December, we were able to purchase 256 rifles and pistols as well as two assault rifles for a total of $13,000 in cash expended.
- Newly Enacted Law Giving Local Governments Increased Authority to Regulate Smoking: The committee heard a report from the Legal Department, discussed enforcement difficulties, and suggested potential revisions to the City's smoking ordinance prior to the formal City Council presentation.
- Nuisance Court: The committee received an update from staff on initial Nuisance Court activity as it was implemented.
- A Policy to Incrementally Initiate Annual Fitness Tests for Police Officers and Firefighters: Dr. Mumpower presented this report. Following the presentation the committee discussed the issue in detail, then agreed to place the issue on the November 24, 2009 City Council Agenda.

In response to Mayor Bellamy, Police Chief Hogan said that we are continuing to have on-line solicitation investigations.

Councilman Russell gave a brief update on the City Council Finance Committee meeting held earlier today. He noted that all of Council will be receiving a copy of the numerous fees and charges and urged all of Council to review the information and give their input to the Committee members as soon as possible.

Strategic Operating Plan

Assistant City Manager Jeff Richardson briefly reviewed with Council the Second Quarter of Fiscal Year 2009-10 following five focus areas: (1) Affordable; (2) Green; (3) Safe; (4) Sustainable; and (5) Fiscal Responsibility.

Regarding Affordable, he briefed Council on the following items: (1) Civic Center Parking Deck Monthly Pass Volume Discounts; (2) Bulk Parking Voucher Discounts; and (3) 2009 Housing North Carolina Award.

Regarding Green, he reported the (1) Energy Efficiency and Conservation Block Grant Program (a) Home Energy Rating System training; and (2) Bicycle Master Plan Implementation (a) Sustainability Outreach Partnerships.

Regarding Safe, he explained the (1) Downtown Patrol Unit (a) Business and Public Contacts: 10,694; (b) Citations/Arrests: 523; (c) Hours of patrol: 2,780; and (d) Budget for 29 Haywood Retrofit; and (2) Fire and Rescue (a) October: Fire Prevention Month; and (b) Fire Station Six Energy Reduction. He then reviewed the calendar year of crime counts excluding unfounded cases. In response to Councilman Smith, Police Chief William Hogan explained what he felt was attributable to the decrease in crime.

Also regarding Safe, Mr. Richardson explained that the nuisance court had (1) Cases: New: 48 and Revisited: 25; and (2) Community Service Hours: New: 435 and Completed: 327. Mayor Bellamy noted that there has been positive feedback from the District Attorney's Office as well as from downtown residents.

Regarding the ARRA Grant success, he explained the (1) NCDOT Contracts; and (2) Five projects totaling $1.3M from original award amount of $3.1M (a) Downtown Streetscapes: $81,400; (b) Sidewalk Gaps: $436,900; (c) Resurfacing and Restriping: $214,200; (d) Kimberly Sidewalks: $540,000; and (e) Fairview Road Signal Upgrades: $58,700 *Of these projects, four (4) part-time jobs were created & 46 full-time job were retained, with an average wage of $12.85.*

Regarding Sustainability, using a chart he showed permit activity from October – December, 2009. He explained the partnership with UNC-Asheville at McCormick Field. Also he explained that the feet of pipe replaced by the in-house construction crew for neighborhood enhancement.

Also regarding Sustainability, he reviewed with Council the following Water Resources: Customer Service Data:

	FY-09	FY-10	Difference
Calls Abandoned	6,558	4,519	31% down
Requests for Adjustments	447	396	11% down
Average Wait Time	6:23	4:53	23% down
Average Abandon Time	1: 54	1:44	9% down

He also provided Council with the economy report for this quarter. Using charts, he showed employment change by major industry; unemployment rates; monthly home sales – units; monthly home sales – average price; residential building permits – units; residential building permits – value; City business licenses; and Asheville Metro total nonfarm employment.

Quarterly Financial Report

Chief Financial Officer Ben Durant provided Council with the following overview: (1) Current year budget trends show a $1.0 million General Fund revenue shortfall; (2) Available Fund Balance is projected to decline to 14.5%; and (3) The FY 2010-11 budget forecast continues to show a significant imbalance between revenues and expenditures. He showed a summary of the current General Fund budget. He then provided Council with a chart of the General Fund budget amendments, totaling $789,057.

General Fund revenue highlights include (1) Sales tax revenue down 9.5% through the first six months of the fiscal year; (a) December was down 1.6%; and (b) Projected to fall $1.35 million short of budget; (2) Property tax budget estimates are on target; (a) Received official FY 2009-10 tax base data from County; (b) Tax base grew 3.5% and (c) Growth driven by

Ridgefield/Airport Road annexation and Biltmore Town Center; and (3) Overall, general fund revenues are projected to fall short of budget by $1.0 million.

General Fund expenditure highlights include: (1) Public Works budget strained by winter storms; (a) Storm control expenses $300,000 over budget; (b) March budget amendment; and (c) Possible FEMA reimbursement after July 1; and (2) Overall operating budgets are tight and we expect $341,000 in savings.

Using a chart, he showed the Fiscal Year 2010 current year estimate (fund balance).

Regarding the Health Care Program, (1) Health Care Reserves: $1.13 million as of June 30, 2009; (2) Trends continue to indicate that expenses will exceed revenues by $1.0 million; and (3) March 9 overview of Insurance Fund and FY 2010-11 budget alternatives.

Using a chart, he showed the enterprise funds (water, civic center, transit, parking, festivals, golf and stormwater) revenue estimates, expenditure estimates and revenue over or under expenditures.

Capital improvement update includes (1) Reid Center (a) $1.8 million construction amendment; and (b) Debt proceeds & donations; (2) 5% Sullivan Act Funding (a) $1.6 million for street & sidewalk projects; and (b) Project list under development; (3) ARRA Funds (quarterly operating update); and (4) City Hall Roof Repairs (a) Report due March 9th.

Quarterly report conclusions (1) General Fund expenses will exceed revenue by $1.0 million (a) Sales tax revenue below estimates; (b) Snow removal/storm clean ups costs; (c) Limited savings opportunities; and (d) Continued reliance on fund balance; and (2) Fund balance below policy level; and (3) Budget balancing for FY 2010-11 will be challenging given existing conditions.

He provided Council with the following executive summary of financial information which reflects the City's overall financial position for the fiscal year through December 2009.

Amendments. The General Fund budget presented in this second quarter report reflects the adopted budget of $92,688,293; plus $1,097,031 in prior year encumbrances that rolled over from FY 2008-09; along with thirteen budget amendments approved by Council since the start of the fiscal year that total $789,057. Three budget revisions involved the appropriation of fund balance: 1) $366,812 was used as the City match for transportation improvement projects that were partially funded with an ARRA grant; 2) $60,000 was used to expand the number of early voting sites; and 3) $71,451 was used to cover civil service board expenses that arose from a General Assembly mandate. The other amendments were funded with various grants and donations.

Adopted Budget	92,688,293
Encumbrances	1,097,031
13 Budget Amendments*	789,057
12/31/2009 Budget	$94,574,381

* Fund balance appropriations since July 1 total $498,263

Revenues. Through December 31, 2009, the City collected $19,897,697 in General Fund revenue, which represents approximately 21.8% of the total General Fund revenue budget. Sales tax collections continue to under perform budget estimates and are down 9.5% compared to the same time last fiscal year. As a result, sales tax revenue is expected to come in under budget in the current year by $1,350,000. The City received its official FY 2009-10 property tax

data from Buncombe County in January, which confirmed that property tax revenue should come in at budget. Based on current year-end estimates, staff is projecting that ***FY 2009-10 total General Fund revenue will come in under budget by $1,039,000.***

Expenditures. General Fund expenditures through December 31, 2009 total $40,946,086 or 43.3% of the budget. ***Due to an unusually high number of winter storms, the Public Works Department budget has absorbed approximately $300,000 in unplanned expenses. Staff will bring a budget amendment to City Council in late March to cover these costs. Based on spending in the first half of the year and historical trends, staff is currently estimating that the overall General Fund budget will end the year with a budget savings of $341,089. Staff, however, is estimating that expenditures in the Health Care Fund will exceed revenues by approximately $1.0 million. It is anticipated that health care reserves, which ended FY 2008-09 at approximately $1.13 million, will be used to cover this shortfall.***

Fund Balance. The City ended FY 2008-09 with available fund balance of $16,696,979, which equated to 18.7% of FY 2008-09 expenditures. ***Based on current year-end revenue and expenditure estimates for FY 2009-10 staff is projecting that available fund balance will decrease to $13,705,410, which will equate to 14.5% of estimated year-end expenditures.***

Mr. Durant responded to various questions from Council, some being, but are not limited to: what is the projection of sales tax revenue for the next 6 months; is there some reason to be optimistic that the sales tax revenue will rise over the next 6 months; with Asheville's budget and our shortfall being less than 1%, how does that compare to cities across the state; explanation that for the current year, we are projecting a $1 Million shortfall and a $5 Million shortfall is projected for next fiscal year.

Mr. Durant then briefed Council on (1) update on assumptions; (2) Identify emerging trends; (3) Review budget calendar; and (4) Set March 9 Budget Worksession agenda.

November 24, 2010, preliminary budget forecast is as follows:

• Revenues flat	
• No fund balance appropriation:	$1,900,000
• Health care increase:	$1,500,000
• Decreased federal transit funding:	$500,000
• Allocation for inflation*:	$1,200,000
• TOTAL BUDGET GAP:	$5,100,000

* Includes 2% ($500,000) employee cost of living adjustments

Current outlook cost increases are as follows: (1) State approved increase in retirement contribution (a) General employees: 4.8% to 6.35%; (b) Law Enforcement employees: 5.27% to 6.82%; (3) Citywide cost: $800,000; and (4) General Fund cost: $650,000; and (2) Revised health care forecast; (a) Additional $600,000 increase taking total estimated increase from $1.5 million to $2.1 million.

Current outlook cost reductions include: (1) Departmental Cost Reductions (a) Departmental targets of 4% & 8% cost reduction; (b) $2.0 million with indirect service impact; and (c) $2.5 million with direct service impact; and (2) Health Care cost reductions: (a) $300,000 to $700,000 with plan alterations.

Current outlook revenue increases: (1) Cost recovery/fee recommendations - $200,000; and (2) Financial Crossroads paper alternatives.

Emerging trends and issues include: (1) Economic Recovery; (2) City Hall Building repairs; (3) Domestic Partner Benefits; (4) Unfunded Mandates; and (5) ARRA Grants Phase II.

The budget calendar is as follows: (1) March 9 Worksession - Budget Policy direction & Cost recovery/fee increases; (2) May 11– Budget Presentation; (3) May 25 – Budget Worksession/Public Hearing; and (4) June 22 – Budget Adoption.

Council policy direction is needed at the March 9 worksession for the following: (1) General Fund Operating & Capital Budget; (2) Parking Fund; (3) Transit Fund; (4) Water Utility Fund; (5) Insurance (Health Care) Fund; (6) Parks Subsidies; and (7) Outside Agencies.

Throughout the presentation, Mr. Durant and Public Works Director responded to various questions from Council, some being, but are not limited: what is included in the allocation for inflation; how does the $1 Million projection shortfall for the current year play into the next years budget; are there other salary increases planned for City employees other than the 2% cost of living adjustments; and financial information due to the recent storm events.

In response to Mayor Bellamy, Mr. Durant clarified that on March 9, staff will need enough direction from Council to prepare a balanced budget.

Vice-Mayor Newman asked staff provide Council with a range of different options to close the gap for a balanced budget.

Mayor Bellamy asked for additional information on the ABC distribution of 25% going to the County and the reason behind that 25/75 distribution. She felt that if that is special legislation, then we should ask our legislators to allow the entire 100% be directed to the City of Asheville.

Mayor Bellamy felt that on March 9 it might be a good time to begin discussions about re-building our Fund Balance. She understood that the state recommendation is 8%; however, she felt it would need to get higher in order to maintain our good bond rating. Personally, she felt 8% is too low for a city our size.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING APPROVAL FOR THE PROJECT IDENTIFIED AS SILVERMAN MIXED USE DEVELOPMENT LOCATED ON SWANNANOA RIVER ROAD

ORDINANCE NO. 3827 - ORDINANCE TO AMEND THE CONDITIONAL ZONING APPROVAL FOR THE PROJECT IDENTIFIED AS SILVERMAN MIXED USE DEVELOPMENT LOCATED ON SWANNANOA RIVER ROAD

Mayor Bellamy opened the public hearing at 6:20 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning approval for the project identified as Silverman Mixed Use Development located on Swannanoa River Road to increase the residential units from 125 to 200 units. This public hearing was advertised on February 12 and 19, 2010.

She said the project site is located at 48 Swannanoa River Road on four parcels totaling approximately 4.5 acres. Two of the parcels are located across Swannanoa River Road Swannanoa River Road and are to be the dedicated open space for the project. This project was approved in June of 2008 as a development of 125 residential units (in two buildings east and west on the site) and approximately 26,000 square feet of commercial space including space for a grocery store (approximately 14,000 square feet) which forms the center of the development. The remaining commercial space (approximately 11,000 square feet) was proposed for the

second level of the western wing structure. The approval granted at that time by the Asheville City Council was for rezoning from River District to Urban Place Conditional Zoning with an approved concept plan. Council also approved a setback modification to allow a greater setback (up to 45 feet as opposed to the required maximum of 15 feet) along Caledonia Road due to the topography in that area. The project was never submitted for final TRC approval. The project at that time was also approved by the City's River District Design Committee for compliance with the River District Design Guidelines. The project is in the flood hazard area and is subject to the requirements governing development in the area.

The developer is returning to seek an amendment to the conditional zoning approval received for this project. The developer seeks to add an additional 75 units to the project. The addition of these units will add approximately 11,144 square feet (gross floor area) to the building at two points to the north. The proposal reduces the number of two- and three-bedroom units and adds studio and one-bedroom units to the residential mix. The proposed mix of units is for: 141 one-bedroom and studio units; 47 two-bedroom units; and 12 three bedroom units. Ten percent (10%) of the units (20) are proposed to meet the City's affordability standards. The development will actually consist of three separate structures with rated firewalls separating them. The height of the residential structures is 77 feet (five stories plus ground parking level). The grocery structure is 24 feet in height.

Parking for the project (327 spaces) is shown to be provided on the first two levels of the building. All parking areas are connected. Access to the development is proposed from both Swannanoa River Road and Caledonia Road. Truck traffic will be routed from Swannanoa River Road easterly through the site and will exit onto Caledonia Road. A revised traffic impact study was provided to the City's Traffic Engineer on February 10, 2010.

Ms. Cogburn asked that if Council approves this project that the recommendations in the Traffic Impact Study be included as a condition of approval and also that the width of Caledonia Road be increased to 20-feet wide at all points along the developer's property line.

Even though there are minor adjustments to materials in this project, it was determined that this amendment did not need to return to the River District Design Committee for additional review. This decision was made after conferring with the Chair and Co-Chari of the Committee and the City's Planning Director.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet health and safety requirements of local and state ordinances. The project will be elevated as required by the flood hazard ordinance to protect life and property.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site is a former service yard for an industrial supplier and has been graded for this use. The river edge however will be un-developed and remain in a natural state and may be improved at a future date as a part of greenway and buffer development. The project will be elevated as required by flood hazard ordinances to minimize damage from flooding and prevent water pollution. With these features in place, the current design will be compatible with the significant natural and topographic features of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The investment in this mixed-use project is expected to improve the values of surrounding properties. The proposal is consistent with the adopted goals and plans for the area to create places for mixed-use commercial and residential development. The site was accepted into the NC Brownfields Study area that will assess the site for any contaminants that may need remediation.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   This site is located at the edge of the Swannanoa River and the Kenilworth Neighborhood sits on the bluffs and knoll above the river. The project should not create a negative impact or affect the character of Kenilworth because its focus is the Swannanoa River. The City Council adopted *Wilma Dykeman Riverway Master Plan* outlines a new vision for the river area with higher density mixed-use projects at appropriate locations as a way to bring new life, opportunity and energy to the river areas. In consideration of the Dykeman Plan goals, the proposal is in keeping with the harmony, scale, bulk, coverage and density and character of the river area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The comprehensive plan encourages redevelopment of infill sites to support multi-modal transportation, greenways and vertical development with greater residential densities. The Dykeman plan is a vision plan with many goals: redevelopment of infill sites with mixed-use buildings, economic development, transportation improvements, environmental protection, among many more. The Silverman proposal includes many of these goals through the specific features of the project. The proposal will provide residential units with some of the units offered at an affordable rate. In addition the project will seek Energy Star and Healthy Built for the residential portion of the project to contribute to sustainable development goals adopted by the City. The project will conform with the comprehensive plan and meets many goals and policies adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The project is located along Swannanoa River Road which is a state highway. The location in the center area of the city means that the public infrastructure is in place to service the development. The project is located close by to commercial and employment centers and recreation areas.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The revised traffic impact study was submitted on 2/10/10. The City's Traffic Engineer will be at Council to discuss the study and make recommendations. Commercial traffic is not permitted to use Caledonia Road into Kenilworth already.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The project is mixed-use and meets many goals of the Dykeman Plan.

- The project could become a destination place within the river area.
- The project will meet NC Healthy Built Homes standards.
- Affordable units will be provided in the project meeting City of Asheville guidelines.
- Sufficient infrastructure is in place to support the project.
- The project should act as a catalyst for further redevelopment in the area.
- The site has been accepted into the NC Brownfields Study Area to identify any environmental contaminants.

Cons:

- Construction work can temporarily create congestion in the area.
- New vehicle trips will be added to Swannanoa River Road and possibly Caledonia Road.

The Technical Review Committee reviewed and approved this amendment (with the conditions noted on their report) at a meeting on February 1, 2010. The amendment did not have to go to the Planning and Zoning Commission.

Mr. David Madera, developer, felt this is a greener and a more sustainable project than the original project. He explained how they are only increasing the space by 10% and not changing the footprint at all. He urged Council to approve his project.

Mr. Alan Ditmore spoke in support of the project, but was concerned that widening the road will increase the amount of impervious surface.

Mr. Terry Meek, representing the Kenilworth neighborhood, supported the project; however, outlined the following concerns related to traffic: (1) due to limited parking for patrons at the Antique Tobacco Barn, request for curb and gutter on the western side of Caledonia Road adjacent to the Silverman property; (2) commercial traffic be right-turn only out of the project on Caledonia Road; (3) traffic light at the intersection of Caledonia Road and Swannanoa River Road; and (4) the project go back to the Technical Review Committee for permitting to make sure it does comply with all the conditions.

Mr. John Pomeroy, owner of the Antique Tobacco Barn, supported the project and explained how they have been addressing the limited parking with signs and how they also have expanded the parking for their clients and dealers. He even offered to donate some of their property at the corner of Swannanoa River Road for the turn lane onto Caledonia Road in order to be better neighbors for the new development and Kenilworth residents.

Mr. Robert Todd, Kenilworth resident, supported the proposal.

At 6:48 p.m., Mayor Bellamy closed the public hearing.

Director of Transportation Ken Putnam addressed the concerns raised by Mr. Meek, noting that all concerns will be, or have been, addressed. He noted that since Swannanoa River Road is a State maintained road, all improvements will ultimately have to be approved by them. He also noted that the State will need to make the decision regarding a traffic signal at the intersection of Caledonia Road and Swannanoa River Road and suggested the appropriate time to request a study would be after the project is built out and traffic patterns are settled in that area.

Mr. Madera responded to questions raised by Councilman Smith regarding the Healthy Built Certification and the affordable units.

Mayor Bellamy asked that the motion include a request that our Director of Transportation contact the N.C. Dept. of Transportation and ask that they study the intersection at Caledonia Road and Swannanoa River Road for a possible traffic signal.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on the findings and analysis provided in the staff report, Councilman Russell moved for the adoption of Ordinance No. 3827, to amend the conditional zoning approval for the project identified as Silverman Mixed Use Development located on Swannanoa River Road to increase the residential units from 125 to 200 units, subject to the conditions as set forth in the staff report and the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) the recommendations in the Traffic Impact Study be included as a condition and the width of Caledonia Road be increased to 20-feet wide, meeting city standards, at all points along the developer's property line; and (6) the Director of Transportation request the N.C. Dept. of Transportation study the intersection at Caledonia Road and Swannanoa River Road for a possible traffic signal. This motion was seconded by Councilman Davis and carried unanimously.

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Closed Session

At 7:00 p.m., Mayor Bellamy announced a short break, at which time they would conduct a closed session. Councilman Smith then moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a)(4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:34 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Vice-Mayor Newman and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY TO SUBMIT A STATEMENT OF INTEREST FOR THE NATIONAL ENDOWMENT FOR THE ARTS MAYORS' INSTITUTE ON CITY DESIGN PROGRAM GRANT

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this item is a selection of a competitive project that meets the grant requirements with a plan to provide the matching funds required. Various groups, including the HUB and the Downtown Master Plan Cultural Arts Implementation team, have come forward with proposals on projects.

Each year, the National Endowment for the Arts (NEA) offers numerous grants in a variety of art and design categories. This year, the Mayors' Institute on City Design (MICD) grant has been created to showcase and celebrate the goals of the MICD and that arts and culture

contribute greatly as core components in building livable and sustainable communities. Applications will be reviewed on the basis of artistic excellence and artistic merit.

The NEA anticipates awarding fewer than 15 grants. Organizations must designate a grant request in one of the following categories: $25,000, $50,000, $100,000, $200,000, or $250,000. All grants require a nonfederal match of at least 1 to 1 dollar for dollar.

Projects may include planning, design, and arts engagement activities such as:

Planning

- The planning of arts districts.
- The mapping of cultural assets and related developmental potential.
- The promotion of the arts and artists as integral components of community life and essential to community planning.
- The exploration of innovative approaches that maximize the economic growth of a community's creative sector.

Design

- The promotion of design and the arts to enhance livability and as central components for the development and enhancement of new or existing public spaces -- such as parks, public buildings, libraries, memorials, streets -- through architecture, streetscapes, pedestrian bridges, neighborhood gateways, and sustainable parks and landscapes.
- Design competitions or charettes (design workshops) for arts or cultural vitality projects.
- The revitalization of neighborhoods that focuses on preserving the historic value and heritage of existing buildings and/or the adaptive reuse of structures to be used as cultural facilities or for mixed use purposes (i.e., for cultural facilities and other entities). This includes affordable housing for artists and others, artist studios or live/work space, and entrepreneurial new creative sector business development.

Arts Engagement

- The transformation of community sites into public spaces for cultural activities.
- Projects which contribute to cultural vitality and a sense of place such as innovative community engagement projects, including festivals, community-wide celebrations, outdoor exhibitions, and learning opportunities; and the commissioning of temporary and/or permanent site-specific public art such as murals and sculptures, sculpture gardens, and waterfront art walks.
- New media or technology projects that connect citizens to cultural activities or engage them in participating in city planning or design projects.

Deadlines:

March 15, 2010: Statement of Interest which is to include:

- Budget Outline (No pre-award costs are allowable in the project budget. Project costs that are incurred before the project start date will be removed from the project budget.)
- Major Project Activities
- Goals
- Schedule (by month or by quarter)
- Partners, key organizations, individuals, and works of art that will be involved in the project.
- Target community (impact, past experience, number served, etc.)

- Plans for promoting, publicizing, and/or disseminating the proposed project, as appropriate
- Plans for monitoring the project and assessing the degree to which you achieve your goals
- Evidence of impacts achieved

April 8, 2010: Invitation to Apply Issued
May 10, 2010: Formal Application Deadline

Project Start Date: between July, 2010 – December 2010
Project Completion Date: one year after start date

Staff have been approached by multiple groups, which includes the HUB and the Downtown Master Plan Cultural Arts Implementation task team, with potential project options for City Council to consider.

Downtown Master Plan Option

The Downtown Master Plan Cultural Arts Implementation task team has asked the City to review possible projects from the Downtown Master Plan including the creation of an arts alliance, the creation of an artist resource center, and the planning of Pack Square Cultural District, all of which would be supported by the grant. However, the matching funds have not yet been identified.

HUB Creative Cluster Option

The HUB through its Creative Cluster leadership is asking to apply for this NEA grant as the single proposal the "HUB Creative Cluster. 1.29.10." to represent the City of Asheville. They would like the city to be the "sponsor" and applicant but HUB would provide the matching funds for the project's Arts & Culture Cluster initiative.

Public Art Board Projects Option

Staff have identified other possible projects as outline in the departments master plan for a direct grant. The Public Art Board has endorsed two public art projects: the Reed Creek Greenway gateway on Broadway as part of the Public Artist of the Year and Riverbend Park (at Wal-Mart). Both of these projects have $25,000 each in privately raised funds that would be used for the one-to-one match. The completion of these projects would support the Parks, Recreation & Cultural Arts Master Plan goal #11 (Support public expectation for public art of the highest quality with public engagement) and goal #13 (Create a coherent, comprehensive, and exciting municipal collection of public art). The public art fund did not receive an allocation for FY10 and this grant would help the projects move forward.

This action complies with the City's Council Strategic Operating Plan in that it supports Job Growth & Community Development. It also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides opportunity to partner with community groups to implement community master plan priorities.

Pros:

- The grant provides support for a variety of projects and activities;
- The arts are an integral part of the City of Asheville;
- Provides additional funding for a project or activity.

Cons:

- The City has limited ability to match funds and will be fiscal responsible for private funds not raised.
- The City has limited resources to administer a federal grant;
- The application deadline is March 15, 2010.

The current FY 2009/2010 operating budget does not include matching funds for an NEA grant. If City Council authorizes the City to submit an application for a grant and the City is a successful applicant, matching funds ranging from $25,000 to $250,000 would be required, depending on the grant project submitted.

Staff's plan for identifying necessary matching funds is to require the appropriate community group seeking to partner with the City for a grant project to raise matching funds through private donations. To the extent that such private matching funds are raised, there would be no fiscal impact to the City. If private funds are not raised, however, the financial impact to the City would range from $25,000 to $250,000, depending on the grant project submitted. The City could further be impacted if the program or project for which grant funds are being sought is on-going in nature, requiring continued operating support from city sources.

Staff recommends that City Council provide guidance on whether to should submit a grant and for what project from the options identified.

Councilman Russell, Chairman of the Finance Committee said that due to time limitations, the Finance Committee did not have an opportunity to give Council their recommendations at their meeting earlier today and suggested the full Council hear the presentations.

Ms. Kitty Love explained the proposal from the Arts & Cultural Sub-Committee of the Downtown Master Plan Action Committee. In summary, they propose that we access the multiple data resources available and compile the evidence that supports the conclusion that arts and cultural institutions (for-profit, not-for-profit, public) help build vibrant, sustainable, and economically viable communities. From this collection of data, a feasibility study can be designed to leverage the necessity of the following action steps (1) perform the first annual state-of-the-art audit to (a) identify existing artists and organizations; (b) compile each agency's mission and programs; (c) inventory each agency's resources, e.g., staff, budget and equipment; (d) identify existing spaces, uses and needs; (e) inventory unmet needs; (f) identify all arts-related, creative, and art-based businesses; (g) project economic impacts derived from for-profit and non-profit organizations; (h) assess Asheville's per capita public support for the arts in relation to programs in other cities; (i) establish metrics, goals, and benchmarks for awareness, sustainability, and growth; (j) seek national models and case studies; and (k) develop an in-depth searchable database to be fed by the data collected from the start-of-the-arts audit as well as other master plan recommendations as the framework for continuing development of an Artists' Resource Center; and (2) once the audit is complete, stage the first annual cultural "summit" at a major downtown arts venue in cooperation with the Tourism Development Authority, Convention and Visitors Bureau, Mountain Bizworks, A-B Tech, the HUB Initiative, UNC-Asheville, Pack Square Conservancy, and other major players. The summit should (a) create cohesiveness within the arts community; (b) develop common advocacy points; (c) plan national marketing; (d) identify strategies to avoid cannibalizing funding sources; and (e) encourage partnership grant applications for state, federal and foundation funding.

Ms. Love said that having evaluated the HUB proposal and noting that the goals and expected outcomes are closely aligned with those that the DTMP Action Committee is putting forth, she hoped that they will be able to meet with the HUB representatives to discuss a possible merger. A part they feel is appropriate to blend is doing a compilation of data resource assessment of our local and regional arts resources for the purpose of compiling them into a database that can have many uses, but also for the purpose of the recommendation of having a state-of-the-arts audit.

Mr. William P. Massey briefly explained the proposal for a Creative Cluster initiative. The Creativity Cluster of Asheville HUB makes this proposal with the understanding that matching support will be secured by members of the HUB Alliance from private community sources. The City of Asheville is *not* asked to provide matching funds. The Arts & Culture Cluster of HUB will endeavor to use a 12-month period beginning July 2010 to facilitate and create evidence-based findings that demonstrate the economic development value-add of arts and cultural programs in Asheville and Buncombe County. This will be accomplished through 4 major components as follows: (1) National research to support the claim that arts and cultural institutions (for profit, not-for-profit, public) help build vibrant, sustainable communities and present specific communities, projects, partnerships and financial outcomes; (2) Undertake local research to map Asheville/Buncombe arts and cultural assets; (3) Engage a wide range of local community conversations around the questions: *"How can arts and culture bridge communities that historically have been separated by race, age, income, or health disparities? How can arts and culture contribute to creating a more civil, just and caring community?"*; and (4) Convene a two-day forum of representatives from 4 or 5 U.S. cities/metropolitan areas that are distinguished for using arts and culture as economic development tools. Regarding the budget, because NEA grants require a 1:1 match, they anticipate project cost of $200,000, with $100,000 from Federal NEA funds. (The project is scalable if less funding is available.) The balance will be secured locally by HUB leadership through contributions and in-kind support. A breakdown for each component described above is: Part I (national research) $25,000; Part II (local research/analysis) $25,000; Part III (convening local community conversations) $25,000; Part IV (Forum & published outcomes) $125,000.

After a brief discussion, Mayor Bellamy felt that since the Finance Committee will not have an opportunity to review this prior to the March 9 agenda to give Council their recommendation, she felt it would be appropriate for the three proposal representatives to meet and discuss if there is any agreement for collaboration. She said that this item can then be placed on the March 9, 2010, meeting for action.

B. RESOLUTION NO. 10-39 - RESOLUTION OF CONSIDERATION IDENTIFYING AREAS WITH POTENTIAL FOR FUTURE ANNEXATION

Urban Planner Julia Cogburn said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation and reducing current map of consideration.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the City may, in the future, be subject to annexation. After being in effect for at least one (1) year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of any annexation ordinance and the effective date of that ordinance from a minimum of one (1) year to a minimum of seventy (70) days. Each Resolution of Consideration is effective for two (2) years. The initial City of Asheville Resolution of Consideration was adopted on April 9, 2002, and revised maps were adopted by Council on March 9, 2004, March 7, 2006, and February 26, 2008. At the time of adoption of the last resolution/map in 2008, Council directed staff to look at creating a map for future consideration that covered less area and was more representative of areas that might qualify for annexation. Staff has incorporated these thoughts into the resolution/map now presented to the Asheville City Council.

Urban Planner Blake Esselstyn said that the map staff has prepared to accompany this resolution substantially reduces the area compared to what was previously included. Areas have been taken out that were recently annexed by Asheville or other municipalities. Major changes were made to take out areas that were sparsely populated due to: steep slopes, little infrastructure (water, sewer, roads), and large parcel size. In addition, areas within one-half mile

of the annexation agreement boundary with the Town of Woodfin have been excluded. The total area of consideration is now 33.1 square miles. 32.2 square miles have been eliminated. The areas that remain are areas that are urbanized or have potential for urbanization, such as the areas along major thoroughfares, areas within the City's extraterritorial jurisdiction, areas with existing infrastructure, or areas where utility extensions are feasible. This map does not preclude incorporation of municipalities in these areas nor does it preclude annexation by another municipality.

Pros:

- Gives residents and property owners within the area advance notice of possible annexation.
- Allows the time period between passage of an annexation ordinance and the effective annexation date to be shortened to a minimum of seventy (70) days.

Con:

- The reality of annexing some parts of the area may not be realized for a number of years.

City staff recommends that the Resolution of Consideration be adopted.

Vice-Mayor Newman felt this is a good step in the right direction, but 95% of the land will not be actively be contemplated for annexation in the next 2-4 years. He wondered if it would be possible to create a map that identifies the areas that are clearly ready for annexation.

Ms. June Patterson, Arden resident whose property is in the area for consideration, explained why her property did not meet the criteria necessary for annexation.

Mr. Alan Ditmore voiced his concerns regarding annexation.

Ms. Betty Jackson urged Council not to use forced annexation to make itself a better city. She provided Council with information on how forced annexation is good for municipalities but bad for the public.

Rev. Christopher Chiaronmonte urged Council to prepare a map that is more realistic on what can possibly be annexed in the next two years.

Mayor Bellamy noted that Asheville is respecting our conversations with the Town of Woodfin in that this map does not identify property in the Leicester Township. The City made a commitment not to annex into Leicester Township for at least three years contingent upon the same commitment by the Town of Woodfin.

Councilman Russell is not a proponent of annexation but understands the City's position. However, he could not support forced annexation.

Councilman Bothwell urged people to lobby the state legislature to allow Asheville to operate as every other city in North Carolina that runs their own water system, so Asheville would not have to use forced annexation.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 10-39. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 352

C. ANNEXATIONS

RESOLUTION NO. 10-40 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 301 LONG SHOALS ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-41 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 380 LONG SHOALS ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-42 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 1 VOLVO DRIVE, 42 SCHENCK PARKWAY AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-43 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX DORSET DRIVE AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-44 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 67 MOUNTAINBROOK ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-45 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 73 AND 75 WATERS ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-46 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 26 ROCKING PORCH ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-47 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 40 KEASLER ROAD AND 23 SUNNYCREST DRIVE AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-48 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 617 UPPER SONDLEY DRIVE AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-49 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX 1445 TUNNEL ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-50 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX WILLOW WINDS LANE AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

RESOLUTION NO. 10-51 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX PORTIONS OF AIRPORT ROAD AND SETTING THE PUBLIC INFORMATION MEETING ON APRIL 12, 2010, AND THE CITY COUNCIL PUBLIC HEARING ON MAY 11, 2010

Urban Planner Julia Cogburn said that this is the consideration of resolutions stating the intent of the City to annex twelve (12) areas contiguous to the current boundaries of the City of Asheville.

The City's policy is to include within its corporate boundaries areas that are urban in nature and meet State of North Carolina qualification requirements. Staff has identified twelve (12) areas that meet the state requirements. All of these areas are contiguous to the current municipal boundary and are mostly small in size. The rationale for annexing these areas is to clean up split jurisdiction issues and to improve service delivery.

Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

Staff has provided the following proposed schedule for these annexations. The effective date for all would be September 30, 2010. The following steps and dates meet the process required by State law:

- Council Adoption of Resolution of Intent – 2/23/10
- Council Adoption of Services Plan – 3/9/10
- Public Information Meeting – 4/12/10
- City Council Public Hearing – 5/11/10
- Annexation Ordinance Adopted – 5/25/10
- Effective Date – 9/30/10

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.
- Fills in service delivery gaps and split jurisdiction issues on the edge of corporate limits.

Con:

- Residents of proposed annexation areas may object to such annexation.

The fiscal impact of this round of annexations will be addressed in the Plan for Services document, which is scheduled to come before City Council on March 9, 2010.

Urban Planner Blake Esselstyn reviewed in detail the following twelve areas and the rationale for annexation:

301 Long Shoals Road (Ingles)
Behind 380 Long Shoals Road (Schenck Parkway)
1 Volvo Drive, 42 Schenck Parkway (Farleigh Street)
Dorset Drive (Deerfield)
67 Mountainbrook Road
73 and 75 Waters Road

26 Rocking Porch Road
40 Keasler Road and 23 Sunnycrest Drive
617 Upper Sondley Drive
1445 Tunnel Road
Willow Winds Lane
Airport Road (portions of shopping center; developed property on edge of municipal service area, including Airport Road right-of-way to Brian Boulevard and County line as well as part of Rockwood Road)

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex these twelve (12) annexation areas.

In response to Mayor Bellamy, Mr. Esselstyn said that Deerfield does pay some property tax; however, annexing this portion would not any additional tax revenue for the City.

In response to Mayor Bellamy about expenses to bring these properties into the City, Mr. Esselstyn said that they are currently working on a plan for services which will be coming to Council on March 9.

Mayor Bellamy questioned if there will be a need for an additional fire station in the southern part of the City if those portions of Airport Road are annexed. Fire Chief Scott Burnett said that based on the current call volume, this area will probably add 50 more calls for request for services, which is not significant.

Mayor Bellamy said that she could not support these resolutions of intent until she sees the plan for services identifying the up-front costs for the City to annex these areas.

Ms. Betty Jackson felt Council should let people decide if they wish to be annexed.

Mayor Bellamy that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-40, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 354

Vice-Mayor Newman moved for the adoption of Resolution No. 10-41, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 358

Vice-Mayor Newman moved for the adoption of Resolution No. 10-42, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 362

Vice-Mayor Newman moved for the adoption of Resolution No. 10-43, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held

on May 11, 2010. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 366

Vice-Mayor Newman moved for the adoption of Resolution No. 10-44, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 370

Vice-Mayor Newman moved for the adoption of Resolution No. 10-45, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 374

Vice-Mayor Newman moved for the adoption of Resolution No. 10-46, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 378

Vice-Mayor Newman moved for the adoption of Resolution No. 10-47, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 382

Vice-Mayor Newman moved for the adoption of Resolution No. 10-48, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 386

Vice-Mayor Newman moved for the adoption of Resolution No. 10-49, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 390

Vice-Mayor Newman moved for the adoption of Resolution No. 10-50, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 394

Vice-Mayor Newman moved for the adoption of Resolution No. 10-51, with the public information meeting being held on April 12, 2010, and the City Council public hearing being held

on May 11, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 398

D. RESOLUTION NO. 10-52 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Newman said that John Miall currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

Mr. Miall was appointed Chairman to the Civil Service Board on March 9, 2009.

Current members of the Civil Service Board include: Chairman John Miall; Virginia Robinson, Larry C. Harris Jr., Marvin Rosen and Charlotte Tell.

Upon inquiry of Councilwoman Manheimer, City Attorney Oast said that Councilwoman Manheimer did not have a disqualifying conflict of interest just because Mr. Harris works at the same law firm.

Councilman Davis moved to appoint Larry C. Harris Jr. as Chair of the Civil Service Board effective February 23, 2010, for a one-year term or until his successor is duly and annually appointed by the City Council, as provided by law. This motion was seconded by Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 403

E. RESOLUTION NO. 10-53 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Asheville-Buncombe Community Relations Council.

The term of William Moore, as a member on the Community Relations Council, expires on December 31, 2011.

Also at the February 9 City Council meeting, it was the consensus of Council to interview Mike Hahn and Curry First. Mr. First was interested in the appointment; however, was unable to attend the interview.

Councilman Bothwell felt Mr. First's credentials would be an asset to the Community Relations Council and would support his appointment.

Councilman Russell moved to appoint Mike Hahn as a member of the Asheville-Buncombe Community Relations Council to serve the unexpired term of Mr. Moore, term to expire December 31, 2011, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 404

F. RESOLUTION NO. 10-54 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Downtown Commission.

The terms of Jesse Plaster, John Rogers and Peter Alberice, as members of the Downtown Commission, expired on December 31, 2009.

On February 9 it was the consensus of Council to interview Bruce Hazzard, Matt Sprouse, Tony Fraga, Rachael Bliss and Bill Allison. Mr. Fraga was interested in the appointment; however, was unable to attend the interview. Mr. Allison withdrew from consideration.

Councilman Davis, member of the Downtown Commission, said that Mr. Brad Galbraith has resigned from the Commission, thus leaving an unexpired term until December 21, 2011. Since this resignation came after City Council met and made the interview appointments with the three specific vacancies in mind, they felt Council should re-open the application process, specifically looking for a person representing the development and property owner community along with vested interest in the downtown.

Councilman Davis moved to (1) appoint Matt Sprouse and Bruce Hazzard as members of the Downtown Commission to each serve a three-year term respectively, terms to begin on March 1, 2010, and expire December 31, 2012, or until their successors have been appointed; and (2) re-open the application process for the remaining expired term as well as Mr. Galbraith's term. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy reminded Council to look for diversity with this Commission.

RESOLUTION BOOK NO. 32 – PAGE 405

G. RESOLUTION NO. 10-55 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Sustainable Advisory Committee on Energy & the Environment.

The term of Sylvia Farrington, as a member on the Sustainable Advisory Committee on Energy & the Environment, expired on December 31, 2009.

At the February 9 Council meeting, it was the consensus of Council to interview Susan Garrett, Sherry Ingram and Dane Barrager. Ms. Garrett withdrew from consideration.

After Council spoke highly of the candidates, Councilman Bothwell moved to appoint Dane Barrager as a member of the Sustainability Advisory Committee on Energy & the Environment to serve a three-year term, term to expire December 31, 2012, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 406

H. ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

Mr. Todd Williams and Mr. Brad Brock have both resigned as members of the Historic Resources Commission, thus leaving two unexpired terms of July 1, 2010, and July 1, 2012, respectively.

At the February 9 Council meeting, it was the consensus of Council to interview Susan West, Amanda Warren and Ashley Black. Ms. West was unable to attend the interview.

At the request of Vice-Mayor Newman, it was the consensus of Council that these appointments be delayed since Council has requested the Boards & Commissions Committee review the report from City Attorney Oast on the membership size of the Committee.

Councilwoman Manheimer, liaison to the Asheville-Buncombe Historic Resources Commission, said that she would be happy to contact the Chair of the Commission and Buncombe County to let them know about the possible downsizing of the Commission and to seek their input. In addition, she suggested City staff look at historic resource commissions throughout North Carolina to see if there is a better working model than the existing 14 members.

I. RESOLUTION NO. 10-56 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Planning & Zoning Commission.

The terms of Steve Sizemore and Tom Byers expired on August 14, 2009.

On September 8, 2009, it was the consensus of Council to extend the terms of Steve Sizemore and Tom Byers for an additional six months, term to expire February 14, 2010, or until the stormwater and erosion control ordinance has been adopted by City Council, whichever occurs earlier.

At the Council meeting on February 9, it was the consensus of Council to interview Joe Minicozzi, Mark Brooks, Holly Shriner and Russ Towers.

After Council spoke highly of the candidates, Joe Minicozzi received 3 votes, Mark Brooks received 5 votes, Holly Shriner received 4 votes and Russ Towers received 2 votes. Therefore, Mark Brooks and Holly Shriner were appointed as members to the Planning & Zoning Commission to each serve a three-year term respectively, terms to begin on April 1, 2010, and expire on August 14, 2012, or until their successors have been appointed.

RESOLUTION BOOK NO. 32 – PAGE 407

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alan Ditmore spoke to Council about the First Amendment and the panhandling ordinance.

Rev. Christopher Chiaronmonte spoke about revising the panhandling ordinance.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:21 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – March 9, 2010 - 3:00 p.m.
Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

BUDGET POLICY DIRECTION

City Manager Jackson explained how staff will be asking for clear direction on how to build the next budget.

City Attorney Oast explained the budget adoption process rules on voting.

Chief Financial Officer Ben Durant explained that we are at a financial crossroads. He said that it will take a strategic and structural approach in addressing the budget situation. Staff is prepared to present any analysis that Council needs to help them make the tough decisions. Council may have to consider service level reductions in some areas, a tax rate increase or some combination of both, in addition to the typical balancing strategies.

Budget Update

Budget Director Tony McDowell said that he will provide a brief overview of the: (1) Water Fund; (2) Stormwater Fund; (3) Parking Fund; (4) Transit Fund; (5) Compensation & Health Care Program; (6) General Fund Operating Budget; and (7) General Fund Capital Budget.

Using a chart, he explained the Water Fund Financial Trends from Fiscal Year (FY) 2000 to FY 2009. The Water Resources FY 2010-11 budget forecast is (1) Declining revenues due to current economic conditions; (2) $1.65 million (5% annually) transferred from Water Resources Revenue to General Fund per Sullivan Act Amendments; (3) Water Resources commodities and materials purchases subject to global market conditions and inflation; (4) Water Resources experienced a 50% increase in debt service payments from FY 2007 to FY 2009; and (5) FY 2011 expenditures are projected to equal revenues.

Water Fund policy recommendations include: (1) Based on bond covenants and debt service obligations a 4% rate increase is needed to meet those commitments; (2) Additionally, a 5% rate increase is needed to offset the Sullivan Act transfer of revenue to the General Fund; (3) Proposed rate increases would apply to consumption charges and the capital improvement fee; and (4) Without a substantial rate increase the alternative approach is to extend the time frame (delay) to accomplish capital improvements.

Using a chart, he explained the Stormwater Fund financial trends. The Stormwater Fund FY budget forecast is (1) Current budget deficit of $278,000; (2) $2.3 Million bond for stormwater projects – annual debt service $190,000; (3) No stormwater rate increase proposals; and (4) $62,500 expenditure toward street repairs (1/2 year), $135,000 each year thereafter.

Stormwater Fund policy recommendations include: (1) Eliminate two positions $78,000; (2) Reduce salary line item by $100,000 to be paid by ARRA funding for inspections of projects; and (3) Reduce salary line item by $100,000 to be paid from bond projects that are completed by in-house crews.

Using a chart, he explained the Parking Fund financial trends – operating results. The Parking Fund FY 2009 anticipated revenue includes (1) parking deck & surface lots revenue = $1,140,000; (2) meters & on-street monthly permits revenue = $960,000; and (3) parking citations & late fees = $700,000. Parking Fund FY 2010-11 budget forecast is (1) $500,000 is included for possible debt reserve on a new parking garage; (2) funding for transit will remain at $248,116; and (3) revenues will exceed expenses by $358,000. He explained that there are certain limitations on the use of parking revenues. The primary restriction is revenue that is collected from enforcement of on-street parking must be used to support that operation. Once you fully fund that part of the parking operation with the parking revenue, we have determined that the rest of the money would be free to use for any other public purpose.

Parking Fund policy recommendations include (1) per Parking Plan, continue to build fund balance to $3,000,000 for future deck construction; and (2) continue Transit Fund transfer at current level or increase by $51,884 to $300,000.

Using a chart, he explained the Transit Fund trends – increasing costs and decreasing federal support. The Transit Fund FY 2010-11 budget forecast is (1) Current Forecast: $880,000 budget imbalance (a) $390,000 or 8.4% increase in operating expenses; (b) $457,000 decrease in federal funding; and (c) $33,000 decrease in fare revenue; and (2) Implement Short-Term System-wide Changes Recommended by the Transit Master Plan (a) Estimated additional annual cost of $780,000.

Transit Fund policy recommendations include (1) Eliminate all evening service and Saturday service along Routes 4,5,12, and 16 = $599,000; (2) Limit General Fund Subsidy; (3) Defer implementation of short-term system-wide changes recommended by the Transit Master plan until funding source is identified; (4) Pursue Other Revenue Sources (a) - New fare structure: reduce existing discounts = $47,000; (b) Transfer additional funding from Parking Fund = $51,884; and (c) Seek legislative authority to increase motor vehicle fee from $10 to $15 under GS# 20-97 = $310,000; and (4) Work with County Commissioners to establish a motor vehicle fee under GS# 105-557 = $434,000.

Using a chart, he explained the compensation and benefits financial trends for health care. Compensation and benefit trends include: (1) Salary Increases for Employees: (a) FY05: 3% Merit and 1% COLA; (b) FY06, FY07, FY08: Merit (3-4%) and Market adjustments (0-10%); (c) FY09: 0 %; and (d) FY10: PROPOSED 2% COLA; and (2) Healthcare Cost Increases to Employees: (a) FY 05: 15%; (b) FY 06: 0%; (c) FY 07: 18%; (d) FY 08: -5% (major plan design and category changes); (e) FY09: 0%; and (f) FY10: PROPOSED 5%. Compensation and benefit trends include: (1) Increases in Claims Costs Trending Downward on a Per Person Basis; (2) Average Cost Per Employee is At or Below National Average; and (3) Current Projection of 7% increase which equals 2.1M in revenue and cost reductions.

Compensation and benefits policy recommendations include (1) 1.5M from General Fund and 700K from Employee Contribution and Plan Changes to Cover Projected Costs; (2) 2% cost of living adjustment for employees; and (3) Domestic Partner Benefits Implemented July 1, 2011.

Using a chart, he then showed the Parks subsidies, along with outside agency funding (funding list for current year is $95,700), (1) Outsourcing/contracting out of parks facilities & programs; (2) Full cost recovery for rental/lease of facilities & parks; (3) Establish a baseline cost recovery for recreational, athletic, & other parks programs; (4) Expansion of non-resident fees; and (5) Reduce outside agency funding by 4% & 8%.

Chief Financial Officer Ben Durant then used charts to review the General Fund Operating Budget financial trends for property tax; sales tax; revenue vs. expenditures; and Fund Balance. The General Fund Operating Forecast for FY 2010-11 includes (1) Current budget gap forecast: $3.5 million or 3.7% (a) assumes $2.0 million in departmental cost reductions; (2) Revenues will be flat compared to current budget; (3) No fund balance appropriation; (4)

Expenses will increase due to: (a) Health care & retirement benefit cost increase; and (b) Inflation & employee cost of living adjustment; (5) Subsidies to other funds: (a) $880,000 increase in Transit subsidy and (b) All other subsidies budgeted at existing levels; and (6) Outside agencies currently projected at existing budget levels.

The General Fund Operating Budget Policy considerations/recommendations include: (1) Pursue additional revenue enhancement opportunities (a) Examples: business privilege licenses, athletic fees, motor vehicle fee; (2) Apply 4% & 8% reduction to outside agencies; (3) Reduce subsidies to other fund & propriety-type funds; (4) Maintain existing funding for core/basic services; (5) Pursue further cost reductions for non-essential services; (6) Preserve fund balance for one-time or emergency use only; and (7) Seek legislative partnerships/additional revenue authority.

He provided Council with a history of the business privilege licenses. Business privilege options (1) restore retail, service & wholesale rates to previous levels (a) additional revenue would be $100,000 (i) $80,000 retail; (ii) $15,000 service; and (iii) $5,000 retail; (2) typical (median) business would see $15 annual increase; and (3) if manufacturing were adjusted back to prior levels there would be a $6,000 revenue gain.

The General Fund Capital Budget financial trends include (1) Capital program enhanced in FY07 & FY08 with the use of fund balance & increased General Fund support; (2) Since the onset of the economic downturn, General Fund capital support has declined by **16%**; (3) Discretionary funding for capital improvements is limited; and (4) Debt service projected to decline by **$1.0 million** in FY12 & by another **$1.0 million** in FY14.

He used a chart to show the debt service trends.

The General Fund Capital Budget FY 2010-11 budget forecast:

Current General Fund capital allocation:	$7.8 million
Less existing debt service:	- 5.2 million
Resources left for equipment, facility maintenance & major capital improvements	**$2.6 million**

Additionally, $1.6 million is available in Sullivan Act funding for street & sidewalk improvements related to water projects.

General Fund Capital Budget FY 2010-11 budget forecast immediate infrastructure and equipment needs consist of (1) City Hall exterior repairs - $5.5 Million; (2) vehicle replacement- $4.5 Million; (3) annual paving program - $752,300; (4) annual sidewalk maintenance- $150,000; (5) Civic Center maintenance and repairs - $400,000; (6) Municipal Building maintenance - $250,000; (7) and Parks centers and facilities - $500,000.

General Fund Capital Budget policy recommendations include (1) Staff will "zero-base" the capital budget to determine most effective use of the limited funding; and (2) Recommend that future debt service savings be earmarked for capital improvements: (a) FY 2011-12: $1.0 million; and (b) FY 2013-14: Additional $1.0 million.

In summary, (1) the General Fund budget and the Capital Improvement Plan gaps are structurally in nature; (2) discretionary funding is limited; and (3) Council policy direction on staff recommended budget balancing strategies.

The budget calendar is as follows: (1) March 23 – adoption of fees; (2) March 24 – April 23 - staff finalizes proposed budget; (3) May 11 – budget presentation; (4) May 25 – budget worksession/public hearing; and (5) June 22 – budget adoption.

Throughout the presentation, Mr. McDowell and Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: concern of the Transit Fund's operating costs continually increasing; the City is improving transit; however, the community is not seeing the benefits; request to contact Representative Shuler and Senators Burr and Hagan to work on the City's behalf to keep the $457,000 of federal funding for the transit system; should the City switch from an 80/20 plan to the 70/30 state plan to save money; what is the ratio of City contributions to health care vs. employee contributions; what does a 5% increase in premiums mean to the employees; why are transit costs increasing so much; what is the annual cost of 1% salary increase; what is our current debt service for; could the water rate structure be adjusted to build in an exemption so that small businesses would not see their rates go up; what is the schedule of rate increased promised to bond holders and what does it mean if we don't raise rates; when will the Housing & Community Development Committee make recommendations on outside agencies; and what type of budget problem do we have, e.g., is a tax increase needed in order to provide new services or rather is it needed for continuation of our existing services; has the City looked at the state's plan regarding smoking and obesity; over the near future do we have enough projects that will meet the criteria for the use of the 5% annual transfer per the Sullivan Act amendments; and has staff performed an analysis of reducing garage collection to bi-weekly in order to reduce fuel consumption and extend the life of the vehicles.

Each Council member expressed their preference on outside agency funding, noting that the Housing & Community Development Committee will bring their recommendations forward to the full Council.

There was a brief discussion regarding the water rate increase and each Council member voiced what percentage, if any, they would be willing to support. At Mayor Bellamy's request, it was the consensus of Council to instruct Water Resources Director Steve Shoaf to provide additional information to justify the need for a rate increase, in addition to a schedule showing the impacts by rate class.

Council members then voiced whether they would be supportive of a tax increase or possibly reducing Fund Balance to balance the budget. In addition, Council would like to see the City Manager's vision of the budget.

Councilwoman Manheimer moved to continue this budget worksession until Tuesday, March 23, 2010, at 2:00 p.m. in the First Floor North Conference Room of City Hall. This motion was seconded by Councilman Russell and carried unanimously. Mayor Bellamy asked that Council be provided as much information as possible prior to the worksession.

Tuesday – March 9, 2010 - 5:00 p.m.
Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Manheimer gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilman Russell asked that Consent Agenda Item "G" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 23, 2010

B. RESOLUTION NO. 10-57 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY SANITARY SEWER EASEMENTS AT THE WEST ASHEVILLE PARK TO THE METROPOLITAN SEWERAGE DISTRICT FOR THE MORRIS STREET AND TALMADGE COURT SEWER REHABILITATION PROJECT

Summary: The consideration of a resolution authorizing the Mayor to convey sanitary sewer easements at the West Asheville Park, identified as PIN # 962891984800000, to the Metropolitan Sewerage District for the Morris Street and Talmadge Court Sewer Rehabilitation Project.

The Metropolitan Sewerage District (MSD) is preparing to make improvements to existing sanitary sewer lines on Talmadge Court and Morris Street. The project arose when the City of Asheville planned to replace the water lines and follow up with street improvements which are greatly needed. MSD would like to coordinate their sanitary sewer line improvements prior to the pavement replacement.

In order to do execute this work, MSD needs to replace a lateral sewer line that connects the aforementioned right-of-way upgrades to the main sewer line that is located within West Asheville Park. MSD replaced this main sewer line within West Asheville Park last year which the City Council approved on February 28, 2006. MSD will replace the 6 inch clay sewer line with an 8 inch ductile iron pipe.

This line replacement is located at the southeastern corner of the park where it would not impact the site or the activities that are programmed within it. MSD is requesting a permanent easement for the line that is being replaced in the park, being approximately 1514 square feet (0.03 acre). MSD is also requesting a temporary construction easement being approximately 1550 square feet directly adjacent to the permanent easement. The park property will be restored upon the completion of the work by MSD. Work for the project is scheduled for April of 2010.

Pros:

- Improved sanitary sewer service for the community
- Minimal impact to the park property
- Proposed line replaces the existing, poor line
- Work is being coordinated with other utilities and agencies

Con:

- Easement is being dedicated

No monetary consideration involved in this conveyance.

City staff recommends City Council to adopt the resolution authorizing the conveyance a sanitary sewer easement at the West Asheville Park to the Metropolitan Sewerage District for the Morris Street and Talmadge Court Sewer Rehabilitation Project.

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C. RESOLUTION NO. 10-58 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY SANITARY SEWER EASEMENTS AT THE MURPHY OAKLEY PARK TO THE METROPOLITAN SEWERAGE DISTRICT FOR THE LIBERTY STREET SEWER REHABILITATION PROJECT

Summary: The consideration of a resolution authorizing the Mayor to convey sanitary sewer easements at the Murphy Oakley Park, identified as PINs # 965758112100000, 965758140200000, 965748833600000, and 965758350700000, to the Metropolitan Sewerage District for the Liberty Street Sewer Rehabilitation Project.

The Metropolitan Sewerage District (MSD) is preparing to make improvements to existing sanitary sewer lines adjacent to Liberty Street. Part of this project includes the replacement of sewer lines located in Murphy Oakley Park. Currently, the 6 and 8 inch clay lines in the park are in poor condition and have resulted in sewer overflows and numerous maintenance issues. MSD plans to replace these existing lines with new 8 inch ductile iron pipe.

The existing and proposed line replacement is within the eastern side of the park. MSD is relocating the placement of some of the existing lines in portions of the site to avoid impacting existing park features such as the playground. The proposed lines will not impact the site or the activities that are programmed within it except for the loss of some parking spaces temporarily. MSD is requesting a permanent easement containing approximately 19,001 square feet (0.249 acre) for the line that is being replaced in the park. MSD is also requesting adjacent temporary construction easements that total approximately 26,483 square feet. The park will be restored upon the completion of the work by MSD. Bids for the project are scheduled for July of 2013.

Pros:

- Improved sanitary sewer service for the community
- Minimal impact to the park property
- Proposed line replaces the existing, poor line

Con:

- Easement is being dedicated

No monetary consideration involved in this conveyance.

City staff recommends City Council to adopt the resolution authorizing the conveyance a sanitary sewer easement at the Murphy Oakley Park to the Metropolitan Sewerage District for the Liberty Street Sewer Rehabilitation Project.

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D. RESOLUTION NO. 10-59 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF SHORT STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase property off Short Street (PIN # 9649-11-8703-00000).

The City of Asheville is the owner of a 0.12+/- acre lot located off of Short Street at Cumberland Place in the Montford Neighborhood. The lot is level and the current zoning of the parcel is RM-8. The land off of Short Street was acquired by the City as part of the Head of Montford Redevelopment Project. On January 7, 2010, the City received a bid for this property from BK Property Partners in the amount of $71,000. This bid was generated with input from two

separate appraisals: one appraisal, dated August 5, 2009 procured by the potential buyer, at $60,000; and the other appraisal, dated October 30, 2009 procured by the City of Asheville, at a price point of $86,000. The bid put forth by BK Property Partners at $71,000 is slightly below the average of the two appraisals. Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

This action complies with the strategic operating plan in that income from the sale of this property will directly benefit the Community Development Block Grant (CDBG) Program, thus providing funding towards affordable housing.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

Once final, the proceeds from the sale of this parcel will be CDBG Program Income.

Economic Development staff recommends City Council approve a resolution directing the City Clerk to advertise an offer to purchase property off of Short Street, (PIN # 9649-11-8703-00000).

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E. RESOLUTION NO. 10-60 - RESOLUTION AUTHORIZING PRIMARY AND SECONDARY AGENTS REPRESENTING THE CITY OF ASHEVILLE TO APPLY FOR ASSISTANCE AND OBTAIN FINANCIAL ASSISTANCE FOR THE SEVERE WINTER STORM DURING THE PERIOD DECEMBER 18-25, 2009

Summary: The consideration of a resolution authorizing primary and secondary agents for the City of Asheville to apply for assistance and obtain financial assistance for the severe winter storm during the period, December 18, 2009 thru December 25, 2009, designated as a disaster and identified as FEMA–1871–DR–NC.

During the period December 18, 2009 thru December 25, 2009 Western North Carolina including Buncombe County and the City of Asheville experienced a sever winter storm.

Staff met with the North Carolina Division of Emergency Management, Federal Emergency Management Agency Administration (FEMA) and Buncombe County and concluded Buncombe County would be eligible for assistance through FEMA. Reimbursable include brush collection and removal, emergency generator use at the water plants and some emergency services. Actual removal of snow from the roadways was not eligible. On the basis of the information gathered, Governor Beverly Purdue signed an emergency declaration to help fifteen (15) Western North Carolina Counties. Governor Purdue subsequently received a federal disaster declaration on February 2, 2009, from FEMA for the snow and ice storms in December.

North Carolina's Division of Emergency Management requires primary and secondary agents representing the City of Asheville be authorized by resolution to execute and file applications for federal and/or state assistance on behalf of the City of Asheville for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act (Public Law 93-228 as amended) or as otherwise available.

This action complies with the City Council Strategic Operating Plan, Fiscal Responsibility by proactively pursuing funding with state and federal governments.

Pro:

- Recovery of costs associated with a declared disaster.

Con:

- Failure to designate primary and secondary agents representing the City of Asheville will result in a loss of eligibility to recover disaster costs.

Funds received will offset general fund expenditures, preliminary estimated at approximately $200,000.

City staff recommends City Council adopt a resolution authorizing Richard Grant, Administrator of Public Works Services, and Cathy Ball, Director of Public Works, as primary and secondary agents to apply for assistance and obtain financial assistance for the severe winter storm in December.

In response to Mayor Bellamy, Public Works Director Cathy Ball explained that we have incurred approximately $700,000 (using FEMA rates) in expenses; however, under FEMA guidelines we are eligible to apply for reimbursement of $200,000 only. So far this year we have spent approximately $550,000, which is approximately $300,000 more than we have. She clarified that some of the $200,000 reimbursement will have to go back in to the Water Fund.

RESOLUTION BOOK NO. 32 – PAGE 413

F. RESOLUTION NO. 10-61 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF ASHEVILLE, A FEDERAL AVIATION GRANT AGREEMENT FOR FISCAL YEAR 2010 PART A

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $902,490.

Due to the current continuing resolution in place for the FAA, the grants for Fiscal Year 2010 are being issued in two separate phases, Part A and Part B. The final grant agreement for Fiscal Year 2010 Part A, which is still being prepared by the FAA – Atlanta Airports District Office, must be executed and returned to the FAA by March 17, 2010.

The Fiscal Year 2010 Part A grant is anticipated to total $902,400 and will be used as a reimbursement of design and professional costs related to the recent terminal renovation project at the Asheville Regional Airport. The Asheville Regional Airport Authority has fully funded this expense including the matching share and no financial assistance is required from the City of Asheville in the acceptance of this Grant Offer.

This is consistent with the City's Strategic Plan for 2010-11 in several ways: (1) leverages partnerships for capital improvements; (2) pursues funding opportunities with federal government; (3) promotes multi-modal transportation; and (4) promotes partnership in regional economic development strategies.

Pro:

- Supports service enhancements at Airport

Con:

- None noted

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Fiscal Year 2010 Part A.

RESOLUTION BOOK NO. 32 – PAGE 414

G. BUDGET AMENDMENT TO SET UP A PROJECT BUDGET FOR THE TRANSIT STREET FURNITURE IMPROVEMENT PROJECT

This item was pulled off the Consent Agenda for an individual vote.

H. ORDINANCE NO. 3829 - BUDGET AMENDMENT TO SET UP A PROJECT BUDGET FOR NEEDED REPAIRS TO THE TRANSIT OPERATIONS GARAGE ROOF

Summary: The consideration of a budget amendment, in the amount of $125,000, to set up the project budget for needed repairs to the transit operations garage roof.

The purpose of the project is to repair the roof at the transit operations garage. The subject building, which was constructed in 1971, is a one-story steel and masonry structure containing about 12,600 square feet. The current roof is an EPDM ballasted roof that was installed in 1985. The membrane on the roof has deteriorated to the point that leaking is occurring in the parking shed, vehicle maintenance area, and offices during rain events. This leaking not only creates a safety hazard with the electrical wiring and equipment in the garage but it has also caused the wood to rot around the skylights and flashing at the mechanical units.

The existing insulation has also been damaged and is therefore not energy efficient. It needs to be replaced in the areas where the water damage has occurred. We do not know at this time if any major structural damage has occurred.

The project would replace the existing roof with a new EPDM mechanically adhered roofing system, which would meet current energy conservation requirements and it would provide savings in energy consumption.

The total cost of the project is $125,000. Federal Funds would provide 80% of the cost, which equates to $100,000 and the remaining $25,000 would come from the Transit Capital Reserve Fund, which currently has a balance of $271,000 ($240,000 is earmarked for the purchase of five buses and $6,000 is earmarked for the purchase of two service vehicles during Fiscal Year 2010-11)

The project is scheduled to take place during the next five months.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by leveraging funding from the Federal Transit Administration (FTA) to address the City's aging facilities.

The Transit Commission supports the subject project.

Pros:

- Provides needed maintenance to an aging facility.
- Helps to make the building safe and more energy efficient which should generate savings in energy consumption.
- Federal Funds will provide 80% of the total project cost, which equates to $100,000.

Cons:

- The total cost of the project is $125,000.
- The City's share of the total cost of the project is $25,000.

The total cost of the subject project is $125,000. Federal Transit Funds in the amount of $100,000 that are available for transit capital projects and preventive maintenance will cover 80% of the cost. City Funds in the amount of $25,000 that are available from the Transit Capital Reserve Fund will cover the remaining 20% of the cost. A budget amendment is provided to appropriate these funds.

Staff recommends that City Council adopt a budget amendment, in the amount of $125,000, to set up the project budget for the Transit Operations Garage roof repairs.

ORDINANCE BOOK NO. 26 – PAGE 43

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM PULLED OFF CONSENT AGENDA FOR INDIVIDUAL VOTE

G. ORDINANCE NO. 3828 - BUDGET AMENDMENT TO SET UP A PROJECT BUDGET FOR THE TRANSIT STREET FURNITURE IMPROVEMENT PROJECT

Summary: The consideration of a budget ordinance, in the amount of $60,000, to set up the project budget for the Transit Street Furniture Improvement project.

The purpose of the project is to install transit street furniture in high demand locations serving low-income areas and/or employment areas along the main corridors served by the transit system.

The Asheville Transit System (ATS) is a consolidated bus service that has been operating for more than 30 years. Currently, the fleet serves primarily transit dependant groups (low-income level groups represent 91% of the ridership). The geographic coverage of the Asheville Transit System (ATS) includes 90 percent of the households in high-density areas are within ¼ mile of a transit route.

During the last three fiscal years, the Asheville Transit System (ATS) has experienced an annual growth rate of 5.3% in ridership. New routes have been developed and new bus stops have been installed to accommodate the growing demand along the routes. Most of the bus stops do not offer comfortable facilities or protection from the weather; therefore, creating an unfriendly environment that directly impacts the riders. This project will improve transit infrastructure resulting in a positive impact to the riders.

The project will be financed with funds received from a Community Development Block Grant (CDBG) in the amount of $60,000 that was approved during March 2009. The project includes purchasing five bus shelters, trash cans, and signs and installing the bus shelters including concrete pads and accessible routes (if needed). The project also includes installing concrete pads at Top-A-Stop locations.

The bus shelters are proposed to be located at the following locations:

- US 25 (Hendersonville Road) and Caribou Rd.

- US 19-23 (Patton Avenue) and Florida Avenue
- US 70 (Tunnel Road) and SR 2002 (Riceville Road)
- SR 3548 (Haywood Road and Ridgelawn Avenue
- Granada Street at Pisgah View Apartments

The project is scheduled to occur later this year after completion of the permit process with the North Carolina Department of Transportation (NCDOT) and the City's Building and Safety Department.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by leveraging funding from other funding sources for regional transportation improvements.

The Transit Commission supports the Transit Street Furniture project and the use of CDBG monies to fund it.

Pros:

- Helps supports the overall transit services experience.
- Provides a friendly environment (comfortable facilities and protection from the weather) to the riders.

Cons:

- The project has a total cost of $60,000.
- There will be ongoing future maintenance and/or repair costs for the street furniture.

The current Transit capital budget does not include funding for the street furniture project. Thus, Transit's capital budget will need to be increased in the amount of $60,000 through a budget amendment. The source of funds for the capital budget amendment is $60,000 transfer from the Community Development Block Grant (CDBG) Funds. As result of the CDBG funding, there is no net financial impact on the Transit Fund.

Staff recommends that City Council adopt a budget ordinance, in the amount of $60,000, to set up the project budget for the Transit Street Furniture Improvement project.

In response to Mayor Bellamy, Public Works Director Cathy Ball explained the term street furniture.

Councilman Russell could not support the motion due to our deficit in transportation increasing over the last several years.

Vice-Mayor Newman moved to adopt Ordinance No. 3828. This motion was seconded by Councilwoman Manheimer and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 - PAGE 41

III. PRESENTATIONS & REPORTS:

A. BOARD OF ADJUSTMENT UPDATE

Mr. Robert Middlemas, Chair of the Board of Adjustment, updated Council on the Board of Adjustment's key accomplishments for 2009 and their goals for 2010. He said that the Board of Adjustment for the City of Asheville is governed by the terms of N.C. Gen. Stat. Sec. 160A-388.

The Board is a "quasi-judicial" administrative body that operates on a level between the enforcement officers and the courts. This Board is charged with hearing and deciding

applications for approval of variances from the terms of Chapter 7 of the Code of Ordinances except where this Chapter places responsibility for hearing or considering such a variance with another body. The concurring vote of four-fifths of the members of the Board is necessary to reverse any order, requirement, decision, or determination of any administrative officer charged with the enforcement of Chapter 7 of the Code of Ordinances.

The Board of Adjustment for the City of Asheville includes five regular members and seven alternate members. Four regular members and five alternate members who are residents of the City of Asheville are appointed by the Asheville City Council. The other regular member and two alternate members are by the Buncombe County Board of Commissioners and reside outside the corporate boundaries of the city but within the city's extraterritorial planning area.

The Board of Adjustment convenes once a month for public hearings. Mr. Robert Middlemas was elected Chairman and Ms. Esther Manheimer was elected Vice-Chair for the 2009 – 2010 calendar year.

Tally of cases heard before the Board for 2009 include: 11 regular meetings; no special meetings; 1 meeting cancelled; 17 zoning variances granted; 1 zoning variance denied; 4 sign variances granted; 5 sign variances denied; 1 appeal upholding the Planning Director's decision; no appeals overruling the Planning Director's decision; 1 appeal tabled pending possible court litigation; and 28 (out of 29 cases) rules consistent with staff's recommendation.

He then explained the criteria used for zoning variances and sign variances.

On behalf of City Council, Mayor Bellamy thanked Mr. Middlemas for his leadership and the entire Board of Adjustment for their service on this Board.

B. RECREATION BOARD UPDATE

Mr. Scott Barnwell, Chair of the Recreation Board, said that the mission of the Recreation Board is to advise the City of Asheville in matters affecting recreation policies, programs, finances and land acquisition related to total community recreation programs.

Key accomplishments include: (1) The Executive Committee revised the board by-laws that were first approved by City Council in 1964 with various updates since then, and participated in designing the overall board orientation and development program, including the New Board Member Mentoring program; (2) Supported capital improvement priorities at the WNC Nature Center as requested by the Friends of the Nature Center; (3) Approved the revision to the Recreation Division snow day and inclement operation policy to consolidate operations to be more cost efficient, effective in responding to customer needs, and considerate to the safety of staff and participants during potentially hazardous weather conditions; (4) Approved and recommended to City Council the proposed layout of the 2009 Bele Chere festival boundaries; (5) Approved the revisions to the facility rental fee adjustment policy so staff and the Recreation Advisory Board have clear guidelines when responding to such requests from outside organizations; (6) Approved and recommended to City Council the proposed rental fees for the first phase of Pack Square Park; (7) Recommended to City Council the fee schedule adjustment for the Asheville Municipal Golf Course beginning FY 2010-2011 that will include a range in fees. The adjustment provides the opportunity to deal with seasonality and weather issues that occur at the golf course, and to position the course to remain competitive with other golf courses in the area; (8) Recommended to City Council the creation of the proposed Riverfront Redevelopment Commission to be charged with upholding the sustainability and continued development of Asheville's riverfront; (9) Recommended to City Council to prohibit smoking in all City of Asheville parks and greenways in response to the North Carolina General Assembly enactment of a law giving local governments increased authority to regulate smoking, and signed by Governor Bev Perdue; and (10) Enhanced the partnership with the WNC Disc Golf Club by recommending the addition of an 18-hole disc golf course at Richmond Hill Park with no fiscal impact to the City.

2010 Goals include (1) Board development; (2) Involvement in the budget process; (3) Relationship building; (4) Advocacy; and (5) Develop and maintain partnerships with Asheville Parks and Greenways Foundation, Friends of Nature Center, Buncombe County Parks and Recreation, and Pack Square Conservancy.

In response to Councilman Bothwell, Mr. Barnwell explained the partnership with WNC Disc Golf Club and how they have donated equipment and materials.

In response to Mayor Bellamy, Parks, Recreation & Cultural Arts Director Roderick Simmons explained our relationship with the Parks and Greenways Foundation. He said that he would be happy to provide Council with a list of projects they have helped raised funds for or funded over the years.

On behalf of City Council, Mayor Bellamy thanked Mr. Barnwell for his leadership and the entire Recreation Board for their service on this Board.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-62 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MATRIX SYSTEMS FOR A CARD ACCESS AND CAMERA SECURITY SYSTEM FOR THE CITY OF ASHEVILLE

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of the following:

- A resolution authorizing the City Manager to enter into a Contract with Matrix Systems for the Card Access and Camera Security System for the Municipal Building, APD Firing Range, Public Works and City Hall. The total bid estimate is $239,049. The portion for the Municipal Building and Firing Range is $200,945 which will be covered by the 2009 JAG ARRA Grant. The JAG ARRA Grant Budget was approved by Council August 11, 2009. The balance of the bid, $38,104 will cover Public Works and City Hall and will be paid from the budgeted Capital Project for security.

- Update on the Local Energy Assurance Planning (LEAP) grant from the Department of Energy which was awarded to the City of Asheville.

Card Access & Camera Security System

The upgrade to the Municipal Building key card access system, surveillance cameras, and alarm systems will greatly increase controlled access and security for Police Headquarters. Installation of access controls for the firing range and security cameras will increase the security and accountability associated with APD's firing range/training building.

Other locations are leveraging the investment being made at the Municipal Building to allow for an integrated access control and camera security system for City facilities. The system is capable of significant expansion in the future as the city grows, and will provide more efficient and cost effective maintenance and operations.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

The purchase and implementation of a card access and security camera system will greatly enhance the safety of our Citizens and City of Asheville Staff. These enhancements will also assist in the accountability for city property as a theft deterrent.

Pros:

- Increase safety for City Employees and facilities
- Increased safety for our communities
- Increased security of city property

Con:

- Maintenance cost

Funds are currently included in the budget to cover the acquisition costs of this system. The total bid cost of $239,049 will be covered by $200,945 in ARRA funds and $38,104 in city capital project funds. The equipment comes with a two year warranty plus an extended warranty through five years. Beyond this period the City of Asheville will be required to maintain the overall operations and maintenance of the equipment. The Municipal and Firing Range enhancement will be fully covered by the ARRA Grant funding. The balance will be funded by the Security Project Capital, which has already been budgeted.

It is estimated that service extentions would run $15,000 per year. These costs will be added to the departmental operating budget at the beginning of the sixth year.

The expected useful life of these systems are 10-15 years. The replacement costs will be at the expense of the department associated with the security equipment.

Local Energy Assurance Planning (LEAP) Grant Award - $209,940

After the fuel shortage in 2008, Land-of-Sky Regional Council was asked to take advantage of its position as an intergovernmental agency with established partnerships with the region's five county governments and 17 municipal governments to aid in the fuel planning process with preliminary work occurring in January 2009. In response to NC League of Municipalities Emergency Fuel Use Survey conducted in the fall of 2008, the Land-of-Sky Regional Council hosted a meeting to address the most recent regional fuel shortage. The survey showed that over two thirds of the local governments expressed interest in a regional collaboration to mitigate the effect of future fuel shortages.

The governments all wanted to ensure that emergency services would be able to continue to offer fire protection, ambulance service, and police protection. They hoped a plan could be developed for better communication between municipalities to ensure continuation of services, and they were willing to work together as a region to establish conservation in times of crisis, levels of fuel alters, and other specific details.

A goal of the American Recovery and Reinvestment Act, in part, is to "facilitate recovery from disruptions to the energy supply" and "enhance reliability and quicker repair of outages." The "Local Energy Assurance Planning" (LEAP Initiative) focuses on developing new, or refining existing, plans to integrate new energy portfolios (renewable, befouls, etc.) and new applications, such as SMART Grid technology, into energy assurance and emergency preparedness plans. The grant encourages regional participation and requires a city to be the grant applicant. For this grant, the City of Asheville is the grant applicant and fiscal agent for the grant with the Land-of-Sky Regional Council would manage implementation of the project.

The City of Asheville, in partnership with 22 local governments, designed the Regional Fuel Project to plan for economic and emergency service disruptions caused by the fuel shortages in Western North Carolina. This funding will further allow our region to address dramatic, recurring and anticipated future fuel shortages and the need for revised and new

energy assurance plans. Being multi-jurisdictional, this planning process has the following objectives:

- Improve the region's readiness for a fuel emergency
- Integrate emergency fuel planning components as recommended by the Public Technology Institute and N.C. State Energy Office into local emergency response plans.
- Develop a Regional Strategic Fuel Plan to integrate critical elements of the emergency energy plans in the five-county region
- Establish local expertise in emergency fuel management and alternative fuels
- Diversify the region's fuel portfolio, reduce carbon emissions, and air pollution and reduce impacts from energy supply disruptions
- Create and maintain jobs through grant support, project management and transfer of expertise

Pros:

- The Regional Strategic Fuel plan will enable the region to better endure a fuel shortage without breaks in vital services such as law enforcement, volunteer and municipal fire protection, and other emergency services.
- The LEAP grant if funded, will give the region the tools to better manage future fuel crisis and mitigate the reliance on fuel from a single source for a more energy independent future.
- Creation of more current or up-to-date energy assurance plans.

Con:

- The City of Asheville will be bear responsibilities as the fiscal agent of the grant for a regional project. This will include ARRA reporting requirements.

This is a 100% non-matching grant.

City staff recommends City Council adopt the resolution authorizing the City Manager to enter into a contract with Matrix Systems for a Card Access and Camera Security System for The City of Asheville.

Ms. Mills responded to Councilman Bothwell when he asked what kind of staff report will be necessary in administering the LEAP grant.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-62. This motion was seconded by Councilman Bothwell and carried on 6-1 with Councilman Russell voting "no."

RESOLUTION BOOK NO. 32 – PAGE 415

D. SUPPORT OF ASHEVILLE AREA BROADBAND STIMULUS REQUEST

Mr. Wally Bowen, Executive Director of Mountain Area Information Network, explained the Community Cloud Computing (CCC) Project which will be the nation's first open-source "Community Cloud Computing" platform.

He made the following points to Council:

- Cloud computing allows a user to operate software and services via remote servers rather than their own computer. Instead of purchasing a CD loaded with software, the user accesses the application via the Internet for free, or at greatly reduced cost. Google's email and other free applications are basic examples of "cloud computing."

- A community-based cloud computing platform can level the playing field for individuals, local businesses, and nonprofits which, unlike Fortune 500 companies, do not have affordable access to advanced information technology (IT) expertise and infrastructure. As the nation's first cloud platform designed for a grassroots community, CCC is a strong example of the innovative uses Google is seeking for its Gigabit broadband demonstration network.

- For example, the CCC will provide advanced services like routine data-backup (hourly, daily, weekly, etc.) to prevent the catastrophic loss of one's business or personal data when a computer hard drive fails. Another possible offering is merchant credit-card services (in partnership with a local bank) with a "buy local" points/rewards program to encourage support of locally-owned businesses.

- Imagine a local artist who wants to build her own website but cannot afford an expensive website- builder program (e.g. DreamWeaver) that will be used once and then put on the shelf. The CCC will provide a free open-source alternative, or purchase multi-user licenses of DreamWeaver. The local artist could then access the software via the CCC for only the amount of time she needs it, paying just a fraction of the full purchase price.

- This same scenario applies to other professionals (e.g., videographers, web programmers) and at-risk populations (e.g. citizens with disabilities and special needs students) who could benefit from advanced Web applications and greater computing power, if only they could afford them.

- The CCC will provide a low-cost "collaboration" platform for our digital media producers and web developers. For example, local videographers could collaboratively assemble and edit "shared-source video," allowing them to tackle more complex projects and complete them faster and more efficiently. The bandwidth required for large, complex video productions – especially in high-definition – exceeds the capacity of most local professionals. The CCC will provide this additional bandwidth "as-needed," plus advanced editing and other production tools that – if purchased or leased individually – would be cost-prohibitive for most local video professionals.

- A major CCC goal is to empower a region-wide shift from "outsourcing" to "local-sourcing" among business, nonprofit, and governmental sectors. The CCC will employ "single sign-on authentication" so that users can move easily and securely through the entire CCC ecosystem without having to repeatedly provide a username and password. As privacy concerns nationwide continue to rise, this locally-controlled CCC will be increasingly valued as a privacy oasis.

- We are currently seeking input from key agencies and organizations to determine specific needs the CCC platform could meet in the project's 24-month phase-one implementation.

- Federal broadband stimulus is also available for Public Computing Centers (PCC) and Sustainable Broadband Adoption (SBA) projects to expand broadband access and adoption. The CCC will host tools, applications, and training modules for PCC and SBA projects to help extend broadband access and digital-literacy training to citizens bypassed by the digital revolution. Basing these tools and services on a CCC platform

will reduce project start-up and operating costs, thereby enhancing their long-term sustainability – a primary requirement for federal broadband stimulus funding.

- The PCC and SBA projects will also include an innovative use of low-cost "thin client" (stripped down) laptops configured for exclusive use only when connected to the CCC platform. The laptops will feature a GPS-enabled (and/or IP-based) tracking capability to ensure that vulnerable populations can use these laptops with a reduced concern for theft.

- Asheville and WNC are well-positioned to sustain complementary PCC/SBA stimulus projects beyond the 24-month funding period. We may be the only region in the United States with both a nonprofit "last-mile" wireless broadband provider (Mountain Area Information Network, founded in 1995) and several nonprofit "middle-mile" fiber providers (NC-REN, ERC Broadband, Pangaea, and French Broad Electric Co-Op). These complementary wireless and fiber networks have the IT security expertise and robust, scalable infrastructure to implement sustainable CCC and PCC/SBA projects.

- Key phase-one sectors include:

    - Vulnerable populations (public housing residents, citizens with disabilities, the homeless, at-risk youth, special needs students, native American and immigrant communities, elderly, and other at-risk residents);
    - Public libraries and community centers;
    - Local job-creation, "buy local" and "smart-grid" efforts and agencies, locally-owned businesses, microenterprises and "green" enterprises;
    - Local digital media entrepreneurs and web developers;
    - Local nonprofit and for-profit media (newspapers, bloggers, public access TV, low-power FM radio, and community broadband providers).

- Participating agencies (to date) are: Housing Authority of the City of Asheville (HACA), Asheville City Schools, City of Asheville, Asheville-Buncombe Library System, Asheville-Buncombe County Christian Ministries (ABCCM), Children First, ERC Broadband, Partners Unlimited Inc., Burton Street Community Center, Western Alliance, WNC Media Center, and Mountain Area Information Network (MAIN).

- Public Computing Centers (PCC) will be expanded at the Burton Street Community Center, the ABCCM Job Training Center, Western Alliance (citizens with disabilities), and at city-run and/or public housing neighborhood centers [preliminary list; more sites possible].

- Sustainable Broadband Adoption (SBA) programs will be based at the proposed PCC sites, at public library sites, and other locations (e.g. after-school study sites operated by the Asheville City Schools and Children First). MAIN will also offer digital storytelling and community journalism training in partnership with select PCC sites and MAIN-FM, a community-based low-power FM radio station serving Asheville and WNC.

- Broadband network capacity, support and project management will be provided by MAIN, which has a 14-year record as a nonprofit ISP and technology partner for Asheville and western North Carolina region. MAIN launched in 1995 via a grant from NTIA's original Technology Opportunities Program (TOP) and is one of NTIA's longest-surviving grantees. Red Hat will produce a case study of the CCC project and will assist MAIN in developing a replicable model to share with communities nationwide.

- In summary, a coalition of local agencies and organizations, including the Housing Authority of the City of Asheville, Asheville City Schools, Buncombe County Health

Department, and Mountain Area Information Network (MAIN), plan to submit federal stimulus requests to expand broadband access and digital literacy training to the city's underserved neighborhoods and at-risk populations.

Information Technology Services Director Jonathan Feldman provided Council with the following information on MAIN's presentation:

The grant referred to by Mr. Bowen's materials is BTOP (Broadband Technology Opportunity Program). BTOP was first conceived as a part of the American Recovery and Reinvestment Act in the second quarter of 2009, with an application deadline for the first round of funding of August, 2009. The program has three distinct types of permitted applications:

1. Comprehensive Community Infrastructure projects.
2. Sustainable broadband adoption projects
3. Public computing centers projects

City Council approved staff in-kind support of a collaborative MAIN and ERC (Education and Research Consortium of the Carolinas) infrastructure (type #1) grant application. Months of work (demographic research, GIS support) went into helping ERC and MAIN apply for the grant. That grant application was specifically targeted at middle and last mile fiber optic connectivity. MAIN and ERC ended up applying separately based on differences in last- versus middle-mile grant criteria. Both were disqualified on technical issues.

BTOP was a long shot for the City in any event, as a cash or in-kind match of 20% was required, with "waivers" possible but highly discouraged. With a $5.5M ask, this would have meant over $1M of grant match, something the City was not in a position to fund. I'm not aware of a grant recipient whose match was waived, and press releases made it a point to highlight grant match funding.

Round two of BTOP, with the late March deadline, also requires a match, but preference is given to >30% match.

As Council is already aware, PCC (type #2) is something that MAIN is currently working on. As of this writing, there is no willing applicant to move forward on this application.

Mr. Feldman said that he had the opportunity to meet with Wally Bowen from MAIN and Hunter Goosmann from ERC, and was able to learn a little bit more about their plans for moving forward with BTOP.

Status of "Round 1" application & requested infrastructure:

- Our existing application will not be re-submitted due to changes in requirements for BTOP infrastructure.
- ERC will be working with MCNC (a not-for-profit based in RTP, and one of the successful "round 1" applicants) to apply for various fiber optic assets, including the AFD fire station redundant "ring" that we included in the first round's application. The match is being sought from the Golden Leaf Foundation, but ERC does not yet know whether this will be approved.
- MAIN will be applying for all the fiber that the City included in the first round (including HACA). ERC is evaluating their ability to include community center fiber in their application, and also working with MAIN to expand other fiber assets in Asheville. Either entity's success would be good for the City. He will be following up to see how the City can continue to support this effort through a letter of support.
- For the current round, MAIN is interested in co-location of their wireless assets at community centers, fire stations, and other city structures that would be conducive to their 'mesh' topography.

- MAIN is also looking for the 20% match associated with approximately $4M of infrastructure. Some of this may take the form of in-kind support, such as allowing MAIN to co-locate on City-owned telecommunication towers if the grant is awarded.

Cloud Computing Effort

- MAIN is submitting a Sustainable Broadband Adoption BTOP proposal for the cloud vision that Mr. Bowen is sharing with Council
- From the discussions, Mr. Feldman believes that the only thing that MAIN is looking for from the Council is an endorsement of the project, possibly taking the form of a Council resolution.
- MAIN is planning on acting as the grant administrator and applicant.
- They plan on funding at least part of the match through in-kind support of the software vendor they're working with (RedHat, a provider of Linux operating system software based in RTP.) MAIN is interested in an in-kind match from the City, possibly in the form of space for training at community centers.
- They discussed potential fits for upcoming public safety applications to be hosted by the cloud environment. At this time, Mr. Feldman didn't see a fit. Although he is enthusiastic about the effort in general, public safety applications tend to use proven and mature technologies due to the life-safety nature of public safety delivery systems. He will keep an open mind going forward, particularly concerning any enhanced departmental or citizen services that we don't currently have funds for.

In response to Mayor Bellamy, Mr. Bowen said that he is requesting the City to collaborate in moving the application forward and also an in-kind match requirement. The minimum match is 20% up to 30% and they know they have 14% with the infrastructure wireless project. He is not expecting a cash match, but the in-kind match is very important. He felt there are a number of ways the City can help them meet the matching threshold. He said that because of the changes in the guidelines from the first round to the second round, ERC is going to be making its fiber request in conjunction with the state network. He said there may be some in-kind match with that. He said that short-term MAIN needs tower space and that is some of the in-kind match. He said that City staff estimates that tower space to be approximately $20,000. Mr. Feldman suggested Council set a not-to-exceed in-kind dollar match.

Mr. Hunter Goosmann, representing ERC broadband, said that they would like to work with the City and explore any opportunity to provide in-kind match to expand the network around the City to support government services, education, health care, etc.

In response to Councilman Smith, Mr. Bowen explained how the CCC is a strong example of the innovative uses Google is seeking for its Gigabit broadband demonstration network.

In response to Mayor Bellamy, Mr. Feldman felt that it would be great for Asheville to have a high speed network. He didn't see a downside to the Goggle pilot project.

Councilman Russell felt he would need additional information prior to making any commitment, especially regarding the in-kind match.

In response to Councilman Smith, Mr. Bowen said that he wants the City's endorsement of the application proposal and whatever value the tower space is, we can forego that.

There was clarification that the motion on the floor did not include any financial support at this time.

Councilman Smith moved to endorse the grant application. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

E. MAYOR UPDATE FROM N.C. METRO MAYOR'S COALITION BOARD

MEETING

Mayor Bellamy updated Council on her recent trip to the N.C. Metro Mayor's Coalition Board meeting. She provided Council with information from the luncheon with the Governor – (1) economic/budget review; (2) N.C. Dept. of Transportation (NCDOT) federal stimulus update; and (3) N.C. Dept. of Juvenile Justice and Delinquency Prevention. This year's agenda includes (1) to defend against attempts to shift state responsibility to local governments and to protect local revenues; (2) continue to improve the relationship between the N.C. Dept. of Transportation and local governments; (3) explore ways to partner with the State to build and maintain a robust transportation system; (4) reduce gang violence; (5) strengthen the state's judicial system; (6) support efforts to advance North Carolina's bio-tech industry and grow related jobs; (7) preserve local governments ability to engage in communication and public enterprise; and (8) maintain a cost-effective way to manage growth, provide services and ensure all who benefit from the heart of their community and also share in the cost. Regarding the NCDOT, there is about $10 Billion in available revenue for projects that NCDOT has on the table for the future, but there is almost $30 Billion of requests. She felt we need to look at our transportation needs and see how we can get in line with our transportation planning, knowing there are limited dollars. She also highlighted juvenile justice issues and gang prevention. She invited Council to the N.C. Metro Mayor's Coalition Board meeting on September 23-24 here in Asheville.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING 65 LONG SHOALS ROAD FROM OFFICE BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3830 - ORDINANCE TO REZONE 65 LONG SHOALS ROAD FROM OFFICE BUSINESS DISTRICT TO COMMUNITY BUSINESS II

Mayor Bellamy opened the public hearing at 6:13 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 65 Long Shoals Road from Office Business District to Community Business II District. This public hearing was advertised on February 12 and 19, 2010.

This 1.5-acre site will be familiar to many as the site of the now-closed Boathouse restaurant. The parcel was voluntarily annexed into City Limits in 2000. At that time, the area to the east and west on this side of Long Shoals Road was subject to Buncombe County's Limestone Township zoning, and this property, as well as the neighboring properties to the west shared the R-2 residential zoning classification. The initial zoning of this parcel to Office Business sought to provide a lower-intensity zoning to ensure compatibility with the neighboring residential area.

Since 2000, this area has experienced major changes, most notably the widening of Long Shoals Road. In addition, the south side of Long Shoals Road to the west of this site was also annexed into the City's corporate limits in 2007. At the request of the property owners in that area, a commercial zoning (CBII) was assigned in place of the residential zoning initially proposed by staff. Further, the parcel immediately to the west was developed with the Overlook office condo project, and other sites farther west, not least of which is the Biltmore Park Town Square project, added to the level of development and traffic along the corridor.

The subject property hence is now an island of Office Business zoning adjacent to two other higher-intensity zoning classifications to the north (Institutional) and west (CBII). The areas to the south and east are the Lake Julian Progress Energy Plant Property, zoned by Buncombe County for Public Service. Agents seeking a new restaurant occupant for the property noted that the Office Business zoning district has the following restriction under *Design and operation*

standards: "All activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 10:00 p.m." The petitioner then submitted an application for the rezoning to make this property consistent with the CBII zoning and Institutional zoning across the road (neither of which imposes limits on hours of operation).

The stated intent of the Office Business district, according to the UDO, is "to reserve an area for the development of office uses and related support uses. This district will reserve areas for medium scale offices and a limited range of business uses and may serve as a transition area between commercial and residential areas." Given the current absence of nearby residential zoning, and the increase in development along the corridor, staff finds the existing zoning designation to be less than apt for the current conditions.

The Community Business II zoning district was "established to provide areas for medium-to-high-density business and service uses ... [and] ... is designed to be located primarily along minor and major thoroughfare streets which serve multiple residential neighborhoods." The CBII district does have a parking standard which is not applicable under the current zoning: "Parking shall be provided at the side or rear and not closer to the street than the edge of the structure." The current development does have an outbuilding which extends north to the edge of the parking lot, technically meeting the requirement, but further expansions to the main building, or new buildings would be required to adhere to this standard.

As of this writing, staff has received two communications from the public regarding this rezoning: one simply seeking more information, and one from the owner of the residence across Long Shoals Road, who expressed his support for the proposed change.

At their February 3, 2010, meeting the Planning and Zoning Commission recommended approval of the rezoning with a unanimous vote.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning district is highly compatible with the surrounding area.
- Would eliminate a small, isolated zoning district.
- Could encourage reuse of a currently unoccupied property.

Con:

- Site's original design was under a district which did not have the CBII requirement for the building to be oriented along the street.

Staff sees the proposed rezoning as an improvement over the existing situation and recommends approval.

Mr. Robin Boylan, representing the property owner, explained how this rezoning will help them move the project forward and asked for Council's support.

Mayor Bellamy closed the public hearing at 6:17 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3830. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 45

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 10-63 - RESOLUTION TO APPLY FOR THE NATIONAL ENDOWMENT FOR THE ARTS MAYORS' INSTITUTE ON CITY DESIGN PROGRAM GRANT

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is a selection of a competitive project that meets the grant requirements with a plan to provide the matching funds required. Various groups, including the HUB and the Downtown Master Plan Cultural Arts Implementation team, have come forward with proposals on projects.

Each year, the NEA offers numerous grants in a variety of art and design categories. This year, the MICD grant has been created to showcase and celebrate the goals of the MICD and that arts and culture contribute greatly as core components in building livable and sustainable communities. Applications will be reviewed on the basis of artistic excellence and artistic merit.

At their February 23, 2010 meeting, City Council asked that the proposals be brought back with additional information and to give the HUB and the Downtown Master Plan team the opportunity to talk about a possible collaboration. Since that time, the HUB has withdrawn their proposal.

Pros:

- The grant provides support for a variety of projects and activities;
- The arts are an integral part of the City of Asheville;
- Provides additional funding for a project or activity.

Cons:

- The City has limited ability to match funds;
- The City has limited resources to administer a federal grant;
- The application deadline is March 15, 2010.

The Public Art project has $25,000 in donated funds for a cash match. The remaining $25,000 comes from the NEA Grant for a total project budget of $50,000. The Downtown Master Plan project match is $50,000 from in-kind services including staff time and $50,000 from the grant for a total project budget of $100,000. Due to limited staff resources, the City may wish to consider hiring a part-time contracted worker to implement the grant for the Downtown Master Plan. This would require the cash match from the city of $25,000.

She provided council with grant guidelines and the timetable.

Staff recommends that City Council provide guidance on whether to submit a letter of intent and for what project from the options identified below:

Public Art Proposal

Ms. Ruggiero said that this project helps to implement numerous goals of the Parks, Recreation, Cultural Arts and Greenways Master Plan approved by Asheville City Council in early 2009.

The project would include community conversations with residents of the historic Montford neighborhood about the location of the artwork. Other stakeholders would include Momentum Science and Health Adventure Park (currently Health Adventure) whose future home is located one mile north along the Reed Creek Greenway.

This project would also require strong collaboration with the City of Asheville Public Art Board and the City of Asheville Greenway Commission.

The project would be part of the city's Public Artist of the Year program and to ensure the best possible artwork for the location, this call will be open to artists within the Southeast region of the United States as defined by the Southern Arts Federation (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Budget: Total Budget: $50,000; Cash Match: $25,000; In-Kind Services Match: $25,000

$40,000 will go towards artist fees for the design and installation of the public art project. The remaining $10,000 will be used for community charettes, artist travel, etc. The site has already been prepped and is ready for the design and installation of public art.

Downtown Master Plan Proposal (portions)

Ms. Jennifer Gordon said that having reviewed the implementation strategies outlined by our Downtown Master Plan (DMP) as well as noting similar action steps in our Parks, Recreation, Cultural Arts, & Greenways Master Plan (PRCA&GMP) we feel that our city would benefit significantly from receiving this grant. In May of 2009, the City of Asheville adopted the DMP, which culminated from a community process involving thousands of local citizens working with planners from a nationally recognized consultancy, Goody Clancy of Boston. The $170,000 investment created a working document to guide the community in five major areas, including Arts & Culture.

Asheville is committed to artistic excellence and the proposed project would enhance the community by first, promoting the arts and artists as an integral component of community life and an essential part of the public process - The importance of the arts is apparent in the heart of our city, where public/private partnerships are creating exciting new spaces for the celebration of the arts: Pack Square Park (committed to working with the best nationally - La Quatra Bonci, Overland, Valley Crest Landscape, the best locally - sculptor Hoss Haley and ceramicist Kathy Triplett - and tomorrow's artists - 400 middle school students who contributed original tiles), and currently, the expansion of the Asheville Art Museum with Polshek Partnership Architects and the Diana Wortham Theater renovation with PBC&L architect are underway. Secondly, mapping Asheville's cultural assets and identifying developmental potential in the cultural sector - The strength and breadth of the arts offerings in Asheville will benefit from the inclusion of our local art entrepreneurs and presenters (often sole proprietors and low income individual performers and artists) in a cultural needs assessment, thereby nurturing the continued excellence of the artistic community. Cooperation amongst our arts organizations, artists, non-profits, and businesses fosters communication and the creation of opportunities for collaboration, sharing of resources, and networking. This allows us to represent the full spectrum of the creative sector from civic institutions to grassroots art representatives such as individual artists, independent galleries, coffee shops, and clubs.

The evolution and sustainability of Asheville is dependent upon the success of arts & culture in our city. To this end, we are working to implement the strategic directives outlined by the Downtown Master Plan. This project celebrates our cultural vitality, harnesses our entrepreneurial spirit, and explores the economic tenacity that defines our creative community.

In summary, this is the production of a public cultural arts specific search engine that allows access to an in depth catalogue of the city's cultural programs and resources. Essentially they would be moving forward with the incubation of the Artists Resource Center.

Budget: Search Engine – 50%; Arts Alliance – 25% and Cultural Mapping – 25%. Grant funds will support contractual staff to execute research, data collection and search engine design.

Partners identified and matching funds to support the cultural asset mapping an search engine development include: $3,500 cash from Arts2People, $5,000 from the Asheville Design Center, $30,000 from the Diana Wortham Theatre in association with Cultural District planning and design; and in-kind support of staff time and/or design development. The total budget of $100,000 is $50,000 grant funds and $50,000 matched funds.

In response to Councilman Russell, Ms. Ruggiero explained the budget mix for the Public Art proposal noting that no taxpayer dollars are involved.

Ms. Gordon noted that the Downtown Master Plan proposal is also not asking for City funds. The staff report before Council indicated $50,000 from in-kind services including staff time; however, they have been able to find matches and now they do not require City funds.

Vice-Mayor Newman noted these are two good projects and felt that as we continue to look at the Downtown Master Plan we need to be clear on what the City's staff responses in supporting the Plan will be.

In response to Councilman Smith, Ms. Gordon explained that the Downtown Master Plan proposal has several phases and this is initial planning and research.

Councilman Smith would support the Public Art proposal at this time; however, he suggested the Downtown Master Plan committee submit this proposal to the Tourism Product Development Fund.

When Councilwoman Manheimer suggested a partnership with the already existing art scene entities, Downtown Master Plan Project Manager Sasha Vrtunski said that all those entities are part of the committee. Mayor Bellamy suggested a representative from the opera.

Due to the short timeframe and the confusion about in-kind services, Mayor Bellamy suggested we look at some best practices to see how this process might flow more smoothly in the future.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved to adopt Resolution No. 10-63 with the Public Art proposal being submitted. This motion was seconded by Vice-Mayor Newman and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 416

B. UPDATE ON 10-YEAR PLAN TO END CHRONIC HOMELESSNESS

Director of Community Development Jeff Staudinger said that the 10-Year Plan to End Homelessness sets out goals and strategies which are intended to drastically reduce homelessness in Asheville. For example, as an outcome of the Plan, housing stabilization services have been developed which reduce the impact that homelessness has on the Asheville and Buncombe County community. After five years of implementation, the Plan is being assessed by the Homeless Initiative Advisory Committee. They will make recommendations to the Housing and Community Development Committee for the Homelessness element of the 2010-2015 Consolidated Plan. The Advisory Committee, in partnership with other stakeholders, seeks to understand what is working, what remains to be addressed, and how to better measure progress.

January 2005: The 10-Year Plan was adopted by the City of Asheville and Buncombe County. The overall goals of the plan are:

- Reduce the number of people who become homeless through prevention,
- Decrease the length of homeless episodes, through rapid re-housing,
- Reduce the number people who experience chronic homelessness through permanent housing, and
- Provide community-based services and supports that support housing stability.

February 2008: The City of Asheville and Buncombe County Commissioners jointly established the Homeless Initiative Advisory Committee. The Committee's vision is to support the 10-Year Plan's implementation process, which will end chronic homelessness and reduce all types of homelessness over the next decade by investing resources in a coordinated, sustained effort that addresses the underlying causes of homelessness. The committee further focused the 10-Year Plan implementation, developing these four strategic directions:

- The Homeless Initiative will improve collection, coordination, and dissemination of data.
- Homeless and formerly homeless individuals have greater access to permanent, supportive housing, employment, education, health care benefits, and support services.
- The Homeless Advisory group will inform and advise public and private funders to ensure that resources are utilized effectively.
- The Homeless Initiative will support the community in providing permanent, supportive housing for 180 people experiencing chronic homelessness.

January 2010: While there is now unprecedented collaboration among providers, there are also growing economic pressures. Additionally, the 10-Year Plan in its 5th year and the Community Development Office is currently engaged writing the 2010-2015 Consolidated Plan.

With that backdrop participating planning groups, agencies, and advocates are now reviewing what has been accomplished, what has been most effective, and what specific actionable steps need to be established to measure if and to what degree the stated goals of the 10-Year Plan are being achieved.

As with other master plans, measurable strategies are important for measuring progress toward goals. The strategies of the 10-Year Plan need ongoing evaluation to ensure that the stated goals of the plan are indeed being met. Community data from local agencies, county, and city services (including the Homeless Prevention and Rapid Re-Hosing Program) will augment findings from a UNC-Chapel Hill research study on housing in Asheville, which is planned to be released in June. At the next Homeless Initiative Update to City Council, results from this data collection will be available.

Proposed Process:

- The Homeless Initiative Advisory Committee will monitor and report on activities regarding the 10-Year Plan evaluation process.
- An executive team made up of a City and County Representatives, the originator of the 10-Year Plan, and the Chair of the Advisory Committee will closely oversee the process and report out to the Advisory Committee and community stakeholders.
- Through the Community Development's Consolidated Planning process, 10YP goals will be reviewed and updated.
- HMIS, County, City, Agency, and UNC Chapel Hill data will inform evaluation of goals.
- Homeless Initiative staff, in partnership with the Homeless Coalition, continue to meet with stakeholders to gather community input.

- The Homeless Initiative Advisory Committee will review the 2010-2015 Consolidated Plan and continue to evaluate data, making recommendations to the Housing and Community Development Committee and City Council as appropriate.
- Results from this process will be reported for the Homeless Initiative's next update to Asheville City Council and Buncombe County Commissioners.

Pros:

- Review and discussion will incorporate local data and the vast experience of community members, offering a strong evaluative tool that will allow agencies and funders to further improve the housing crisis response system.
- Consideration of measurable strategies for achieving goals will allow the City and County to better consider progress toward those goals.
- The process will offer direction in challenging economic times. The ability to direct and utilize existing resources efficiently and effectively is now, more than ever, a key to successfully addressing community issues like homelessness.
- The City of Asheville's Community Development office will incorporate the 10-Year Plan into the 2010-2015 Consolidated Plan.
- As awareness of homelessness increases in the community, specific community-derived, evidence-based action steps will offer people who want to help real opportunities to impact homelessness.

Cons:

- The issues of homelessness are deep and wide; balancing the need to focus efforts in order to create action and also providing space for all avenues to be explored will be a challenge.
- Without strong leadership, the public discourse on homelessness could become focused on the failings of specific individuals instead of the community's systematic approach to people who have no home.

This process directly supports the City's Strategic Operating Goal of Affordable; supporting the Council's objective to end chronic homelessness.

No action is requested at this time. The results of the process described above will be incorporated into the 2010-2015 Consolidated Plan.

Mr. David Nash, Chairman of the Homeless Initiative Advisory Committee, focused on the key elements of the Ten-Year Plan which is to end chronic homelessness. We explained how they have made progress in reducing the chronic homeless. We need to think creatively about ways to increase one specific service – case management resources for that population. We are currently looking at reallocating existing resources within our own agencies.

Councilman Bothwell felt that one thing many homeless experience a lack of transportation. He suggested exploring offering bus passes to those who register with the HMIS system or some other participation in programs, since we are running the buses anyway. Vice-Mayor Newman suggested the Transit Commission review that suggestion.

Councilman Smith said that in our conversation with our legislators regarding what our community mental needs are, case management services should be kept in mind.

Mayor Bellamy noted that Asheville is a leader across the country in keeping people in housing and wrapping services around them. However, another discussion needs to be held on the behavior of some who are praying on the homeless. She felt we will be hearing more from service providers who are willing to work with our homeless population. She supported case management resources.

In response to Councilman Davis, Mr. Staudinger said that various homeless statistics are coming together to understand what is happening in our community over time.

Councilman Smith thanked the community partners who have signed onto and are utilizing the HMIS system. He felt that if we can point people in the right direction we can provide a path out of homelessness.

C. SHORT-TERM ACTION PLAN ON THE TRANSIT MASTER PLAN IMPLEMENTATION

RESOLUTION AUTHORIZING CITY STAFF TO IMPLEMENT CERTAIN OPERATIONAL CHANGES TO THE TRANSIT SYSTEM INCLUDING SYSTEM-WIDE ON-TIME PERFORMANCE CHANGES AND 30-MINUTE FREQUENCY

RESOLUTION AUTHORIZING CITY STAFF TO MOVE FORWARD WITH DEVELOPING A MARKETING STRATEGY TO PROMOTE THE OPERATIONAL CHANGES AND CREATING A NEW "BRAND" FOR THE TRANSIT SYSTEM

BUDGET AMENDMENT TO SET UP THE PROJECT BUDGET FOR THE MARKETING STRATEGY PROJECT

Director of Public Works Cathy Ball said that this is the consideration of (1) a resolution authorizing City staff to implement certain operational changes and a new fare structure to the transit system, based on recommendations included in the Transit Master Plan; and (2) a resolution authorizing City staff to move forward with developing a marketing strategy to promote the operational changes and creating a new "brand" for the transit system.

The Transit Master Plan (TMP) was approved by City Council on October 27, 2009. As a part of the plan's approval, City Council asked staff to meet with the Transit Master Plan Steering Committee and the Transit Commission to develop an action plan to begin the implementation process for the Transit Master Plan. City staff met with both groups during November and December 2009 and developed the action plan. The complete report was sent to City Council members on March 2, 2010. The action plan focuses on three operational areas; specifically, operational changes, fare structure, and marketing. The specific recommendations for each area are listed as follows:

- Operational Changes

In order to provide better service to our customers, 30-minute frequency is recommended along the main corridors. In order to accomplish this task, existing routes would be staggered in four corridors; namely, Patton Avenue – Routes 15 and 16, Haywood Road – Routes 1 and 9, Biltmore Avenue – Routes 4 and 8, and Tunnel Road – Routes 13 and 26. Merrimon Avenue would remain at hourly service.

System-wide on-time performance changes are also recommended. Currently, one of the biggest challenges the transit system faces is keeping the buses on-time mainly due to route deviations and Dial-A-Ride service. In order to accomplish this task, existing route deviations will be reduced or eliminated and Dial-A-Ride service will be stopped. The subject action will address driver's concerns with the current route schedules and the pressure they constantly receive from riders to be on-time. First Transit, the City's management company, stresses safety and has an extensive ongoing training program for the bus drivers. This training includes defensive driving, state laws regarding safe driving, accident reporting and investigation, and regular safety meetings. The overall purpose of the training is to ensure that the rider's safety is always the main consideration when using an Asheville Transit bus.

The total cost to implement the 30-minute frequency on four of the five major corridors and the system-wide on-time performance changes is $44,000. $31,000 of the cost is due to the production and printing of new maps and is included in the marketing section. The remaining $13,000 will be absorbed in the current fiscal year's operational budget.

The timeline to implement these changes would be 120 days beginning after City Council approval.

Although the action plan recommends implementing the system-wide short-term recommendations as proposed in the Transit Master Plan including Sunday service, 30-minute frequency on all five main corridors, more evening service, and eliminating the evening gap, City staff is not asking for specific action at this time. This recommendation should be considered as a part of the overall ongoing budgetary process for Fiscal Year 2010-11.

- New Fare Structure

During the developmental process of the Transit Master Plan, it was determined that the current discounts for ticket books, monthly passes, and annual passes were far in excess of typical discounts offered throughout the United States. The average discount offered by American Public Transportation Association (APTA) members ranges from 15% to 25%. The current discount is 36% for ticket books, 62% for monthly passes, and 76% for annual passes. To be more reflective of industry practice, the Transit Master Plan recommends reducing the current discounts offered to riders who purchase ticket books and passes. During Fiscal Year 2010-11, the discount would be set at 18% for ticket books, 50% for monthly passes, and 55% for annual passes. If approved, the new rates would be $9.00 for ticket books, $20.00 for monthly passes, and $220.00 for annual passes compared to $7.00, $15.00, and $120.00 respectively.

It should be pointed out that no changes to the actual cash fare of $1.00 are recommended at this time.

The cost to implement this recommendation would be absorbed by the marketing component of the operational areas.

The Asheville City Council Finance Committee will be reviewing the new fare structure on March 4, 2010, and if approved, the recommended changes will move forward with other citywide changes to the Fees and Charges Manual to be considered by City Council as a part of the overall budget approval process.

- Marketing

One of the most important elements to enhance the Asheville Transit System, as expressed in the Transit Master Plan, is to develop a marketing strategy that focuses on the creation of a new image for the system and promotion of route changes including system "branding" (logo), color schemes for the buses, signs, and new maps. The City would hire a consultant to support and assist in the implementation of the marketing strategy. Marketing is an eligible expense under the annual Federal allocation, with an 80%/20% ratio (Federal/Local).

The total cost to implement the subject marketing strategy is a maximum of $150,000, with $120,000 being paid by Federal Funds and $30,000 paid by City Funds. The Transit Enterprise Fund currently does not have the $30,000 Local match available; therefore, the City Council would need to approve a transfer from the General Operating Budget Fund Balance. The consulting work represents 33% of the cost, which equates to $50,000. The balance of the cost, $100,000, will be used to produce and print the appropriate schedules and maps.

The timeline to complete the subject task would be 120 days beginning after City Council approval.

This action complies with the current City Council's Strategic Operating Plan for Fiscal Year 2009-10 by helping to support a sustainable community through a strong commitment to long-term planning and fiscal responsibility; and helping to establish a multi-modal transportation plan by making needed transit system improvements.

The Transit Commission and the Transit Master Plan Steering Committee support the subject actions. Both groups actively participated in the process to suggest the recommendations.

Pros:

- On-time performance changes will increase the transit system's reliability and will have a positive impact on the drivers and riders.
- 30-minute frequency on four of the five main corridors will give riders more mobility options and will potentially attract choice-riders to the system.
- The new fare structure will help bring fares more in line with industry practice.
- The marketing strategy will give a fresh image to the transit system, promote the operational changes, and highlight the new buses that the City should receive towards the end of the current calendar year.
- Federal Funds will provide 80% of the total cost of the marketing task, which equates to $120,000.

Cons:

- The total maximum cost of the subject project is $163,000.
- The $13,000 cost to implement the operational changes would be absorbed by the current fiscal year's transit operational budget.
- A 20% local match, which equates to $30,000, is required for the marketing task.
- The new fare structure might produce a decrease in ridership (approximately 8% for monthly pass holders) during the first several months after implementation.

The total anticipated cost of the subject project is $163,000. The $13,000 operational changes cost will be absorbed by the current fiscal year's transit operational budget. The marketing strategy cost of $150,000 will be funded with Federal Funds at the rate of 80% or $120,000 and the balance of $30,000 by the City. Since the Transit Enterprise Fund currently does not have the $30,000 Local match available, the City Council would need to approve a transfer from the General Fund Fund Balance. The specific impact of the new fare structure, which involves reducing the discount rate for special fare packages, is unknown at this time but should have an overall positive effect on revenue.

City staff recommends that City Council adopt (1) a resolution authorizing City staff to implement certain operational changes to the transit system, based on recommendations included in the Transit Master Plan; (2) a resolution authorizing City staff to move forward with developing a marketing strategy to promote the operational changes and creating a new "brand" for the transit system; and (3) a budget amendment, in the amount of $150,000, to set up the project budget for the Marketing Strategy Project.

Vice-Mayor Newman said that there is only a certain amount of federal government that Asheville gets for the transit system. He wondered if we use this 80% match ($120,000) for marketing, would our certain amount of federal funding be decreased. Ms. Ball explained that the transit deficit is on the operational end. The $120,000 for the marketing strategy could not be used for operations; however, we could use it for other capital things.

Vice-Mayor Newman expressed concern about changing the fare structure vs. the relatively modest revenue gains.

In response to Vice-Mayor Newman, Ms. Ball said that said that there are no additional fare changes in the Transit Master Plan.

Councilman Russell was concerned about the rising expenses related to transit and since the marketing strategy would have to come out of the General Fund Fund Balance, he could not support the action.

When Mayor Bellamy asked if the market study would be eligible from Community Development Block Grant (CDBG) Funds, it was noted by Community Development Director Jeff Staudinger that the marketing strategy could possibly be an eligible expense but would requires a lot of discussion. Ms. Ball noted that going through the CDBG process will impact delaying the schedule on the bus delivery.

There was discussion about the $30,000 recommended to come out of the City's General Fund Fund Balance. Mayor Bellamy asked if there was a way for staff to find another option to come up with the $30,000. Ms. Ball said that she would be happy to delay action on these items for approximately 4 weeks (without holding up bus production) and provide Council with another option to fund the $30,000, noting that there will be something else that will have to be delayed.

Transit Services Manager Mariate Echeverry responded to Councilwoman Manheimer when she asked if Merrimon Avenue is included in the 30-minute frequency.

Councilwoman Manheimer asked that the fold-out map schedules at the bus stops be reconfigured to be user-friendly.

Mayor Bellamy said that we will lose some of the riders by increasing the fares and asked if staff could reconsider some other options to fund these issues.

Vice-Mayor Newman moved to adopt the resolution authorizing City staff to implement certain operational changes and a new fare structure to the transit system, based on recommendations included in the Transit Master Plan. This motion was seconded by Councilman Bothwell. Ms. Ball noted that if we do the rate structure, we will have to change the maps and that would be the $30,000 figure. Vice-Mayor Newman then withdrew his motion.

Councilman Smith suggested earmarking a portion of the Parking Fund money toward a marketing effort going forward.

Ms. Hanna Raskin, Chair of the Asheville Transit Commission, supported the actions staff is requesting.

Mr. Michael Soule, representing Get There Asheville, strongly supported staff's recommendations and highlighted the importance of marketing.

Rev. Christopher Chiaronmonte suggested asking the Tourism Development Authority for the $30,000.

Vice-Mayor Newman moved to continue these items until April 13, 2010. This motion was seconded by Councilman Davis and carried unanimously.

At 7:24 p.m., Mayor Bellamy announced a short recess at which time Council would conduct a closed session.

Closed Session

At 7:24 p.m., Councilman Smith then moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is approximately 11 acres at Shelburne Road and Hominy Creek Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:37 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilwoman Manheimer and carried unanimously.

D. **RESOLUTION NO. 10-64 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 301 LONG SHOALS ROAD**

RESOLUTION NO. 10-65 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS BEHIND 380 LONG SHOALS ROAD

RESOLUTION NO. 10-66 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 1 VOLVO DRIVE, 42 SCHENCK PARKWAY

RESOLUTION NO. 10-67 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS DORSET DRIVE

RESOLUTION NO. 10-68 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 67 MOUNTAINBROOK ROAD

RESOLUTION NO. 10-69 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 73 AND 75 WATERS ROAD

RESOLUTION NO. 10-70 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 26 ROCKING PORCH ROAD

RESOLUTION NO. 10-71 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 40 KEASLER ROAD AND 23 SUNNYCREST DRIVE

RESOLUTION NO. 10-72 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 617 UPPER SONDLEY DRIVE

RESOLUTION NO. 10-73 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS 1445 TUNNEL ROAD

RESOLUTION NO. 10-74 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS WILLOW WINDS LANE

RESOLUTION NO. 10-75 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN PORTIONS ALONG AIRPORT ROAD

Urban Planner Julia Cogburn said that this is the consideration resolutions approving the Annexation Services Plan for twelve (12) areas contiguous to the current boundaries of the City of Asheville.

Staff has identified twelve (12) areas with potential for being annexed: Ingles; Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road. Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

The following steps and dates meet the process required by State law:

- Council Adoption of Resolution of Intent – 02/23/10
- Council Adoption of Services Plan – 03/09/10
- Public Information Meeting – 04/12/10
- City Council Public Hearing – 05/11/10
- Annexation Ordinance Adopted – 05/25/10
- Effective Date – 09/30/10

The second step in the annexation process is for the City Council to consider and approve an Annexation Services Plan for the areas to be annexed. The Annexation Services Plan includes a demonstration of how each area proposed for annexation meets the statutory qualifications for annexation and further demonstrates the capability of the City to provide urban services to these areas.

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.
- Fills in service delivery gaps and split jurisdiction issues on the edge of corporate limits.

Con:

- Residents of proposed annexation areas may object to such annexation.

The fiscal impact of this round of annexations is found in the Financing Plan for Annexation Areas section (Section 3) of the Plan for Service.

City staff recommends that City Council adopt the resolutions approving the Annexation Services Plan for the twelve (12) areas.

Urban Planner Blake Esselstyn reviewed the annexation standards. In summary, the 2010 annexation areas are (1) 12 areas identified; (2) adjacent to south and east areas of the City; (3) principal aim is clean-up, closing gaps, resolving split jurisdictions and addressing inconsistencies; and (4) mostly commercial and residential uses.

Using maps, Mr. Esselstyn summarized the Plan for Services as follows: (1) Ingles area (a) 1.2 parcels; (b) 3.6 acres; (c) commercial land use; and (d) meets nonresidential urban use text; (2) Schenck Parkway area (a) portion of 1 parcel; (b) 0.7 acres; (c) commercial land use; and (d) meets nonresidential urban use text; (3) Farleigh Street area (a) portions of 2 parcels; (b) 0.6 acres; (c) commercial and residential land use; and (d) meets development test; (4) Deerfield area (a) portion of 1 parcel; (b) 29.3 acres; (c) institutional land use; and (d) meets nonresidential urban use text; (5) Mountainbrook area (a) 1 parcel; (b) 4.4 acres; (c) approximately 65 residents; (d) institutional land use; and (e) meets nonresidential urban use test and population density test; (6) Waters Road area (a) portions of 2 parcels; (b) 0.6 acres; (c) approximately 2 people; (d) residential land use; and (e) meets population density test, subdivision test, and development test; (7) Rocking Porch Road area (a) portions of 1 parcel; (b) less than 0.1 acres; (c) one dwelling; (d) approximately 2 people; (e) residential land use; and (f) meets development text; (8) Keasler/Sunnycrest area (a) 2 parcels; (b) 1.4 acres; (c) 2 dwellings; (d) approximately 4 people; (e) residential land use; and (f) meets population density test, subdivision test, and development test; (9) Upper Sondley area (a) 1 parcel; (b) 0.98 acres; (c) 1 dwelling; (d) approximately 2 people; (e) residential land use; and (f) meets subdivision test and development test; (10) Tunnel Road area (a) 1 parcel)b) 1.5 acres; (c) commercial land use; and (d) meets nonresidential urban text; (11) Willow Winds area (a) 1 parcel; (b) 12.1 acres; (c) commercial land use; and (d) meets nonresidential urban use test; and (12) Airport Road area (a) 18 parcels; (b) 122.1 acres; (c) mostly commercial land use; and (d) meets development test.

Ms. Cogburn then reviewed the Plan for Extension of Services for police protection (2 new police officers), fire protection, solid waste collection, street maintenance (no new streets in plan), water distribution (no waterline extensions), sewer collection (1,632 linear feet of 8-inch sanitation sewer in the Airport Road area), and administration and other services.

Revenue summary for all areas total (1) ad valorem - $222,354; (b) state utility taxes - $45,514; (c) sales tax - $80,586; (d) Powell Bill - $4,594; (e) fees, charges and permits - $2,210 for a total of $353,258.

Annually recurring expenditures totals (1) police - $84,016; (2) fire - $40,110 (5-year duration for rural fire districts); (3) solid waste - $1,741; (4) recycling - $212; (5) street maintenance – zero; and (6) street lighting – zero for a total of $126,079. After five years total - $85,969.

Capital expenditures are $13,000 (Police); $17,354 (Fire); $358,560 (sewer lines); $765 (rollout containers) for a total $389,679.

In response to Mayor Bellamy, Ms. Cogburn said that the sewer line capital expenditure of $358,560 is to extend sewer lines.

When Mayor Bellamy asked about fire protection, Assistant Fire Chief David McFee said that all the areas touch an existing parcel and we are already responding. The rural fire departments presently serve 7 of the annexation areas and each of the affected fire departments will be offered negotiated contract opportunities for five years to reimburse them for lost revenue from fire taxes within the territories they respectively served prior to annexation. Mayor Bellamy noted that because of how sales taxes are distributed, technically we are paying them twice.

In response to Councilman Bothwell regarding stormwater fees, Public Works Director said that if you live within the City limits, you pay a stormwater fee based on your amount of impervious surface. There will be some increase in revenue that would go into the Stormwater Utility Fund.

After a short discussion about MSD sewer lines and at Vice-Mayor Newman's request, it was the consensus of Council to ask the Planning & Development Committee review the current Council policy of extending sewer lines.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that the Airport annexation area is the largest capital expense where we will have to invest over $300,000. The report states that it will be paid by utilizing current and anticipated surplus General Fund revenues. Since we don't have any surplus General Fund revenues, she would vote against the motion.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-64. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 417

Vice-Mayor Newman moved for the adoption of Resolution No. 10-65. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 418

Vice-Mayor Newman moved for the adoption of Resolution No. 10-66. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 419

Vice-Mayor Newman moved for the adoption of Resolution No. 10-67. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 420

Vice-Mayor Newman moved for the adoption of Resolution No. 10-68. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 421

Vice-Mayor Newman moved for the adoption of Resolution No. 10-69. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 422

Vice-Mayor Newman moved for the adoption of Resolution No. 10-70. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 423

Vice-Mayor Newman moved for the adoption of Resolution No. 10-71. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 424

Vice-Mayor Newman moved for the adoption of Resolution No. 10-72. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 425

Vice-Mayor Newman moved for the adoption of Resolution No. 10-73. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 426

Vice-Mayor Newman moved for the adoption of Resolution No. 10-74. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 427

Vice-Mayor Newman moved for the adoption of Resolution No. 10-75. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

RESOLUTION BOOK NO. 32 – PAGE 428

VI. NEW BUSINESS:

A. FRENCH BROAD WATER RESOURCES STUDY COMMITTEE

Mr. Joe McKinney, Executive Director of the Land-of-Sky Regional Council, said that the Land-of-Sky Regional Council's (LOSRC) Executive Committee has recommended that the City Council undertake a broad study of water resources in the region, the capacity of water systems, future water supplies, water quality conditions and other key water resource issues.

The State is investigating water resource issues including how to allocate water within river basins across the state. LOSRC's Executive Committee members believe that we need a regional forum to educate ourselves on water resource issues and to discuss strategies. We want to be proactive and not reactive to state and federal actions affecting our water resources.

Please note that the establishment of a regional water systems is not being proposed, but our elected officials believe that there are opportunities for communities to work together cooperatively to supply and manage water for their citizens.

LOSRC has recently received a $26,108 grant from the N.C. Division of Water Quality that will help to establish a French Broad Water Resources Study Committee. Once established, the group will hold a series of monthly meetings over the next year to study and identify key water resource issues and develop strategies to address these issues. A report listing key issues and strategies will be the final deliverable.

They have also made application to the N.C. Rural Center for $40,000 to assist in collecting detailed information on municipal water systems in the region. The Rural Center will announce the successful grant awards in the near future.

The French Broad Water Resources Study Committee will be comprised of a combination of local elected and appointed officials and key water stakeholder/experts in the French Broad River Basin. There will be at least three representations from each county in the LOSRC region:

two appointed by the County Commissioners and one appointed by the largest municipality in each county.

They requested that City Council appoint a person to serve on the Study Committee since the City of Asheville operates a large water system in our region. Please note that Buncombe County is also being asked to appoint two individuals – one representing the county's interests and one representing a large water user (industry, agriculture, etc.) or a smaller water system in the county. He hoped that all appointments would be made by the end of March, 2010.

The Study Committee meetings will be public meeting and others from the community are welcome to attend.

Mayor Bellamy felt it was good opportunity to talk with water partners in our region. She felt that our Water Resources Director Steve Shoaf would be a good addition to the committee.

In response to Councilman Smith, Mr. McKinney said the time commitment would be monthly meetings for 12 months.

Councilman Davis respected the Land-of-Sky Regional Council; however, we have spent significant time to dissolve the water agreement, bring it back in-house and improve our water system, and did not want to do anything to compromise the progress to date.

In response to Councilman Russell, City Manager Jackson said that staff is here to support collaborative efforts, lend our analyses, provide the benefits of our planning studies, and lend whatever level of staff necessary to help with that technical review. However, he felt this is a forum made up of a combination of elected officials. Beyond the level of technical support, which we would be happy to lend, he felt it might be more appropriate for Council to appoint a leader – not a manager or staff engineer. However, staff would be happy to participate in the appropriate way. He felt elected leadership, along with staff support, seems the best approach.

Mayor Bellamy spoke about the importance of this initiative and offered her assistance.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Newman moved to (1) support the City participating in this process; (2) appoint Mayor Bellamy and Councilman Bothwell as the Alternate to represent the City of Asheville to the French Broad Water Resources Study Committee; (2) authorize City staff support; and (4) authorize the City Manager or his designee to be appointed to the Executive Committee or establish a technical committee of technical staff. This motion was seconded by Councilman Bothwell and carried unanimously.

B. RESOLUTION NO. 10-76 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN

Mayor Bellamy noted that the original staff report and announcement included a loan from the Housing Trust Fund to Mountain Housing Opportunities (Larchmont). That has been deleted from Council's consideration at this time.

Councilman Davis moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously. At this time, Councilwoman Manheimer left the meeting room.

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing approval of a Housing Trust Fund loans to Beaucatcher Properties, LLC (Tunnel Rd).

Staff has received four (4) applications for HTF funding totaling $1,668,000. These applications were presented to the Housing and Community Development Committee (HCD) on January 28 and each was evaluated on its own merit. Resources were insufficient to approve all applications. The current available cash balance in the Housing Trust Fund is $446,400.

Of the four (4) applications presented, two have been recommended by the Committee for approval. An application from Mountain Housing Opportunities, Inc. (MHO) for the Larchmont project in North Asheville has been approved by HCD; however, the MHO proposal will not be submitted to the City Council for final approval until zoning approval has been received. The following application from Beaucatcher properties is presented for immediate consideration:

Beaucatcher Properties, LLC- Tunnel Road (address unassigned) $200,000.

Mr. Kirk Booth representing Beaucatcher Properties LLC has proposed a 12-unit rental project on the Tunnel Road corridor. The proposed project is a cottage development on 1.01 acres directly behind the Mountaineer Inn. The property is easily accessible to transit, employment, and services. The total anticipated project cost is $1,272,000. The terms requested are $200,000 at 2.00% interest for 30 years, representing 15.7% of total project cost. The application scored 96 out of a possible 130 points. The per-unit subsidy is $16,667.

The developer has committed to marketing the project to Section 8 tenants and has agreed to voluntarily deed restrict the property for thirty (30) years to align the project with the new policy guidelines adopted in January. One (1) unit will be ADA compliant and all units will be 3-bedroom residences. Mr. Booth has also agreed to sign a personal guarantee on the loan as required under the proposed underwriting and risk management revisions.

The developer was provided HTF financing on a similar project at 57 Nancy Street in February 2009. That project has performed well to date and is now 80% complete with nearly all completed units being occupied by Section 8 voucher holders. The quality of construction is very good and the project has been built in conformity with the original plans and specifications.

Pros:

- The development costs per unit are relatively low at $106,000.
- The cottage development style allows for added density and housing appropriate for families with children.
- The urban location provides easy access to employment, transit, and services.
- The developers' agreement to a 30 year Deed Restriction substantially exceeds the minimum requirements for affordability under the old guidelines, and is in line with the new guidelines.
- The developer has successfully completed other local projects of similar size and scope.
- Past performance with the Housing Trust Fund has been excellent.

Cons:

- Proposed rents are near the program maximum.
- The Housing Needs Assessment indicates that one and two bedroom units are most needed at the present time.
- The land has not yet been appraised.

The project directly supports the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourages higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing

affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Trust Fund is $446,399.93. There are sufficient funds at the present time to fully fund the proposed development. The available fund balance will be reduced by $200,000 to $226,399.93 if the loan is approved. The project is new construction and is anticipated to add $1.2 million dollars in new development to the City tax base.

The Housing and Community Development Committee recommends City Council approve a resolution approving a loan of $200,000 to Beaucatcher Properties, LLC for the development of 12 rental units on Tunnel Road.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 10-76. This motion was seconded by Councilman Davis and carried unanimously (with Councilwoman Manheimer being recused).

RESOLUTION BOOK NO. 32 – PAGE 429

At this time, Councilwoman Manheimer returned to the meeting.

C. RESOLUTION NO. 10-77 - RESOLUTION APPROVING THE HOUSING TRUST FUND UNDERWRITING AND RISK MANAGEMENT POLICIES

RESOLUTION NO. 10-78 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL

Community Development Director Jeff Staudinger said that the Housing and Community Development Committee has reviewed and is recommending approval of a resolution authorizing adoption of Housing Trust Fund underwriting and Risk Management policies.

Community Development Division staff and City Council's Housing and Community Development Committee (HCD) have been reviewing and revising the Housing Trust Fund's policies and procedures since June, 2009. At the January 26th meeting, Council formally adopted specific policies for the fund related to eligibility, loan terms, and fund priorities. Staff's focus has now shifted to the administrative concerns of fund management.

Housing Trust Fund programs both regionally and nationally have been researched to identify standard policies and procedures that may strengthen the underwriting and closing of approved HTF loans. In addition to web-based research, staff has conferred with a senior commercial lender at a local bank to assess the potential impact of the proposed policy recommendations on construction financing. This discussion also addressed other actions that could be taken to identify potential problems or areas of concern with subsidized developments.

In summary, the purpose is to (1) create underwriting policies for prudent decision-making; (2) strengthen the quality of loans; (3) reduce City risk; and (4) reflect best-practices in lending.

Policy recommendations related to underwriting and risk management were made by staff and discussed in detail by HCD at the February 18th meeting.

A. The following policy concerns have been noted by the Committee:

- No formal underwriting guidelines have been adopted since the creation of the fund;
- Due to the lack of clear guidelines, past decisions relating to the assumption of risk have been somewhat subjective. Consistency between applications is needed to run an effective program and protect the City's substantial cash investment.
- Formal written policies for the administration of the fund, underwriting of new applications, and long term risk management practices are needed to strengthen the quality of funded loans and to prevent the City from assuming a disproportionate amount of risk ;
- Administrative approaches to fund management should be proactive rather than reactive, and should incorporate best practices from other revolving loan funds.
- Lessons learned in the Fund's operations need to be translated into the Fund's underwriting and risk management processes.

B. In response to these concerns, the Housing and Community Development Committee is recommending nine (9) underwriting and risk management criteria to be incorporated into the Housing Trust Fund Guidelines. The Committee's recommendations are summarized below:

1. An application fee of $300 will be required to be paid at the time of application. The fee will be used to pay for credit reports on all principal partners (excluding LIHTC projects and non-profit organizations), project monitoring expenses, and criminal background checks if determined as necessary by the Community Development Director, and assist with other costs of administration.
2. The Housing Trust Fund loan must close in no less than 3rd lien position.
3. With the exception of land acquisition, all loans will close as a line of credit.
4. A property appraisal dated no later than six (6) months prior to closing will be required. If the appraisal reflects a total loan-to-value (TLTV) of more than 95%, the City may require a pledge of additional equity or other assets prior to closing.
5. Eligible costs will be limited to land acquisition and hard costs only. All draws, except those for acquisition, will be on a reimbursement basis only.
6. All financing commitments must be secured prior to closing.
7. All HTF funds must be drawn down proportionately with other financing sources.
8. With the exception of LIHTC projects and non-profit agencies, personal guarantees will be required for all principals, partnerships, and majority members holding more than 19.9% ownership in the organization.
9. If the risk of loss appears high, a loan may be denied despite the proposed project meeting other goals and objectives of the City.

Pros:

- Provides formal written policies and procedures for administration of the Housing Trust fund.
- Provides a proactive rather than a reactive approach to loan review.
- Draws upon the experience of other similar programs to strengthen the current risk management structure of the HTF.
- Eliminates subjectivity in the underwriting and closing processes.

Cons:

- The fund has not had clear underwriting guidelines in the past, and this may be seen by some as unnecessary or onerous requirements.
- No application fee has been charged in the past, and this may be perceived as limiting the fund's availability to small scale developers.

These changes directly support the City's Strategic Operating Goals: (1) *Affordable*: The policy proposals are supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable:* The policy proposals ensure financial accountability by matching resources with strategic initiatives and creating meaningful performance measures. The policy recommendations are also supportive of the Consolidated Strategic Housing & Community Development Plan in that the adoption of risk management and accountability standards will directly impact the funds ability to assist in increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Regarding the fiscal impact, the collection of an application fee, depending on the number of applications, may have an overall positive affect on the cost of fund administration. Generally, the proposed underwriting and risk management recommendations are intended to help protect the Fund from losses.

The Housing and Community Development Committee recommends City Council approve a resolution adopting the proposed underwriting and risk management changes to the Housing Trust Fund guidelines.

In response to Councilwoman Manheimer, Mr. Staudinger said that we have not gotten title insurance policies on our loans, but we will incorporate that as part of the process in the future.

Vice-Mayor Newman said that this is a good set of procedures while still making the process being user-friendly.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-77. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 430

Vice-Mayor Newman moved for the adoption of Resolution No. 10-78. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 431

D. CITY HALL WATER INFILTRATION REPORT

RESOLUTION NO. 10-79 - RESOLUTION AUTHORIZING CITY STAFF TO DEVELOP A REQUEST FOR QUALIFICATIONS FOR ENGINEERING DESIGN, PREPARATION OF CONSTRUCTION DOCUMENTS AND TO CONDUCT SPECIAL INSPECTIONS FOR THE REPAIRS TO THE CITY BUILDING

ORDINANCE NO. 3831 - BUDGET AMENDMENT FOR A PROJECT MANAGER POSITION FOR THE CITY HALL BUILDING PROJECT

Director of Building Safety Robert Griffin said that the purpose of this report is to present the City Council with the results and recommendations of a water infiltration study conducted on the City Building (Asheville City Hall), and seek Council action to initiate repairs to the building.

The Asheville City Building is recognized throughout the country as an Art Deco masterpiece. Douglas D. Ellington, an architect who came to Asheville in the mid-1920s, designed the eight-story building, which was completed in 1928. Ellington stated that the design was "an evolution of the desire that the contours of the building should reflect the mountain background."

Ellington chose building materials that presented a "transition in color paralleling the natural clay-pink shades of the local Asheville soil," according to the booklet that was printed for the dedication of the building on March 19, 1928. The unique octagonal roof is covered with bands of elongated triangular terra cotta red tiles. Between the two levels of the roof are angular pink Georgia marble piers, between which are precise vertical rows of ornamental green and gold feather motifs. The building façade is composed of brick veneer installed over a variety of backup materials including brick and tile.

Terra cotta is a building material that is cast from clay and then glazed. Terra cotta components add great color and detail to a building, but we now know that they are also highly susceptible to cracking and damage from impacts or freeze and thaw cycles. It is also often thought that old brick buildings will remain solid and sturdy forever, requiring little or no maintenance. However, the life expectancy for most mortars is up to 75 years. At the end of its life-cycle, mortar will require repair before moisture and water infiltration create damage to the interior of the building.

Over the last several years, the City of Asheville has implemented smaller repair and refurbishment projects to address water infiltration issues present on the upper floors of the building. However, when signs of major water infiltration became apparent, Asheville City Council approved Resolution Number 09-79 on April 28, 2009, authorizing a contract with Sutton-Kennerly & Associates to conduct an exterior inspection for water infiltration on Asheville City Building. The scope of this investigation was to evaluate the condition of the existing exterior of the building in an effort to determine the source of water leakage into the building, assess the existing condition of cladding materials on the building, and to develop recommendations for any repairs needed.

During the course of the investigation, scaffolding was erected on the north and south elevations of the building, and existing brick was removed from approximately 12 locations to evaluate conditions behind the brick veneer. In addition, several of the terra cotta sections were removed from the tops of the parapet walls at the corners of the building, as was one section of marble coping from the top of the parapet wall on the south side of the building.

Results and Recommendations: Sutton-Kennerly & Associates' report outlines the causes of water infiltration, damage as a result of freeze-thaw conditions, and weather related damage as a result of building construction techniques that are now known to be insufficient to control water infiltration. Causes of the water infiltration include the lack of flashing on the building; deterioration of mortar joints between the decorative terra cotta units as well as corrosion of the steel anchorage of the terra cotta to the building; corrosion of ties securing the brick veneer to the building; the corrosion of shelf angles that serve as lintels over window openings; warping and damage to upper floor windows; failure of existing sealants; cracks in the rising walls at the small roof on the upper floors, and; the absence of brick expansion control joints, among others.

The repair of these issues will be complex and costly. Damaged terra cotta sections must be removed and replaced with new tiles to prevent further water infiltration and structural damage. Replacement components must be created to replicate the design of the original piece, as well as the coloration that is acquired as the surrounding pieces age. Securing and repairing the brick veneer and other building components will require extensive hand work. The total time to complete the project, from developing construction documents and bidding the project to

completing the construction, is estimated to be in the range of 36 to 48 months or more. Staff estimates that it will take 12-14 months to prepare for construction, and that construction alone will take an additional 24-36 months. The project will be phased to assess the effectiveness and aesthetics of the repairs.

At this time, the total cost of the project is estimated to be around $5 million. Staff will be prepared to present City Council with a financing plan for the project when the contract for construction is considered by Council. Financing for the project will need to be in place by Fiscal Year 2010-2011.

Due to the magnitude and importance of this project, staff recommends the project budget include a project manager (PM) for the City of Asheville. This PM position will develop a full-scale project plan including detailed schedules and budgets and will work to ensure construction documents and specifications meet the City's requirements for quality control and operations. The PM will also formulate the bid package, schedule and conduct pre-construction meetings, complete progress reports, negotiate costs of the initial contract and change orders with the goal of minimizing change orders and cost increases, and provide communication to and from the City, contractors, and design firm. The project manager will ensure that the City of Asheville's sustainable and energy efficiency goals are met.

Pros:

- The City Building is an architectural treasure and the crown jewel of Asheville. Restoration of the building is essential to the city's historic and cultural fabric.
- Approving the resolution authorizing the development of a RFQ for construction and bid documents begins the project.
- The project manager position will improve the chances of the project's completion on time and on budget.

Cons:

- Administering a project of this size and following through on implementation will require significant staff time.
- Funding for the project is not currently budgeted and will impact the city's financial picture.
- A delay will further deteriorate the building and could threaten its structural integrity.

This project supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

The costs for hiring a project manager, as well as the cost for developing bid and construction documents, are not included in the current year's budget. The budget amendment for FY 10 in the amount of $19,842.50 will provide funding for the project manager for the remainder of the current fiscal year. For FY 11, a full year's cost is estimated to be $79,100, which will cover salary and fringe benefits. Staff is actively seeking federal support and grant opportunities that projects of this type would qualify.

The costs for a professional design firm to develop the bid and construction documents and special inspections conducted by the engineers are unknown at this time, but they are currently estimated to be $395,000. During a subsequent Council meeting when Council takes formal action to award the contract for the bid and construction documents, a second budget amendment will be presented to providing funding for the cost of the contract. Additional costs for construction above the cost estimates in the report could occur when actual bids are obtained.

Once debt financing is in place, the city could be reimbursed for design and project management expenses previously incurred through bond or bank proceeds. Additional costs could be anticipated as change orders during construction. Damage and repairs not found to this point could be found during construction, impacting the total cost of the project.

City staff recommends that City Council adopt a resolution authorizing City staff to develop a RFQ for an engineering design firm for the project, authorize the addition of the project manager position, and approve the associated budget amendment, in the amount of $19,842.

Using a PowerPoint, Mr. Griffin explained that City Hall is (1) an Art Deco design by Douglas D. Ellington; (2) Built 1926 – 1928; (3) on the National Register of Historic Places; and (4) Centerpiece in the Downtown Asheville National Register Historic District.

The scope of work necessary is to (1) Evaluate existing condition of the exterior; (2) Determine the source of water leakage into the building; (3) Assess condition of the existing cladding material; and (4) Develop recommendations for repairs that are needed.

The investigation will consist of (1) North and South elevations of the exterior accessed August & September 2009; (2) Existing brick removed at 12 locations allowing visual examination; (3) 2nd floor – 8th floor examined; (4) Terra cotta removed on parapet walls; (5) Marble coping removed from parapet wall on south side; (6) City Building construction was prior to State Building Codes; (7) Many of the construction practices would not meet code today (a) Lack of flashing; (b) Inadequate number of ties securing brick to structure; (c) Lack of expansion joints; and (d) Assumed the brick, terra cotta, marble, and mortar in joints would prevent water intrusion.

Conditions noted (1) Roof (a) existing roof membrane appears to be in good condition; (2) Terra Cotta (a) Significant damage to many of the sections around the upper levels; (b) Water beneath those removed; and (c) Moss growth indicating a consistent source of moisture exists; (3) Brick (a) Appears to be relatively sound; (b) Numerous and extensive cracks in various locations; (c) Corrosion of shelf angles supporting brick and corrosion to brick ties; and (d) Behind cement plaster (ground floor to grade on north wall) plaster has spalled off revealing extremely soft and deteriorated brick; (4) Marble Coping at 2nd Floor Parapet (a) Sealing material in joints very weathered and failed at most locations; (b) Water found below the coping stone on top of brick masonry below; and (c) Separation of ½" between outer Sythe of marble and the inner Wythe of bricks; and (5) Windows (a) Sealant installed between the window frames and brick have failed; (b) 7th floor windows operating mechanisms have failed; (c) Window panes are loose and easily removed by hand in places; and (d) Frames are warped.

Recommended repairs include (1) Repair existing terra cotta copings and install new flashing; (2) Install new stainless steel spiral ties to secure the brick to the building; (3) Remove existing brick at the shelf angles and repair, replace, extend shelf angles where needed, install flashing; (4) Replace brick as needed; and (5) Remove the existing plaster between ground floor level and existing grade on north elevation.

Below is the estimated costs:

• Repairs	$2,631,348
• Permits, insurance, etc.	$ 263,135
• Scaffolding, access	$ 400,000
• 20% contingency	$ 658,897
• Design fees/inspect	$ 395,000
• HVAC 7th & 8th floors	$ 743,000
• Up-fit Interior 7th & 8th	$ 500,000
• Total Estimated Cost	$5,591,380

Management and implementation consist of (1) Establish a Project Manager position; (2) Develop a full-scale project plan including detailed schedules and budgets; (3) Formulate the bid

package; (4) 12-14 months (a) select design professional; (b) bid documents; and (c) select contractor; and (5) 24-36 months construction.

Staff recommendations include: (1) Adopt resolution authorizing City staff to develop a RFQ for an engineering design firm to create construction documents; (2) Authorize the addition of a project manager position, and approve the associated budget amendment; (3) Direct staff to come back to Council with a detailed schedule and financing plan; and (4) Direct staff to continue to seek other sources of funding for the project including federal funds and grants.

Councilman Russell questioned whether the project manager position needed to be dedicated prior to coming back to Council with a financing plan. Mr. Griffin said that they are requesting approval for that position now in order that the project manager be on board to give input on the selection of the engineering design firm and to work with the design firm to understand the complexities of the project.

When Councilman Smith asked how many offices could be obtained on the 7th and 8th floors, Mr. Griffin said that the number is not known at this time because after completion of the project in 4 years, the needs of the City may change. The square footage is similar to the 6th floor and they feel portable walls will be used for flexibility as changes occur.

Thinking long-term, Mayor Bellamy hoped City Council would support having Council offices on either the 7th or 8th floors.

When Mayor Bellamy wondered why this is being brought forward at this time and not during the budget process, City Manager Jackson said that staff feels a sense of urgency. The sooner we get a project manager on board and get the engineering design firm selected, the quicker we can apply for federal funds.

Mayor Bellamy could not support the motion as she felt it should be reviewed in the context of the budget as a whole and start at the beginning of the budget year in July. She also felt Council should see the financing plan.

Councilwoman Manheimer felt it was important to have a dedicated well-qualified professional to do the project. When Council is finally being asked to dedicate $5.6 Million, she hoped we will have a better idea of what kind of federal funding will be available and also about whether we can consider the upfit parts in the later time in the project.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Russell moved for the adoption of Resolution No. 10-79. This motion was seconded by Councilwoman Manheimer and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 32 – PAGE 433

Vice-Mayor Newman moved for the adoption of Ordinance No. 3831. This motion was seconded by Councilwoman Manheimer and carried on a 6-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 26 – PAGE 47

E. SUPPORT OF TOWN HALL FORUM ON APRIL 19, 2010, ON THE ASHEVILLE ENERGY INDEPENDENCE INITIATIVE

Vice-Mayor Newman said that he would like to request that the Asheville City Council host a special Town Hall Forum on the proposed Asheville Energy Independence Initiative. The primary purpose of the forum would be to educate the community about the program concept, seek feedback on the substantive and technical issues involved and to gauge how much public interest there is in the initiative. He would also like for us to invite the Buncombe County Commissioners to be a Sponsor of the forum as well, as they are also analyzing the potential for a community-based energy efficiency initiative.

We may also want to invite Progress Energy's Community Energy Advisory Committee (CEAC) to be a Sponsor. There are also many other community groups, such as the WNC Green Building Council who he was sure will want to participate in the forum, Asheville GO and others that I am confident will want to actively participate.

Why a Town Hall Forum? The new PACE financing model (Property Assessed Clean Energy improvements) is an innovative concept that is operating in a relatively small number of communities across the nation. Prior to implementing such an initiative, it is important that the issue be fully vetted by the community in terms of costs and benefits. It is important for the City Council to get a sense of how much interest there may be in the idea. Clearly, this is an effort that cannot succeed without substantial public support and engagement.

Proposed date: Evening of Monday, April 19. If there is a problem with this specific date, other dates could be considered so long as they are before the NC Legislature reconvenes on May 12. We will want to invite our NC Legislatures to participate in the Town Hall Forum so we can thank them for their support of the clean energy enabling legislation. There may be some further clarifications to the enabling legislation that would be beneficial, so we want the legislators to be able to participate.

Location: To Be Determined.

Tentative Agenda:

- Welcome
- Overview of energy independence initiative and PACE model
    - Purpose and need
    - How the program could work
    - Examples of programs around the county
    - Financial issues
    - Legal issues
- Break-out sessions
    - Seeking community input on general concept
    - Seeking community input on technical issues
    - Seeking community input on marketing the initiative and determining how much public interest there is in participating in the program
- Reconvene – Report back on results & discuss next steps in community process
- Adjourn

Paul Bellows, Chairman of the Board of Directors of the Blue Ridge Sustainability Institute (BSRI), said that they would be a Sponsor of this event and help get the word out in the community about it. BSRI is also reaching out to the County Commissioners and the Progress Energy Citizens Energy Advisory Committee (CEAC) group to invite their participation. So the forum would have as its sponsors the City of Asheville and Blue Ridge Sustainability Institute as well as the County and Progress Energy CEAC committee, assuming they decide to participate as well. He explained that they currently hold month green Monday meetings for people to talk

about sustainable issues and the April 19 date would be the perfect forum date at approximately 5 or 6 p.m.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved to support the Town Hall forum on the Asheville Energy Independence Initiative on April 19, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

~~RESOLUTION BOOK NO. 32 - PAGE~~

F. DISCUSSION AND CONSIDERATION OF THE STATE LEGISLATIVE AGENDA FOR 2010

City Attorney Oast said that prior to Council's annual retreat, on January 8 and 9, 2010, Council was provided with a memorandum from me covering developments of interest from the 2009 session of the North Carolina General Assembly, and outlining a schedule and important deadlines for the 2010 session of the General Assembly. The session convenes on May 12 and the deadline for submission of legislative requests to bill draft is May 19. The deadline for introduction is May 26. He provided a copy of the memorandum, along with a copy of the joint resolution setting the schedule and establishing other important limitations regarding local legislation.

The 2010 session of the North Carolina General Assembly is a "short" session. As Council is aware, there are limitations on the matters that may be considered in a short session. As to local legislation, the chief limitation is that the bill must be "non-controversial." Our local delegation is typically willing to discuss any legislative proposal with us and looks to such indications as community interest and whether the request is unanimously supported by the City Council.

Since his previous memorandum, he explained the following matters that have come to his attention as possibilities for legislative action:

1. Woodfin/Asheville Boundary Realignment. This has been a recurring issue. Asheville and Woodfin are adjacent to one another and, in many places, have a common boundary. In some places, however, the boundaries diverge such that there are pockets or "islands" of unincorporated area that are surrounded by incorporated area under the jurisdiction of either Asheville or Woodfin. In addition, there are some properties located in one jurisdiction that can be more effectively provided with police, fire, and other services by the other jurisdiction. The unincorporated areas include the Broadway/Riverside Drive/US 19-23 interchange and parts of the UNC-A campus. The most dramatic example of the jurisdictional confusion is that the UNC-A track is transected by Asheville City limits such that part of the track is inside the City and part of it is not.

   Further with respect to UNC-A, there are some properties adjacent to the campus that are owned by the State of North Carolina and planned for eventual future use by UNC-A. This property is in Woodfin's jurisdiction.

   In previous discussions with Woodfin, UNC-A, and the State, there is general agreement that all of the UNC-A property and the Broadway/19-23 interchange should be in Asheville's jurisdiction. Because this property is government owned, there is no tax

consequence, and Asheville is in a better position to provide necessary services to these areas.

In order to accomplish this realignment in a way that makes sense and accomplishes the governmental objectives, however, some privately owned property is necessarily affected. Previous attempts to realign the boundary have met with objection from some of the private property owners who do not want to change jurisdictions or have their property taxes increase. It may be possible, through interlocal agreements or otherwise, to provide for certain properties in one jurisdiction to be served by another jurisdiction that can provide the services more effectively. If such an agreement can be reached, it may be possible to realign the boundaries of Asheville and Woodfin such that the jurisdictional issues with respect to the government owned property are addressed, the service delivery issues as to the privately-owned properties are addressed, and no negative tax consequences are experienced. To the extent that specific legal authority does not exist for such agreements, legislative authorization for such an agreement could be obtained as part of the boundary realignment.

More recently, as Council is aware, discussions with Woodfin have indicated that the developer of Reynolds Mountain proposes to locate an entrance to the development on Merrimon Avenue in the vicinity of its intersection with Elkwood Road. For many reasons, it is preferable that this entrance be located entirely within one jurisdiction or another, and since most of Reynolds Mountain is in Woodfin, this intersection should be as well.

2. Clarification of Energy Improvement Assessment Authority: Through a series of legislative enactments in recent years, North Carolina communities have obtained the ability to use the property assessment process to finance the installation of energy efficiency measures (solar panels, etc.) on private property. Some communities interested in implementing such a program may request further enhancement or clarification of their authority to do so through the assessment process. Since Asheville has been involved in this concept from an early stage, our assistance may be requested in seeking or supporting additional legislation.

3. Clarify ABC Allocation: At a presentation to Council on February 23, there was some discussion of the allocation of revenues generated by the local ABC system among Asheville (75%) and Buncombe County (25%). Our review of the law indicates that this 75/25 allocation is established by the local act establishing the City's ABC Board. The general law pursuant to which most ABC systems operate provides that all of the revenue goes to the general fund of the government that operates the system. However, pursuant to N.C.G.S. 18B-805(e), the allocation may be altered at any time by the governments receiving the revenue. This is true whether the system operates pursuant to local act or general law. Thus, the current 75/25 allocation could be changed by agreement with Buncombe County. If, however, the City wishes to change the statutory default allocation, an amendment to our local ABC law would be necessary.

4. Revenue Stream for Civic Center: Council has from time to time explored the possibility of a dedicated stream of revenue to fund improvements to and maintenance of the Civic Center. In other communities that operate public auditoriums and similar facilities, such dedicated revenue streams are typically in the form of occupancy taxes or taxes on prepared food and drink. These possibilities have been discussed in the past with members of the local delegation. When these discussions have occurred, the proposals have not been viewed as "non-controversial", and our legislators have asked for a plan as to how the City proposes to use the revenues. While the short session may not be the time to request that such legislation be introduced, it may be the time to begin discussions with the delegation about how to present such a request, and what supporting information should be available.

5. Cable Franchise/Intranet Issue: Pursuant to the Video Service Competition Act of 2006, local franchises for cable television transition to a state franchise upon their termination. This is true whether the termination occurs by expiration, or by the provider giving notice of termination as provided for in the statute. Last year, the City's cable provider, Charter, gave notice of termination of its franchise, effective October 31 of 2009. The franchise was set to expire by its own terms in 2010.

   In connection with some local cable franchises, in North Carolina and elsewhere, the installation and maintenance of a local intranet was provided for. The intranet, or "I-net" is a fiber-optic/data transmission link between government facilities and is used for routine and emergency operations.

   In connection with Asheville's franchise with Charter (or its predecessor in interest), an I-net was provided for. When Charter gave notice of termination of the franchise, there was no specific provision made for the I-net. Moreover the Video Service Competition Act makes no provision for the I-net or similar peripheral services. Clarification of this issue may warrant discussion with our local delegation.

As is usually the case in any legislative session, bills get introduced that the City is interested in, either in obtaining similar legislation, or in joining other local governments in supporting or opposing. Revisions to the annexation laws, introduced in 2009, remain eligible for consideration in the 2010, and this is one example of legislation that Council may be interested in monitoring or in taking a position on. Another big issue may be the economy and we need to be careful that the State does not reduce any of our income streams. Council may also want us to follow-up on items on the N.C. Metro Mayor's Coalition agenda, community mental health and legislative agenda from the Chamber of Commerce. Our office receives daily reports on legislation that is introduced. If we see matters of interest to the Council we will bring those forward for your consideration. He said that he would be getting the sense of Council and bring back a legislative proposal for Council consideration on April 13. He felt we need to engage our legislators on matters that are of interest to us prior to convening of the legislative session.

Throughout the presentation, City Attorney Oast responded to various questions/ comments from Council.

Councilman Davis said that he did not want to give up on the revenue stream for the Civic Center but explained why this might not be the right time to include that in our legislative agenda.

In response to Vice-Mayor Newman, City Attorney Oast said that he would research whether Asheville is the only city in the state that has a 75/25 allocation with the County of ABC revenues.

When Councilman Smith suggested exploring an increase in the occupancy tax go through the Tourism Product Development Fund and be earmarked for the Civic Center or other municipal infrastructure project. City Attorney Oast said that we will explore all avenues before taking this to the legislators.

There was a brief discussion, initiated by Vice-Mayor Newman, to add the voluntary annexation issue regarding whether the properties needed to be contiguous.

In response to Vice-Mayor Newman, Mayor Bellamy said that if Council members have items they would like for Council to consider (not specifically Asheville-related issues) to have them to City Clerk Burleson prior to Monday, April 5, with a copy to all Council.

G. BOARDS & COMMISSIONS

It was the consensus of Council to instruct the City Clerk to arrange interviews for Kathleen Lyons, Honor Moor and Jaan Ferree for a vacancy on the Public Art Board.

Vice-Mayor Newman said that the Boards & Commissions Committee discussed (1) the process for requesting that people who apply for boards and commissions disclose possible conflicts of interests they may have in serving; and (2) voting process.

Regarding potential conflicts of interest, it's not usually for people to have conflicts and we don't want to discourage them from applying as they can recuse themselves from voting on any particular issue. We do want active people in the community to be active on our boards. City Attorney Oast and City Clerk Burleson have been instructed to revise the Boards & Commissions Application for that kind of disclosure statement for the Committee's review at their next meeting. Councilwoman Manheimer suggested language be incorporated that they disclose their business or land ownership in the City.

Regarding the voting process, the Committee discussed two processes to make appointments after interviews (1) poll members of Council and appoint whichever person gets the most votes (if multiple appointments); and (2) someone makes a motion and if the motion passes, the person gets appointed. Both processes were discussed and since no resolution was reached, the Committee felt we needed to keep both options available. The Committee welcomed feedback from Council and will discuss this item again at their next meeting.

In response to Councilman Bothwell in making the process more public, Vice-Mayor Newman said that it is appropriate for any member of Council to speak about of the applicants during the voting process.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Smith explained the Google gigabit broadband pilot program and how Asheville is a good candidate for their program. He urged the community to go to the Google Asheville site and fill out an application to nominate Asheville for the program. He also suggested a resolution of support for the municipal application be considered by Council on March 23.

Councilman Russell was pleased to note that Habitat for Humanity is closing on their 200th house in the community.

Rev. Christopher Chiaronmonte prophesied about a terrible disease that was going to strike all the children.

Mr. Jerry Summers expressed disappointment about Council's appointment of Ms. Holly Shriner to the Planning & Zoning Commission.

The following claims were received by the City of Asheville during the period of February 19-25, 2010: Vanessa H. Garris (Transit), PSNC (Water), Driss Bentaleb (Water), Yolanda L. Tierson (Water), Irene Wright (Water), Danny Donaldson (Transit), Robin Merrell (Police), Progress Energy (Water), AT&T (Water), Motor Parts of Asheville (Police). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:18 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – March 23, 2010 - 2:00 p.m.
Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman William A. Russell Jr. (participating via speaker phone); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Esther E. Manheimer (in trial)

Mayor Bellamy announced the resignation of Chief Financial Officer Ben Durant. On behalf of City Council, she wished Mr. Durant the best of luck in his future career.

BUDGET POLICY DIRECTION

Mayor Bellamy noted that this worksession is a continuation of the budget direction to staff which began on March 9, 2010.

City Manager Jackson focused on the following three items: (1) coping with financial stress; (2) balancing General Fund revenues and expenditures; and (3) setting water system rates.

Two positive actions in hard times recommended strategy include (1) well-managed organizations are capable of dealing with events before, during and after crises; (2) they are able to adapt in the short-term within a cycle and over the long term of several business cycles.

Coping well with financial stress recommended strategies include (1) short-term tactics – reign in expenses and adjust revenue mix; and (2) long-term adaption – educate leaders and stakeholders and pursue structural solutions.

Positive actions in hard times short-term tactics include (1) reign in controllable expenses; (2) improve productivity and financial management practices; (3) shed activities, invest or eliminate; (4) adjust the revenue mix and tax rates; (5) introduce or increase charges for services; (6) bolster residents' willingness to share risks; and (7) improve political acceptability of cutbacks.

The City of Asheville's short-term tactics for Fiscal Year 2008 included (1) reduced capital; (2) cut training, travel, services and equipment; and (3) targeted hiring freeze. In Fiscal Year 2009 those tactics included (1) deferred capital; (2) salary freeze; (3) reengineering – One Stop Shop; (4) early retirement program; (5) managed vacancies; (6) fee increases/cost recovery; and (7) aggressive pursuit of ARRA grants.

Positive actions in hard times long-term adaption include (1) avoiding excessive commitments to fixed expenses; (2) diversifying revenue sources; (3) engaging in long-term financial planning; (4) maintaining adequate reserve; (5) using charges for services and taxes for capital improvements; and (6) educating stakeholders.

The City of Asheville's long-term adaption include (1) avoiding fixed expenses – postponed bond program (2008 & 2009); (2) long-term financial planning/diversifying revenues – structural issues identified in 2008 and financial white paper released in 2009; (3) maintaining reserves – retained 15% General Fund balance; and (4) recommended community meetings to educate stakeholders – February 9, 2010.

For Fiscal Year 2010 budget planning, balancing revenues and expenditures include (1) General Fund initial forecast - $5.1 Million gap (a) flat revenues; (b) loss of transit funding; (c)

inflation in operating and health care costs; (d) cost of living adjustment for employees of 2%; and (e) no Fund Balance use; and (2) Increase for State pension - $5.75 Million gap.

Tier 1 expense reductions/managed ($2.3 Million) include (1) freeze vacancies in development services; (2) reduce overtime and temp services; (3) reduce contracts and services; (4) reduce other training, tuition reimbursement, printing, other line items; (5) reduce transit subsidy; and (6) savings from expired annexation agreements.

Tier 2 expense reductions/services ($1.5 Million 8-10 full-time and 12-14 part-time positions) include (1) delay Master Plan implementation; (2) reduce police and fire overtime; (3) re-engineer brush collection; (4) reduce programming at centers; (5) other re-engineering efforts; (f) reduce outside agency; and (6) cost-sharing for co-sponsored events.

Tier 1 revenue enhancements total $975,000 and include (1) fees and charges - $200,000; (2) street cut enterprise - $150,000 net; (3) Parking Fund recurring transfer - $125,000; and (4) Parking Fund one-time transfer - $500,000. The adjusted budget gap is $1 Million.

Tier 2 revenue enhancements include (1) increase business licenses - $100,000; (2) reduce General Fund reserves to 14% - $1 Million; and (3) 1-cent property tax increase - $1 Million.

Tier 3 expense reductions/services include (1) transit service reductions - $600,000; (2) 4/10's for non-emergency facilities (energy) - $75,000; (3) second year salary freeze - $500,000; (4) further health insurance cost shifting - $200,000; and (5) eliminate additional positions 10-12 - $600,000.

The recommended strategy, including Tier 1 and Tier 2 expense/service reductions, and Tier 1 revenue enhancements, leave a planning gap of approximately $1 Million. He asked Council if (1) there any elements of the strategy that Council would alter; (2) they had any substitutes an alternate revenue increase or expense reduction; (3) for any guidance they may provide on preferences for closing the remaining gap; and (4) what is preferable or untouchable?

Council raised several questions throughout the course of the presentation with expectations for responses from staff regarding some Tier 1 ($2.3 Million) and Tier 2 ($1.5 Million) expense reductions.

In summary, the following was the consensus of Council: (1) Council did not rule out the increase in business licenses (except for small businesses and manufacturing businesses); (2) Council rejected reducing the General Fund reserves; (3) Council rejected the 1-cent property tax increase; (4) Council was cautiously receptive to limiting transit service reductions; (5) Council expressed interest in seeing additional details on the 4/10's for non-emergency facilities but was concerned about closing City Hall on Fridays; (6) Council was open to City management recommendations on (a) second year salary freeze; (b) further health insurance cost shifting; and (c) eliminate additional 10-12 positions; and (7) Council agreed to reduce the Housing Trust Fund by an additional $50,000.

Water Resources Director Steve Shoaf explained different alternates for the water rate increase. Discussion surrounded the type of projects we could use with the Sullivan Act transfer of 5%, along with a request for information on the projects, including cost estimates, identified as candidates for use of the water utility fund 5% transfer.

It was the consensus of Council to instruct the City Manager to provide Council with a memo on the planning for the General Fund capital budget.

At 4:30 p.m. Councilman Davis moved to continue this worksession, if needed, until Tuesday, April 27, 2010, from 3:30 – 4:30 p.m. in the First Floor North Conference Room. This motion was seconded by Councilman Smith and carried unanimously.

Tuesday – March 23, 2010 - 5:00 p.m.
Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer (arrived at 5:53 and excused at 10:25 p.m.); Councilman William A. Russell Jr. (arrived at 5:53 and excused at 10:25 p.m.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Evergreen Community Charter School Kindergarten Classes led City Council in the Pledge of Allegiance and the Earth Pledge. Mayor Bellamy recognized Mr. Stuart Miles who was chosen Charter School Teacher of the Year in North Carolina. She wished him luck in competition for the N.C. Teacher of the Year.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 1, 2010, AS "CENSUS DAY" AND APRIL 10, 2010, AS "MARCH TO THE MAILBOX DAY"

Mayor Bellamy read the proclamation proclaiming April 1, 2010, as "Census Day" and April 10, 2010, as "March to the Mailbox Day" in the City of Asheville. She presented the proclamation to Mr. Ken Richards who briefed City Council on some activities taking place during the Census.

B. PROCLAMATION PROCLAIMING APRIL, 2010, AS 'CHILD ABUSE AWARENESS MONTH"

Councilman Davis read the proclamation proclaiming April, 2010, as "Child Abuse Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Bill McGuire, with Child Abuse Prevention Services, and a representative of the Community Child Protection Team, who thanked City Council for their support in this effort and briefed Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING APRIL 2010 AS "JAZZ APPRECIATION MONTH"

Vice-Mayor Newman read the proclamation proclaiming April 2010, as "Jazz Appreciation Month" in the City of Asheville. He presented the proclamation to Mr. Dwight Williams, Music Director at the YMI Cultural Center, who briefed Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Smith, Consent Agenda Item "G" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 2010

B. RESOLUTION NO. 10-80 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY OFF SHORT STREET TO BK BROADWAY PARTNERS

Summary: The consideration of a resolution authorizing the sale of property off Short Street to BK Broadway Partners.

The City of Asheville is the owner of a 0.12+/- acre lot located off of Short Street (PIN # 9649-11-8703-00000) at Cumberland Place in the Montford Neighborhood. On January 7, 2010, the City received a bid for this property from BK Broadway Partners in the amount of $71,000. This bid was generated with input from two separate appraisals: one appraisal, dated August 5, 2009, procured by the potential buyer, at $60,000; and the other appraisal, dated October 30, 2009, procured by the City of Asheville, at a price point of $86,000. The bid put forth by BK Broadway Partners at $71,000 is slightly below the average of the two appraisals.

This bid was advertised in the Asheville Citizen-Times on Friday, March 12, 2010. No upset bids have been received for this property. Approval of the resolution will accept the bid from BK Broadway Partners as the winning bid and authorize the conveyance of the property.

This action complies with the strategic operating plan in that income from the sale of this property will directly benefit the Community Development Block Grant (CDBG) Program, thus providing funding towards affordable housing.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The $71,000 in proceeds generated from the sale of this parcel will be accounted for as CDBG program Income in the amount of $71,000." This additional income is currently unbudgeted, but it will be available to the Housing & Community Development Committee to allocate and include in the FY 2010-2011 Consolidated Action Plan.

Economic Development staff recommends adoption of the resolution which will authorize the conveyance and sale of property off Short Street.

RESOLUTION BOOK NO. 32 – PAGE 434

C. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 2010, FOR ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2010 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

Summary: The consideration of a motion setting a public hearing for April 27, 2010, to obtain citizen input on the Consolidated Action Plan for Fiscal Year (FY) 2010-2011, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

The Community Development Division is responsible for the receipt and management of federal Community Development Block (CDBG) and HOME Investment Partnership Act funds. Applications from public, private and non-profit entities are solicited annually for these funds. Staff receives and evaluates applications for eligibility and prepares summary evaluations for the Housing and Community Development Committee (for CDBG funding) and the Asheville Regional Housing Consortium board (for HOME funds). These committees review the applications and make recommendations for funding. After a public review period of the proposed funding allocations, City Council approves an annual Consolidated Action Plan, which is submitted to the US Department of Housing and Urban Development (HUD). Upon HUD's approval of this plan, contracts are signed with the funded agencies. In order to meet HUD's submittal deadline, City Council must approve the annual Action Plan on or before May 15 of each year.

HUD requires two public hearing during this process. The first public hearing is held in November or December, to receive citizen comment about the application process. The second hearing is held prior to the submittal to HUD of the annual Action Plan. According to the City of Asheville "Public Participation Plan," public hearings for this process must be warned 30 days in advance of the hearing date. Key dates for this year's process are:

Public Hearing warning published	March 28, 2010
Public Hearing	April 27, 2010
City Council resolution to Approve Action Plan	May 11, 2010
Action Plan Submitted to HUD	May 15, 2010

The Action Plan directly relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pro:

- The public hearing process gives citizens the opportunity to comment and affect public decision-making regarding the use of public funds.

Con:

- There are no cons to this public hearing process.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be approximately $3 million for 2010-2011. Once the City receives approval for the plan, the entitlement funds will be included and authorized for expenditure as part of the annual budget ordinance adopted by City Council. No City cash match is required to receive the entitlement funds.

Staff recommends that Council set the public hearing for the 2010-2011 Consolidated Action Plan for April 27, 2010.

D. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 2010, FOR THE ADOPTION OF THE CONSOLIDATED STRATEGIC HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2010-2015

Summary: The consideration of a motion setting a public hearing for April 27, 2010, to obtain citizen input on the Consolidated Strategic Housing and Community Development Plan for 2010-2015, which establishes the priorities, strategies and targets for the use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

The Community Development Division is responsible for the receipt and management of federal Community Development Block (CDBG) and HOME Investment Partnership Act funds. Every five years, we must prepare and submit to HUD a Consolidated Plan (accompanied by

research, including the Housing Needs Assessment and Market Analysis) that details our priorities, strategies and performance targets for the next five years.

The development of this plan began last summer. The Asheville Regional Housing Consortium board reviewed the Plan development process, and agreed to act as the steering committee for that process. The Housing and Community Development Committee also agreed to act in an advisory capacity during the process. We procured and contracted out the writing of the Housing Needs Assessment and Market Analysis, which was completed in early December. Staff conducted a public participation process in November and December, including the first of two required formal public hearings. The Plan is now in draft form, with a publication draft due to be completed by the end of this month. The draft Plan will be presented in public meetings in each of the four counties participating in the Consortium in mid-April. It will be recommended for approval to City Council by the Consortium Board and the Housing and Community Development Committee.

In order to meet HUD's submittal deadline, City Council must approve the Consolidated Plan on or before May 15.

The second hearing is held prior to the submittal to HUD of the Consolidated Plan. According to the City of Asheville "Public Participation Plan," public hearings for this process must be warned 30 days in advance of the hearing date. Key dates for this year's process are:

Public Hearing warning published	March 28, 2010
Public Hearing	April 27, 2010
City Council resolution to Approve Consolidated Plan	April 27, 2010
Consolidated Plan Submitted to HUD	May 15, 2010

The Consolidated Plan relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pro:

- The public hearing process gives citizens the opportunity to comment and affect public decision-making regarding the use of public funds.

Con:

- There are no cons to this public hearing process.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be approximately $15 million for 2010-2015. Once the City receives approval for the plan, the entitlement funds will be included and authorized for expenditure as part of the annual budget ordinance adopted by City Council. No City cash match is required to receive the entitlement funds.

Staff recommends that Council set the public hearing for the 2010-2015 Consolidated Strategic Housing and Community Development Plan for April 27, 2010.

E. RESOLUTION NO. 10-81 - RESOLUTION SETTING A PUBLIC HEARING ON APRIL 13, 2010, TO CONSIDER THE VOLUNTARY ANNEXATION OF 97 AND 99 UNDERWOOD DRIVE

Summary: The consideration of a resolution fixing the date of a public hearing on April 13, 2010, for voluntary annexation of property located at 97 and 99 Underwood Road.

Larry Holbert and Ronnie Gray (L & R Rentals) have petitioned the City of Asheville for the annexation of one (1) lot located at 97 and 99 Underwood Road in South Buncombe County containing a total of approximately 8.95 acres. The area is not contiguous to the primary corporate limits but is contiguous to the satellite corporate area at the Asheville Regional Airport. The area is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be May 31, 2010.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal costs for rural fire department debt service and calls for service/patrol.

At the City's current tax rate, the property, valued at $1,354,300, would generate approximately $5,688 in ad valorem tax revenue annually. The required debt service payment to the Skyland Fire Department is estimated to be $1,300 which must be paid within forty-five (45) days of the annexation effective date. This is a one time payment. Other marginal costs would come from calls for service or patrol.

City staff recommends that City Council accept the petition and adopt the resolution setting the date for a public hearing on the annexation petition for April 13, 2010.

RESOLUTION BOOK NO. 32 – PAGE 436

F. RESOLUTION NO. 10-82 - RESOLUTION SETTING A PUBLIC HEARING ON APRIL 13, 2010, TO CONSIDER THE VOLUNTARY ANNEXATION OF 411 DEAVERVIEW ROAD

Summary: The consideration of a resolution fixing the date of a public hearing for annexation of City-owned property at 411 Deaverview Road for April 12, 2010.

In 2009, the City of Asheville obtained two parcels at foreclosure auction. One of the parcels had been previously annexed into the City as a requirement for obtaining Housing Trust Fund loans for the Villas at Cedar Hill development. As part of the financing, the senior lender, Blue Ridge Savings Bank, secured the other parcel (PIN 9628274164) at 411 Deaverview Road as collateral. When the developer defaulted on the senior lien, the bank put the parcels up for sale at foreclosure auction. The City bid on the parcels to protect its investment in the property and was able to purchase the land at below market value. It is the intent of City staff to sell the properties and use the proceeds to repay the Housing Trust Funds advanced on the property. The collateral parcel is not yet a part of the City. The City proposes to annex this parcel to allow any future development on the site to contribute to the City tax base.

The parcel is 6.38 acres in size and has a tax value of $162,000. It contains a vacant residence.

The first step in the process for annexing a City-owned parcel is to approve a resolution of intent to annex the property and to set a public hearing on the matter. It is proposed that this hearing be held on April 13, 2010.

Pros:

- Provides for an urban level of service for areas adjacent to the existing city limits.
- Brings in a parcel currently in City of Asheville ownership avoiding later involuntary annexation.

Con:

- Marginal costs for rural fire department debt service.

Because the property is owned by the City, there would be no immediate ad valorem tax revenue generated. Once sold, the property would contribute to the tax base at an amount determined by the development of the property. The required debt service payment to the West Buncombe Fire Department is estimated to be $150.00, which must be paid within forty-five (45) days of the annexation effective date. This is a one-time payment.

City staff recommends that City Council adopt the resolution stating its intent to annex property at 411 Deaverview Road and setting the public hearing on this annexation for April 13, 2010.

RESOLUTION BOOK NO. 32 – PAGE 439

G. RESOLUTION OF SUPPORT TO BECOME A TARGET CITY FOR THE GOOGLE FIBER FOR COMMUNITIES FIBER-TO-THE-HOME PROJECT

This item was removed from the Consent Agenda for an individual vote.

H. RESOLUTION NO. 10-84 - RESOLUTION SUPPORTING THE GREEN OPPORTUNITIES' PROPOSAL TO THE U.S. CONFERENCE OF MAYORS/WAL-MART FOUNDATION GREEN JOBS TRAINING INITIATIVE PILOT AWARDS

Summary: The City of Asheville has enjoyed a successful partnership with Green Opportunities, Inc. through two grant-supported activities: Asheville GO, and the GO Energy Team.

The Asheville GO program prepares unemployed, low-income youth and young adults for living wage, green collar jobs through technical skills training, life-skills training, academic training and support, case management, and hands-on service projects. Members who successfully complete a four-month preparatory training program are placed in a five-month paid apprenticeship with local employers.

In July of 2009, the City of Asheville awarded a Community Development Block Grant to Green Opportunities, passed through Mountain Housing Opportunities. The pass-through relationship was necessary because the activities that Green Opportunities proposed to deliver could only be done through an organization with a certification as a Community-Based Development Organization (CBDO). Regardless, the responsibility for performance, reporting and accountability has been Green Opportunities'. In that time, they have demonstrated that they possess the capacity to manage the contract effectively and to perform the intended job training and placement outcomes. They are in compliance with all the provisions set forth in our contract. Because of their performance and capability, we have encouraged them to seek certification as a CBDO in their own right. They have almost completed this process, and I expect to certify them in this regard before the new program year that begins in July.

The City has also supported the GO Energy team, which has been a key component of the CDBG-funded "Weed and Seed Weatherization Program," managed by the Western North Carolina Green Building Council. In a unique partnership, The Green Building Council contracts with Green Opportunities to provide the labor to weatherize the homes of low-income homeowners in the West Riverside Weed and Seed area. Community Action Opportunities, funded through the US Department of Energy, provides the materials and also contracts with other businesses to perform code-related work such as furnace replacements. Green Opportunities GO Energy Team is one of the apprenticeship opportunities provided to GO members, one making a direct, measurable improvement to the lives of low-income families in our City.

Green Opportunities' staff is competent and professional and, to my knowledge, their Board of Directors maintains adequate oversight of the organization's operations and finances.

The City and Mountain Housing Opportunities took a risk last year entering into a contract with such a relatively new organization. Before doing so, we made certain that Green Opportunities had the infrastructure in place to be successful and both Mountain Housing Opportunities and the Community Development Division have invested our time and resources into helping the organization become established. Nearly a year later, I feel confident that Green Opportunities has a solid foundation from which to begin having a real and lasting impact on our community.

RESOLUTION BOOK NO. 32 – PAGE 443

I. RESOLUTION NO. 10-85 - RESOLUTION AFFIRMING CONTINUED SUPPORT OF THE WNC PASSENGER RAIL INITIATIVE

Summary: The consideration of a resolution affirming the City of Asheville's continued support of the Western North Carolina (WNC) Passenger Rail Initiative.

The WNC Passenger Rail Initiative is a long term partnership between several municipalities in the region and the North Carolina Department of Transportation, Rail Division. The proposed service will connect Asheville to the Amtrak station in Salisbury, NC. The purpose of this initiative is to enhance regional and local economic development, and to improve the state's transportation infrastructure.

The City of Asheville's past involvement in the initiative was driven by several (former) City Council resolutions and adopted strategic plans. Past staff involvement was coordinated by Mac Williams, former Economic Development Director and culminated with the site selection and purchase of the future Asheville passenger rail depot at 81 Thompson Street in Biltmore Village.

The WNC Rail Corridor Committee, a representational body made up of elected officials, municipal staff, and citizen advocates from the proposed corridor (including staff from the City of Asheville), continues to meet and work towards the establishment of passenger rail service from Salisbury to Asheville. On April 7th, 2010, members of the Corridor Committee will briefly meet with State Representative Ray Rapp, Chairman of the House Select Committee on Comprehensive Rail Service Plan for North Carolina. The Committee, led by Judith Ray, is supportive of Council adoption of this resolution, and appreciates the timeliness of Council's consideration of this matter.

The Office of Economic Development, via the Urban Planner/Riverfront Redevelopment Coordinator, will coordinate the interdepartmental resources to support this initiative. In the coming weeks, the Riverfront Redevelopment Coordinator will work closely with legal staff to provide Council with relevant Rail Service information as part of Council's upcoming review of state legislative priorities.

Pros:

- The City of Asheville's renewed support for the initiative will facilitate the timely implementation of the Passenger Rail Initiative when implementation funding becomes available at the State and/or Federal level.
- Will precede a Corridor Committee meeting with state representatives.
- Will provide a timely signal regarding the City's continued support for state priorities.

Cons:

- None known.

This action aligns with the following goals from Council's strategic operating plan: (1) Job Growth and Community Development (a) Partner in regional economic development strategies; (b) Expand partnerships with institutions to achieve common goals; and (c) Support the riverfront redevelopment partnership; and (2) Green and Sustainable (a) Integrate and implement a multi-modal transportation plan.

There is no fiscal impact associated with this action. Subsequent actions, including City collaboration with NCDOT rail on the preplanning for a multimodal station at 81 Thompson Street, will eventually require a financial contribution from the City. The amount of this contribution is unknown at this time. In order to best prepare for any future capital needs Economic Development staff recommends that Council receive regular updates on the WNC Passenger Rail initiative, especially in regards to funding alternatives for the development of the multimodal station facility at 81 Thompson Street.

If Council approves of the resolution, adoption of it is recommended.

RESOLUTION BOOK NO. 32 – PAGE 444

J. RESOLUTION NO. 10-86 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO JOIN THE MUNICIPAL ENVIRONMENTAL ASSESSMENT COALITION AND PARTICIPATE IN OBTAINING A STUDY OF PROPOSED WATER QUALITY STANDARDS

Summary: The consideration of a resolution authorizing the City of Asheville to enter into an agreement to participate in the Municipal Environmental Assessment Coalition (MEAC), and assist in obtaining an engineering analysis for proposed water quality standards.

In response to a mandate from the United States Environmental Protection Agency, the Division of Water Quality of the North Carolina Department of Environment and Natural Resources has initiated a review and modification of State surface water standards. This review could result in revised standards, which in turn could cause cities to undertake expensive upgrades to their wastewater and stormwater treatment facilities in order to comply.

The Municipal Environmental Assessment Coalition (MEAC) of the North Carolina League of Municipalities has proposed that cities work together to engage a consultant to produce an engineering analysis that may be used to assist the League in working with members of the General Assembly to ensure that municipal interests are appropriately considered in connection with these proposed revisions, and that there is scientific data to support the League's arguments.

The City of Asheville has been asked to support the League in this effort, and in the analysis, to join the MEAC. The cost of joining MEAC and participating in the engineering analysis is $2,500 for a city of Asheville's size. This cost may be paid half in this fiscal year, and half in the next fiscal year.

Pros:

- The engineering analysis will be helpful to the League in representing municipal positions on proposed water quality standards.

- The proposed cost sharing arrangement lowers the potential cost to the City for obtaining and participating in such a study.

Cons:

- Analysis may not address issues relating to particular cities.

There is a cost of $2,500 to join the MEAC and participate in the study. Funds are included in the FY 2009-10 Public Works Department Stormwater Services budget to cover this cost. In view of the substantial costs that may potentially be associated with revised water quality standards, as well as other community impacts, such as riparian buffers, this cost seems reasonable.

Staff recommends that the City Council approve the resolution authorizing the Mayor to sign an agreement to join MEAC and to participate in the engineering analysis.

RESOLUTION BOOK NO. 32 – PAGE 445

K. ORDINANCE NO. 3832 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF THE INTERIOR FISH AND WILDLIFE SERVICE GRANT FOR RED WOLF HABITAT IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of $179,000, for a grant from the U.S. Department of the Interior Fish and Wildlife Service Grant.

In November 1973, the U.S. Department of Interior established a red wolf captive-breeding program as part of the overall red wolf recovery program in the United States. The Nature Center is approved as an off-site holding facility for the red wolf and has had red wolves in its collection since 1991, and a new red wolf educational exhibit opened in 2009.

As part of the 2008 federal legislative process, Representative Heath Shuler introduced a bill to provide funding for the national Red Wolf Recovery Program located at the Point Defiance Zoo in Tacoma, Washington, and at the Nature Center. The bill was approved which allocated $179,000 to the City for the red wolf recovery program at the Nature Center.

The funds will be used to enhance the red wolf exhibit educational and display areas as well as to enhance the veterinary and isolation facility to assure quality health care for the red wolves.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:

- Provide funds to support the overall operating cost of the Nature Center
- Provide funds to enhance special projects and services to Nature Center visitors

- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Con:
- None

Planned expenditures in the amount of $179,000 to enhance the Red Wolf exhibit at the Nature Center reflect one-time project costs and are fully funded with a grant in the amount of $179,000 from the US Department of Interior Fish and Wildlife Service Grant. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of $179,000 for the WNC Nature Center with a grant from the United States Department of the Interior Fish and Wildlife Service Grant.

ORDINANCE BOOK NO. 26 – PAGE 49

L. ORDINANCE NO. 3833 - BUDGET AMENDMENT FROM THE STATE OF N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES THROUGH THE GRASSROOTS SCIENCE MUSEUMS COLLABORATIVE, FOR GENERAL NATURE CENTER IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of $77,434.70, for the remainder of a grant from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Each year the State of North Carolina allocates funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Museums Collaborative as supported by North Carolina Senate Bill 1741. WNC Nature Center is a member of the collaborative.

In FY 2009-2010, the City received $113,055.70 for the WNC Nature Center. City Council approved a budget amendment of $35,621 in November 2009 for a portion of the FY 2009-2010 grant to enhance Nature Center operations and to make improvements to the facility and animal exhibits at the Nature Center. This budget amendment will appropriate the remaining $77,434.70 to be used for the same purpose.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:
- Provide additional funds to support the overall operating cost of the Nature Center
- Provide funds to enhance special projects and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Con:
- None

The existing project budget for one-time operational and facility improvements at the Nature Center will increase by $77,434.70. This increase is funded by a grant from the State of

North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the project budget for Nature Center operational and facility improvements by appropriating $77,434.70 in remaining grant funds from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

ORDINANCE BOOK NO. 26 – PAGE 51

M. ORDINANCE NO. 3834 - BUDGET AMENDMENT TO COMBINE TWO PROJECT BUDGETS FOR THE CLINGMAN AVENUE STREETSCAPE PROJECT

Summary: The consideration by Council of a technical budget amendment, in the amount of $407,251, to combine two project budgets for the Clingman Avenue streetscape project into one single project to allow for more effective accounting and reporting of revenues and expenses.

In January 2004, Council approved a budget amendment to the City's Grant Fund in the amount of $172,131 to recognize a grant from the N.C. Dept. of Transportation (NCDOT) for West End/Clingman Avenue pedestrian improvements. In July 2005, City Council approved an additional budget amendment to the Grant Fund in the amount of $235,120 to recognize a second grant from NCDOT for the West End/Clingman Avenue project. This amendment brought the total budget in the Grant Fund for this project to $407,251.

With adoption of the FY 2007-08 capital improvement budget, Council approved an additional $500,000 from the City's General Fund for the West End/Clingman Avenue project. This $500,000 is budgeted in the City's General Capital Projects Fund. To allow for more effective accounting and reporting of revenues and expenses, staff is requesting that Council approve a technical budget amendment to move the $407,251 currently budgeted in the Grant Fund over to the General Capital Project Fund.

This action complies with the City Council Strategic Operating Plan to operate the City of Asheville's organization to the highest fiscal responsibility.

Pro:

- Will allow for more effective accounting and reporting of revenues and expenses

Con:

- None

The budgets for the Clingman Avenue Streetscape project were previously approved by Council so there is no fiscal impact with this action. Combining the two project budgets into one will allow for more effective accounting and reporting of revenues and expenses.

City staff recommends City Council approve the technical budget amendment.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. RESOLUTION NO. 10-83 - RESOLUTION OF SUPPORT TO BECOME A TARGET CITY FOR THE GOOGLE FIBER FOR COMMUNITIES FIBER-TO-THE-HOME PROJECT

Summary: The consideration of a resolution of support to become a target city for the Google Fiber for Communities fiber-to-the-home project.

The Economic Development Coalition has been working on responding to Google's RFI (Request For Information) for approximately a month.

The Google fiber project represents an opportunity for residents of Asheville to connect to the Internet at 100 times faster than incumbent telecommunications providers allow for. The RFI itself is available on the Internet: http://www.google.com/appserve/fiberrfi/.

This action ties in with City Council's strategic operating plan, specifically the "Job Growth" and "Economic/Community Development" areas.

Pros:

- Being a target city will add significant possibilities to Asheville's residents and businesses, such as enhanced telemedicine
- May provide significant economic development impact to the area
- Significant citizen interest

Con:

None noted at this time.

Fiscal Impact:

- No "in kind" match or other city funds are being sought by Google.
- Economic development / tax base improvements are thought to be fairly significant.
- Construction of the fiber network will likely bring jobs to the area
- The continued presence of the fiber network will also likely bring jobs and opportunities to residents and businesses

City staff recommends City Council adopt a resolution of support to become a target city for the Google Fiber for Communities fiber-to-the-home project.

Councilman Smith moved adopt Resolution No. 10-83 with the following language: "And to proclaim 1:30 p.m. on Thursday, March 25 a 'Google Moment.' At this time on the 25th the Asheville City Council invites all citizens, including our school children, employees, and business leaders to pause and fill out a community application in an effort to make Asheville the home of the Google Fiber Initiative." This motion was seconded by Councilman Bothwell and carried unanimously.

Mr. Ben Teague briefed Council on the efforts made to date on this effort. He urged the community to fill out an application at www.googleavl.com by March 26 to make Asheville the next home of the Google Fiber Network.

III. PRESENTATIONS & REPORTS:

A. CITIZENS-POLICE ADVISORY COMMITTEE UPDATE

Citizens-Police Advisory Committee Chairman Charlie Hume said that their mission is to (1) Serve as a liaison between the police department and community; (2) Mediate problems or conflicts; (3) Advocate for programs, ideas, and methods to improve the relationship between the police and community; and (4) Disseminate information to the community and government officials of Asheville.

He introduced the members from the Committee being Angelica Reza – North; Bob Smith – Central; Caesar Romero – West; Charlie Hume – South / Chairman; and Ron Maynard – East / Secretary. Asheville Police Department (APD) support includes Melissa Williams – Comm. Relations Mgr.; Chief Bill Hogan; and Lt. Sean Pound – Professional Standards. City Council's liaison is Councilman Jan Davis.

Some 2009 accomplishments include (1) Press Release (AC-T, La Voz); (2) Local Telephone (333-4801); (3) Email (ashevillecpac@gmail.com); (4) Community Outreach Meetings (a) Residents Council (Housing Authority); (b) Kenilworth Neighborhood Association; (c) Montford Neighborhood Watch; and (d) Gene Bell (Housing Authority - Dir.); (5) Bi-Monthly Meetings; (6) Increased Diversity; and (7) Youth Representation (Asheville High School).

Some 2010 goals include (1) Enhance Knowledge Base (a) Each member has committed to participating in Citizens Police Academy; (2) Quarterly Meetings (a) Feb, May, Aug, Nov; and (3) Taking It To The Streets Initiative (a) Minimum of (8) Community Meetings and (8) Each CPAC member is responsible for selecting target group and coordinating logistics.

Program focus will be (1) Disseminate Information (a) Tax dollars at work; and (b) Services provided; (2) Enhance Knowledge Base (a) Committee Members; and (b) Citizenry; (3) Facilitate Feedback (a) Concerns, ideas, methods; and (4) Build Relationships (a) Raise awareness; (b) Trust and (c) Continuity.

Target groups include homeowner associations, neighborhood watch groups, civic organizations, service clubs and special events.

Using the S.W.O.T Analysis, internal positive strengths include APD/Council support, Citizens Police Academy, Diversified Committee, City Neighborhood Coordinator and Community Resource Officers. Weaknesses include member participation, member attendance and knowledge of the APD.

Using that same analysis, external positive strengths include align with community policing, offer varied perspective of citizen needs, build relationships/trust; and continuity of communication. Weaknesses include mission duplication, unrealistic expectations and poor community awareness.

On behalf of City Council, Mayor Bellamy thanked Mr. Hume and the entire committee for their service.

At the request of Vice-Mayor Newman, Mr. Hume said that he would be happy to contact Councilman Russell, Chair of the Public Safety Committee, to have time set aside in the Public Safety Committee meetings to hear more about what the Committee is hearing from the community.

B. RIVER DISTRICT DESIGN REVIEW COMMITTEE UPDATE

Former Chair Pattiy Torno of the River District Design Review Committee said that their committee consists of seven volunteer community members and was created to promote redevelopment of Asheville's riverfront as an economic hub for the City and WNC. In addition, they review all major works projects within the City's River District, in accordance with the River District Design Review (RDDR) Guidelines utilizing a "mandatory review/voluntary compliance" structure.

Using a short film, she reviewed the items on their agenda in 2009, including (1) staff updated them on their project to digitize the RDDR Guidelines; (2) they met with the N.C. Dept. of Transportation regarding the new Biltmore Avenue bridge; (3) they worked with the Land-of-Sky Regional Council Brownfields Advisory Group and its site selection committee for both the RBI and City of Asheville Brownfields grant funds; (4) Mark Allison and Pattiy Torno toured the Swannanoa Watershed with the Flood Damage Reduction Task Force and RECNI; (5) staff updated them on the adoption of the new Digital Flood Insurance Rate Map (DFIRM) and the need for a new flood ordinance; (6) staff and WPC member Pattiy Torno updated them on the WPC Stormwater Ordinance recommendations to City Council; (7) Dan Baechtold reported on the N.C. Dept. of Transportation $600,000 grant for preliminary engineering on the City's roadways within the scope of the Wilma Dykeman Riverway Plan; (8) they encouraged and helped facilitate the development of the Asheville Riverfront Redevelopment Commission; and (9) they re-visited the Silverman project.

In response to Councilman Bothwell, City Attorney Oast explained the "mandatory review/voluntary compliance" structure.

On behalf of City Council, Mayor Bellamy thanked Ms. Torno and the entire Committee for their service.

C. GIFT FROM THE FRIENDS OF THE WNC NATURE CENTER

ORDINANCE NO. 3835 - BUDGET AMENDMENT FROM THE FRIENDS OF THE WNC NATURE CENTER TO RENOVATE THE OTTER EXHIBIT

Mr. Bob Pierce, Board member of the Friends of the WNC Nature Center, was pleased to present the City of Asheville with a check in the amount of $59,400 to be used for renovation of the existing otter exhibit and to create the new Brandon's Otter Falls Exhibit which will be completed in 2001. This gift was given by a former Friends member, Rennie Habel, whose beloved son Brandon died prematurely in November 2009. She and he loved nature together and they spent much of his growing up visiting the WNC Nature Center and neighboring facilities using the Friends' Reciprocal Zoo and Science Center Membership Benefit. She remembers this time fondly and wanted to memorialize Brandon's passion for nature by giving this wonderful donation to our community.

Ms. Sarah Oram, Executive Director, said that the Friends is happy to facilitate such gifts as well as use the money raised by selling memberships to provide further needed enhancements or improvements in 2010. This past year they have provided funds for a designer to upgrade all the major exhibit signs, purchased a new Reptile Habitat to replace the former Nocturnal Hall, bought materials for weatherization by AmeriCorps members of the two main indoor buildings at the Center, renovated the Education classroom from floor to ceiling, secured the donation of a $250,000 Laser Map exhibit from the now closed Grove Arcade Heritage Gallery and we have contributed funds to its installation at the Nature Center. They have applied for and received a grant from REI to start a hands-on "Science Backpack" program for both visitors and our local schools and contributed funds for a Visitor Survey for use by the Tourism and Development Authority to quantify the financial impact of the Center on our local economy. They have pursued non-funded grants from the Cannon Foundation, Vulcan quarry and others throughout this year.

Mr. Pierce said that additionally, the Friends have purchased advertising, printed newsletters and rack cards, developed and managed the website, wildwnc.org, and worked hard to raise the profile of this gem in our community, the Western North Carolina Nature Center. Since July 1, 2005 (when the City took over the Nature Center), the Friends have contributed $837,656 in items and services to support the Center and this does not count the work of their staff and their AmeriCorps intern in helping run an efficient operation for the Center's 2,500 member households, an estimated 11,000 individuals.

They appreciated being in partnership with the City of Asheville in improving the Nature Center and look forward to a non-competitive and efficient partnership in future efforts together.

At this time (5:53 p.m.), Councilwoman Manheimer and Councilman Russell arrived in the meeting.

Staff summary: The consideration of a budget amendment, in the amount of $60,375, for a contribution from the Friends of the Nature Center for the Nature Center.

The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to develop resources and raise funds to support the programs and enhancements at the Nature Center. The City has received a contribution of $60,375 from the Friends to include 1) $975 for the installation of the new lazar map exhibit, and 2) $59,400 for improvements to the otter habitat.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:
- Provides funds to support capital improvements at the Nature Center
- Provides funds to enhance special projects and services to Nature Center visitors
- Provides funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:
- None

A project budget authorizing one-time improvements to the Otter Habitat and a new lazer map exhibit will be established with approval of this staff report. The project budget will authorize expenditures up to $60,375. These expenditures will be fully funded with a donation from the Friends of the Nature Center in the amount of $60,375 that has been received; thus, there is no net fiscal impact to the City's operating budget.

City staff recommends City Council to adopt a budget amendment authorizing the City Manager to establish a budget for funds received from the Friends of the Nature Center in the amount of $60,375 to support installation of the lazar map exhibit, and to support improvements to the otter pond habitat.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 3835. This motion was seconded by Councilman Smith and carried unanimously.

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IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND A PREVIOUSLY APPROVED SIGN PACKAGE FOR THE ASHEVILLE REGIONAL AIRPORT

ORDINANCE NO. 3836 - ORDINANCE AMENDING A PREVIOUSLY APPROVED SIGN PACKAGE FOR THE ASHEVILLE REGIONAL AIRPORT

Mayor Bellamy opened the public hearing at 5:54 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance amending the previously approved sign package for the Asheville Regional Airport. This public hearing was advertised on March 12 and 19, 2010.

On November 10, 2009, the Asheville City Council reviewed and approved an application from the Asheville Regional Airport for a variety of signage designed to accommodate the unique operational needs of the airport.

The overall request included:

- Parking lot & traffic control signs
- Wayfinding monument signs
- Monument entrance signs
- Vehicular directional signs

The follow-up applications for the approved signs included two free-standing monument signs that were larger than what had been previously approved through the sign package.

The following summarizes the request:

Approved North (S-A)
96 square feet total, including base & frame
8 feet-8 inches tall

Proposed:
111 square feet total, including base & frame (16% increase)
8 feet, 10 inches tall (nominal increase)

Approved South (S-P)
30 square feet total, including base & frame
5 feet tall

Proposed:
61.5 square feet total, including base & frame (105% increase)
6 feet, 8 inches tall (33% increase)

The requested increase came about as a result of testing and mock-ups where concern over the size and readability of the text for motorists resulted in a desired increase in the size of the sign overall. Staff will typically administratively flex final plans that deviate 10% or less from the originally approved plan. Sign S-A is not dramatically outside this parameter; however, sign S-P is more than twice as large and would require re-consideration by Council.

As discussed in the original report, the airport would normally be limited to one free-standing sign at 125 square feet and one attached sign of the same size. Given that the main sign falls within what would normally be permitted, staff supports this request and finds it reasonable. Additionally, given the size of the airport property and the unique nature of its operations, the additional sign square footage requested for the south (S-P) sign also appears reasonable.

In order for the airport to adequately and safely direct travelers in and out of the airport, staff finds this request to be reasonable.

Regarding the Strategic Operating Plan, this proposal most closely supports the goal of sustainability through improved identity and wayfinding supporting the economic viability of the overall project.

Pro:

- Provides a sign with text that will be more readable from a vehicle.

Con:

- None identified.

No direct fiscal impact to the City has been identified.

Staff recommends approval of the amendments to the sign package as proposed.

Mr. Alan Ditmore felt people should take train or buses, which will not use massive petroleum consumption.

Mayor Bellamy closed the public hearing at 5:59 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3836. This motion was seconded by Councilman Russell and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER A CONDITIONAL ZONING REQUEST FOR THE PROJECT IDENTIFIED AS THE LARCHMONT, LOCATED AT 785 MERRIMON AVENUE, FROM INDUSTRIAL DISTRICT TO URBAN RESIDENTIAL/CONDITIONAL ZONING DISTRICT FOR THE DEVELOPMENT OF A 60-UNIT APARTMENT COMPLEX, WITH A REQUEST FOR MODIFICATIONS OF THE DESIGN STANDARDS FOR ENTRANCE LOCATION, FRONT SETBACK AND BUFFER WIDTH RESTRICTIONS

ORDINANCE NO. 3837 - ORDINANCE APPROVING THE CONDITIONAL ZONING REQUEST FOR THE PROJECT IDENTIFIED AS THE LARCHMONT, LOCATED AT 785 MERRIMON AVENUE, FROM INDUSTRIAL DISTRICT TO URBAN RESIDENTIAL/CONDITIONAL ZONING DISTRICT FOR THE DEVELOPMENT OF A 60-UNIT APARTMENT COMPLEX

Mayor Bellamy opened the public hearing at 6:04 p.m.

Urban Planner Julia Cogburn said that this is the consideration of a conditional zoning request for the project identified as the Larchmont, located at 785 Merrimon Avenue, from

Institutional District to Urban Residential/Conditional Zoning District for the development of a 60-unit apartment complex, with a request for modifications of the design standards for entrance location, front setback and buffer width restrictions. This public hearing was advertised on March 12 and 19, 2010.

She said the subject property, 2.29 acres, is located within the city limits off of East Larchmont, east of Merrimon Avenue behind the Grace Station Post Office. It has a current address of 785 Merrimon Avenue. The property is currently vacant, is zoned Institutional, and is owned by Buncombe County. The site was formerly occupied by the Naval Reserve Center.

Property to the north contains the Grace Covenant Presbyterian Church and is zoned RS8 (Residential Single-Family, High Density District). To the south are properties zoned CBI (Community Business I) and RM8 (Residential Multi-Family Medium Density District) containing a financial institution, small commercial center, and a City of Asheville fire station and community center. The property to the west is zoned INST (Institutional) and contains the branch post office. To the east are single-family homes facing Melrose Avenue, zoned RS8.

The applicant, Mountain Housing Opportunities, Inc., is requesting the conditional zoning of the property. The request is for conditional zoning to URD (Urban Residential District - Conditional Zoning) CZ to allow for the development of a 60-unit residential rental community.

The sixty units in the proposed development are to be housed in two buildings, each with a footprint of 9,644 square feet. Each building has a total gross floor area of 28,725 square feet and is 29'6" in height (per the City of Asheville Unified Development Ordinance). At the highest point the structural height (as measured from the lowest point where the structure meets the ground to the top of the roof pitch) is 61 feet (Merrimon Avenue elevation). This structural height varies throughout the development.

The developer is proposing a mix of one- (32), two- (23), and three- (5) bedroom units for a total residential density of 28.4 units per acre, lower than the thirty-two (32) units per acre (up to 67 units) that could be permitted in the URD. Thirty-seven (37) units would be permitted under the current zoning of Institutional. A 1,120 square foot community building is also proposed for the development along with a play area and open space/courtyard. All of the units are proposed to meet the City's requirements for affordable housing.

The location of the boundary for the property has led to some confusion. Buncombe County mapping information shows the property line running alongside East Larchmont Road and indicates that there are 2.29 acres on the site. A recent survey (in plan documents) of the property shows the property contains 2.725 acres that includes the land containing East Larchmont and its right-of-way. For the purposes of computing density on the site and designing the project to meet City standards, the applicant did not include the .435 acres containing the road or road right-of-way. Should the project be approved the applicant is committed to working with the City of Asheville to resolve the lot size discrepancy so the development parcel will be as shown in Buncombe County mapping information.

In addition to deleting the .435 acres containing the road and right-of-way for purposes of calculating density, the developer also deleted from acreage figures a small portion of the site (.18 acres) located within a regulated steep slope area.

Access to the site is off of East Larchmont Road. Seventy-one (71) parking spaces are to be provided on site, although the URD zone would allow a minimum of thirty-three (33) parking spaces because the zoning district standards allow for a 50% reduction in required parking. In addition, the developer is proposing a sidewalk along its frontage which is intended to connect to Merrimon Avenue pending discussions with the postal service about obtaining an easement across their property to complete that connection. The developer has begun to initiate these discussions. The developer is also in discussion with Sun Trust Bank for overflow parking if it

becomes necessary. The developer has held several meetings with the neighborhood and adjoining property owners.

The developer is seeking three (3) development standard modifications for this project.

- The first request is for a reduction in the buffer width and plantings along the northern property boundary. The request is to reduce the buffer from the required thirty (30) feet to twenty (20) feet and to reduce some the of the required plant material (for plant health) in this reduced buffer. This plant material will be placed elsewhere on the site. This modification is requested due to site constraints and the desire of the developer to limit grading and work with the existing site layout. The parking in this area will be in line with the existing/former asphalt for the previous use of the site. This modification must be granted by the Asheville City Council.

- The second request is for a modification to the setback requirement for URD. The URD district standards provide for a maximum setback of fifteen (15) feet from the right-of-way. Due to topographic constraints, Building A and the Community Building would be placed from twenty-two (22) to six (6) feet further back from this maximum. The URD standards provide that the Planning and Development Director may increase the setback line based on an assessment of site constraints. Given the topographic constraints on the site this modification request has been granted.

- The final request is to the requirement for entrance locations in the URD. The requirement states that all buildings shall include a well-defined operable entrance at regular intervals not exceeding forty-five (45) feet. The proposed site plan shows two entrances along the front façade (one in Building A and one in the Community Building). There is also an access point along a covered walkway between these two buildings. Again, topographic constraints prevent additional entrances along the front building elevation. This modification must be addressed by the Asheville Planning and Zoning Commission. On March 3, 2010, the Planning and Zoning Commission granted this request.

Staff supports all of these modifications.

At their February 15, 2010, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Asheville Planning and Zoning Commission. The developer has subsequently submitted additional information which addresses the bulk of the conditions.

At their March 3, 2010, meeting the City of Asheville's Planning and Zoning Commission (Commission) reviewed the conditional zoning request and made a positive recommendation (5-1) that the project be approved generally as submitted with the conditions as listed in the TRC staff report, the standard conditions listed on the staff report, and the following additional conditions:

- That the units be maintained as affordable units.
- That MHO escrow up to $9,000 to be used for traffic calming devices, including speed humps, along Edgewood Road between Merrimon Avenue and Kimberly Avenue. Conditions and procedures outlined in the existing City's Traffic Calming Policy still need to be followed as well as good traffic engineering principles related to the actual design and placement of traffic calming devices.

Thirty (30) people spoke at the hearing before the Commission. Sixteen (16) individuals spoke in favor of the development, and fourteen (14) people spoke against the development (with

four (4) of those representing groups). Most of the comments opposing the proposed apartments expressed concerns about traffic congestion and density.

This proposal has raised substantial community interest, both in support and opposition. Many attended both the TRC and Planning and Zoning Commission public hearing to express their views. The range of comments in support generally reflects the elements that support the 2025 Plan goals and the Council goals noted above. The range of comments in opposition to the proposal generally reflects concerns about traffic congestion and density.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications manual. The developer has been working closely with City staff to ensure compliance. The City of Asheville Fire and Rescue Department has been involved in the review of the project, particularly as it concerns the ability for rescue vehicles to gain ingress and egress from East Larchmont and are satisfied that life safety issues have been addressed. There is a traffic signal at the intersection of Merrimon Avenue and Larchmont Road that is equipped with emergency preemption. This allows Asheville Fire and Rescue to change the traffic signal to allow quicker egress onto Merrimon Avenue.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The proposed site is primarily flat, which appears to have been the result of grading when the Naval Reserve Center was built, resulting in significant topographic changes around the perimeter of the site. Given the already significantly altered terrain, the developer has been able to design the project to minimize further grading and maintain the existing land profile as much as possible.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The property as currently zoned (Institutional), allows a wide range of commercial, institutional or office uses, whereas, this proposal is to develop a multi-family residential community which is often viewed as an appropriate "buffer" between commercial corridor development and single-family housing. The property is surrounded by an equally wide range of use types and zones. The building design shown on the development plan depicts a project that should not injure the value of adjoining properties. The developer has worked with adjoining property owners to attempt to satisfy their wishes for landscaping of the development.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

   The area surrounding the project site is varied in scale, bulk, and coverage of building firmly establishing a mixed use character in this general area (including a range of other

multi-family developments). The building footprints for the proposed development are comparable to many buildings along the Merrimon Corridor. Many non-Merrimon fronting developments contain larger footprints than the proposed development (Red Cross, SteinMart Center, Asheville Catholic School, Asheville Pizza and Grace Covenant Presbyterian Church). The proposal forms a moderate density residential transitional use between the mixed commercial/residential uses along and adjoining Merrimon, and the single-family residential neighborhoods beyond. Thus the proposed development contributes to the area's existing mixed use character, while providing a buffering use.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The proposed use supports the 2025 goals and Council vision as follows:

   a. The goal of pursuing compatible infill development in places where infrastructure capacity exists or where it can be provided to accommodate a development.
   b. The goal of permitting and encouraging transit supportive density along and adjacent to major corridors and at logical transit nodes.
   c. The goal of promoting the use of green building techniques.
   d. The goal of providing affordable housing.

   Additionally, while not an officially adopted plan (City Council "accepted" the plan in June 2008) the *Affordable Housing Plan for the City of Asheville* identifies a number of strategic goals that the Larchmont project directly supports. Of important note is the very first recommendation outlined in the plan which reads:

   > *The City of Asheville, in partnership and collaboration with the entire Asheville community and area developers should set a goal to increase the supply of affordable housing units by 500 units a year over the next 20 years. Approximately 75% of these units should be rental units and many should be efficiency or 1-bedroom units.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

   The proposed use is located off of a major thoroughfare in the City. Regular transit service is available along this corridor. Needed infrastructure is in place or can be provided to meet City standards.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

   The City Traffic Engineer has evaluated the project. Using accepted trip generation standards, it is projected that the project will generate a daily peak hour volume of 51 trips between 4-6 PM, and a morning peak hour volume between 7-9 AM of 33 vehicles. By comparison, recent turning movement counts and tube count data (taken along Larchmont and Long) show that currently, the daily peak hour in the area is between the hours of 12:00 noon and 2:00 PM. Since the projected peak hours for the project are at different times, the additional traffic should not cause an undue burden on Larchmont Road.

Pros:

- This project supports the City of Asheville's goal of pursuing higher density infill development along major traffic corridors with transit availability.

- The project provides for sixty (60) new affordable units.
- The project will be designed to meet a range of greenbuilding standards.
- The project will provide a new bus shelter and a sidewalk along its property frontage which is likely to be extended all the way to Merrimon Avenue.

Cons:

- The project will add traffic trips to Merrimon Avenue and increase traffic on Larchmont Avenue.
- The project may generate additional parking on Long and Larchmont.

Staff recommends approval of this conditional zoning request and the requested modifications. The TRC met to discuss this project on February 15, 2010, and recommended it to you with conditions, generally noted below, and as outlined in the TRC Report. The Planning and Zoning Commission held a public hearing on this matter and voted 5-1 to recommend this development to the Asheville City Council.

Additionally, based on the finding and analysis provided in the report, staff finds this request to be reasonable.

Ms. Cogburn said that there is a valid protest petition. In addition, Grace Covenant Presbyterian Church adopted a resolution of support for this development.

Mr. John Legerton, with Legerton Architecture, gave an overview of the design of the buildings from different views using a computer model. He also reviewed the elevation drawings.

Mr. Wyatt Stevens, attorney with Robert & Stevens, P.A., representing MHO, explained that MHO's proposal to change zoning from Institutional to Urban Residential District meets the criteria for conditional zoning. The proposed development is clearly compatible with all neighboring uses. He outlined some of the permitted uses in the current Industrial District noting that there is no height restriction, much higher potential impact and the only difference in density is units per acre – 16 (Institutional) vs. 32 (Urban Residential)/units per acre. Currently allowable 36 units might mean even greater density (1) 36 3-bedroom units equate to 108 bedrooms, more cars, more traffic, bigger parking problem and the same height issue vs. (2) MHO Larchmont equals 32 1-bedroom units, 23 2-bedroom units and 5 3-bedroom units = only 93 bedrooms, fewer cars, less traffic and no parking problem. He noted one concern raised was the project density was too much for north Asheville. The following is a list of properties north of I-240 placed in residential areas, noting that the density of the Larchmont is 27,022 sf/acre (1) 301 E. Chestnut - Princess Ann Hotel - 40,780 sf/acre; (2) 215 E. Chestnut, The Commodore – 48,473 sf/acre; (3) 116 E. Chestnut - 44,211 sf/acre; (4) 198 Kimberly - 26,205 sf/ft; (5) 30 Edgemont - Grove Park Apts - 63,984 sf/acre ; (6) 185 Macon - Longchamps - 28,135 sf/acre; and (7) 288 Macon - Fitzgerald - 28,978 sf/acre. He said this is not public housing and showed a picture of Aston Towers, which is public housing. Regarding affordability, he felt affordable housing will not be built under the existing zoning (1) development costs would be too high for only 36 units; (2) $1.8 Million purchase price for the land; (3) high quality, attractive construction costs money; (4) development would be ineligible for tax credits; (5) cost per unit could not be supported by affordable rents; and (6) would have to charge high rents to make the project cash flow. 2009 affordable housing developments approved for tax credits by NCHFA (1) average size for family development in cities > 50,000 population was 95.6 units; and (2) median size for family developments in cities < 50,000 population as 92 units. Using a chart, he explained that MHO doesn't buy land for less than 50 units for tax credit developments. He pointed out that the Urban Residential Zoning was "established to complement existing residential neighborhoods ... and is intended to be located on significant transit corridors and/or in high growth areas." He explained that the City Development Plan of 2025 specifically states that Merrimon Avenue should be Urban/Neighborhood Corridor from Hillside Street to Colonia Place. The definition of Urban/Neighborhood Corridor states in part "mixed-use structures, typically 2 to 4 stories in

height, contain retail, office, and residential uses that serve and are complemented by adjacent neighborhoods." From the 2025 plan it states that we need "increased accommodation of population growth within the City, particularly along commercial corridors." "It will require ... strong leadership and political courage, and an open and inclusive attitude on the part of its citizens to address this problem in an effective way." He then explained the low traffic input. According to the Institute of Transportation Engineers Trip Generation study, the 60 unit MHO Larchmont development would generate the following traffic impact: (1) average two way trip volume – 511 trips/day; (2) peak volumes for AM peak hour is 33 vehicles per hour (cars in and out) and peak volumes for PM peak hours is 51 vehicles per hour (cars in and out); and (3) maximum volume is less than one additional car/minute. He showed a comparison of the actual traffic flow in Northpoint Commons apartment complex, which has 9 more units and 48 more bedrooms than the Larchmont development, and it shows a lower vehicles per hour in both the AM and PM peak hours. He also provided information about comparable traffic for possible Institutional zoning projects (retail, medical offices and general office building) which showed higher traffic volumes during the peak hours. If City Council deems it necessary as a condition of the rezoning MHO is willing to escrow up to $10,000 to cover the cost of traffic calming on Edgewood, provided the City and the neighborhood can agree on the need for such devices. He said that MHO will escrow that amount, even if City Council does not make it condition. Regarding parking, he said it will not be a problem (1) under the City's guidelines for Urban Residential, only 33 parking spaces are required; (2) MHO Larchmont will have 71 spaces for 93 bedrooms in the complex; (3) according to the City's census statistics, 19% of people who rent apartments do not own cars; and (4) possible additional night-time parking at Sun Trust. He then explained the MHO parking study performed during March 5-9 for (1) Crowell Park which has 119 bedrooms and the average per night was 63 cars; and (2) Northpoint Commons which has 141 bedrooms with an average per night of 91 cars. The Larchmont will have 93 bedrooms with a predicted average per night of 57 cars and a predicted maximum number of 62 cars. He said the development will not materially endanger public health or safety in that (1) it meets all technical standards; (2) the Asheville Fire & Rescue Department approves the project and Fire Chief Burnette has no concerns; and (3) there is no crime or safety issue associated with MHO developments and Police Chief Hogan has no concerns. He explained that Partnership Property Management (who manages MHO's properties developed by MHO) utilizes a very through and complete screening process for prospective tenants. They obtain (1) criminal background check; (2) credit history check; (3) third party verifications of employment and income; (4) maximum number of occupants per unit; and (5) on-site property management and strict enforcement of lease requirements. He provided actual crime statistics for February 2009-February 2010 of crimes within 25 feet of MHO properties: (1) no crimes reported at Northpoint Commons; and (2) total of 16 crimes reported at 18 different MHO properties, including 394 living units. Typical crimes were larceny and vandalism. As a comparison, the Grace neighborhood had 88 crimes reported, including 33 crimes reported with 1,000 feet of the proposed development. The MHO Larchmont development is likely to improve the crime statistics in that neighborhood. He urged Council to support the project.

Mr. Larry Holt, property owner on Lockley Avenue, explained that he is a planner by education and has worked with housing, redevelopment, community and economic development programs for over 38 years. He has spent those years improving and developing affordable housing. He said the proposed conditional use rezoning and the increased density is a concern to the neighborhood. The developer's occupancy standards in the 60 1, 2 and 3 bedroom units would result in a maximum of 246 residents. The usable area of this property based on the Buncombe County survey is 1.65 acres. We feel the 60 units with the potential occupancy of 246 residents is excessive. The Plan indicates 71 parking spaces which is 1.1 car per apartment. This includes visitors, guests, management staff and maintenance staff. They indicated the requirement under this zoning would be 33 spaces and that is not realistic. Regarding the statistics noted by Mr. Stevens, he felt that 19% of apartment dwellers lease (not own) cars so they don't show up on the tax records. There are very few people who don't have cars. To achieve the proposed plan and provide minimal parking requires the construction of massive retaining walls which add significant visual mass to the development. Planning staff states that

the highest point of the structural height (as measured from the lowest point where the structure meets the ground to the top of the roof pitch) is 61 feet (Merrimon Avenue elevation). The actual height, based on the topographic information on the survey prepared by the developer indicates a height of 81 feet from above Merrimon Avenue. Regarding the property having a Merrimon Avenue address, the survey of the property indicates an appendage on the south side of the property that runs from the drive entrance of the fire station all the way down to Merrimon Avenue, between the Post Office and the bank. Mr. Stevens indicated that the developer did not intend to purchase this 40-foot appendage. When he checked with the County, there were not aware of that. Also the 20-foot easement for Larchmont is on the south side of this appendage. Less than half of Larchmont is within the 20-foot easement. We feel this matter should be resolved and the public property and legally dedicated right-of-way should be resolved before action taken rather than after the fact. Regarding traffic, City staff estimated the proposed development would generate an additional 500 trips per day. The traffic counts made were taken the last weekend in January and due to weather conditions, he questioned the accuracy of the counts. He felt the numbers are somewhat questionable but anyone traveling Merrimon Avenue is the morning, noon or early evening is aware of the congestion and adding this additional traffic will not solve that problem. He submitted that Council needs to resolve all TRC issues and determine how the corrections will be funded before you proceed with the rezoning. The only real control we have over the quality over the life of these residents is the density and what is proposed of 60 units on 1.65 acres is not acceptable and not in keeping with the 2025 plan. The older properties given as examples by Mr. Stevens were built 60-80 years ago and you would not be able to build them today. They have been accepted in the neighborhoods because they have been there for a long time. He also noted that until recently when making inquires about this proposed development has he been called several names. In summary, the development of affordable, workforce housing is not an issue. Their concern is the increased density, scale and mass of the proposal is not in keeping with the neighborhood. The increased traffic volume will exacerbate the existing traffic congestion and will create more vehicle and pedestrian conflicts and hazards.

Mr. James Gardner, resident of Lynmar Avenue, was speaking on behalf of those who signed the petition against the rezoning. "Over the past few months we learned about the developer's proposal, about the need for affordable housing, about the Larchmont site and the surrounding area. But there is much that we still don't know (1) whether or not the County seriously considered another public purpose for the land (perhaps at little or no cost to tax payers); (2) if the land was posted for sale for a fair amount of time or just for the sliver of time required for compliance; (3) if the estimated need for 744 units in North Asheville should be revised to reflect the current 2010 economy and housing situation rather than the 2008 projection; (4) the cost to taxpayers for infrastructure repairs and upgrades to accommodate such a large-scale project, in light of the growing deficit in the City's budget; and (5) why building 60 units is affordable but the developer, whose responsibility it is to maximize efficiency, cannot make less than 60 units work financially. They don't know because the process has not been entirely open to citizens. We do know that (1) there is no proposal for a strip mall, or a skyscraper, or a race track, or a gymnasium, or a space needle, or any other onerous red herring that some proponents want to throw in our path - and if there *were* such a proposal, City Council could exercise its authority to further restrict zoning for the site; (2) that the physical and social fabric of the neighborhood will be drastically and unnecessarily altered; and (3) that 60 apartments—two three-story buildings, one of which will tower over 60 feet in height—will be too big for the 1.65-acre site. Yet we are being asked to believe that the current zoning is incorrect, that a maximum of 32 units is somehow not dense enough for the site or for the goals of those crusaders for "urban density." That crusade should not come at the expense of the backbone of the city—residents of the old neighborhoods. Also, we should recognize that the drive toward urban density can have the unintended consequence of creating more sprawl because single-family housing is displaced or deemed less attractive to buyers who spread out to leave the density behind. The net carbon footprint is an increase, not a reduction. It is an awkward situation for the city. People of good will and good intentions on both sides of the debate are eager to do what's best. Many civic servants have devoted themselves to helping a worthy cause and a popular non-profit

organization. But the best solution, the best plan—a proposal that fits the current zoning—is not the one that is before the Council. It is an awkward situation, because the only germane issue is the scale of the project and whether or not it fits the site and the current zoning. What is before City Council is not a referendum on the greatness of the developer or on the socio-economic character and ideals of residents, or on the need for affordable housing. We have heard many (and we will hear more) glowing testimonials about the developer. While perhaps true, those are irrelevant smokescreens. The only relevant issue is the scale of the project. The City's technical review is riddled with troubling loose ends in every technical category, and at the end of the report suggested motions are offered for Council. How about a motion to insist that the developer submit an alternate plan that fits the scale of the site and the neighborhood? One thing the developer's proposal does get right: the addition of a bus shelter. Those of us who have ridden bus #2 know that there can be quite a wait for the next bus if you miss the hourly connection or if a bus is full. So it will be good to have shelter for that long wait (even though there is already a shelter a block away at the next stop). One member of City Council, in her campaign platform, bemoaned the lack of "strict development standards" in our zoning ordinances. Yet to conditionally rezone Larchmont would be a step away from that goal, not toward that goal. A developer's budget should not be the basis for zoning decisions. We must ask: What would be the risk of designing a 32-unit alternate plan, other than a bit of wounded pride in acknowledging that we initially were too ambitious? The site would then be used at its maximum density and for the worthy goal of providing affordable housing to more than 100 people. Neighbors who object to 60 units would support the smaller plan and join forces with the current proponents. New residents would not live in overcrowded conditions, and current residents would not have overly massive structures imposing over their backyards. Traffic—already congested—would not be maxed out beyond the limits of safety, and the concerned fire fighters at the Larchmont station would rest a little easier. The current zoning allows multi-family housing at a maximum of 16 units per acre. That zoning is meant to protect the character of old neighborhoods while allowing for reasonably moderate additions. That's the zoning that should be followed, the zoning that fits the "moderate density" designation of the current neighborhood. But, unfortunately, there is no alternate plan from the developer on the table. You don't have to read Henry David Thoreau to realize that a correct balancing of the moral equation tells us that the greater good does not always equal the greater mass. You know these planned buildings are too big for the site. Requesting conditional zoning is a clear, if implicit, admission that the plan is too big for the site. We all know the buildings are too big for the site. We should not act as if Asheville is twice as big as Asheville really is. Sixty units would be completely inconsistent with the residential neighborhood in that area. 'There is no similar use of the property anywhere in the vicinity. There is no good reason that this particular property should be conditionally zoned and placed into a category that would be unique for the area and is inconsistent with the surrounding and historical uses.' As two residents have written in the *Citizen-Times*, 'It is true that, with 37 units instead of the proposed 60, fewer tenants would be housed. One site, however, should not carry a disproportionate burden [to meet] the need for affordable housing in Asheville.' Please don't let the popularity and momentum of a successful non-profit enterprise rush the City into a bad decision. Let's heed the ancient proverb that says, *Before you buy shoes, measure your feet.* Despite all the mischaracterizations of those of us who question the scale of the project, and despite some hateful character attacks, the residents who live next to the site are working class people who have long contributed to the betterment of this city. They include: a special education teacher who is also a single mother; a high school teacher and his wife and children; an elderly Greek immigrant couple who are active gardeners and members of their church and who have lived there for 55 years. All those longtime residents and others have helped make the city the attraction it is to so many people who relocate here and need affordable housing. Do not ignore the neighborhood's root systems as you plant new residents. You have a dream opposition here—citizens who share your ideals and goals, citizens who voted for you, citizens who will be foot soldiers for you if you show willingness to compromise. What more could you want from an opposition? Think of us as a strange breed of friendly gadflies who don't sting but buzz just enough to make you choose a better course of action. Ignore us, however, and you risk losing the best allies you could have had. Do the right thing. Don't write your name in Asheville history as the City Council that refused to compromise on the Larchmont plan, which is too big for the site and too big for the neighborhood. Reject this

current plan, which reflects eagerness and good intent but ultimately lacks wisdom. Insist on a plan that puts us all on the same side of the issue and pushes us to work toward a more affordable, sustainable, neighborly city for all."

During the following public comment period, after the one hour limit (per Council's rules), it was the consensus of Council to continue with the public comment period; however, to limit speakers to 2 minutes.

The following individuals spoke in opposition to the conditional zoning request, basically noting that they are not opposed to affordable, workforce housing, but the increased density which will exacerbate the existing traffic congestion on Merrimon Avenue along with safety issues on Long Street and Edgewood Road:

Mr. Bill Van Cleve, resident on Melrose Avenue
Mr. Lawrence Hall, resident on Westall Avenue
Ms. Laura Bowers, north Asheville resident
Mr. Stan Taylor, resident on Colonial Place
Mr. John Combs, resident on Melrose Avenue
Ms. Tina Schwartz, resident on Edgewood Road
Mr. Gary Schwartz, resident on Edgewood Road
Ms. Sharon Moulds, resident on Melrose Avenue
Mr. Andrew Tashie, resident on Westall Avenue
Mr. Paul Willard, resident on Melrose Avenue
Mr. Dean Hittleman
Mr. Jack Krolak, resident on Woodward Avenue
Mr. Steve Rasmussen

The following individuals spoke in support of the conditional zoning request:

Mr. Mike Lewis, resident on Gracelyn Road
Mr. Robbie Sweetser, resident on Fenner Avenue
Mr. Danise Hauser, resident on Melrose Avenue
Mr. Paul Szurek
Mr. Steve Cochran, resident on Page Avenue
Ms. Robin Merrell, Sr. Housing Attorney at Pisgah Legal Services
Ms. Deborah Miles, resident on Westall Avenue
Mr. Christopher Dickson, resident on Reynolds Place
Mr. Dan March, resident on Woodvale Avenue
Mr. Robert Todd, resident on Lexington Avenue
Mr. George Peery, resident on Club Knoll
Ms. Beverly Nivens, resident on Melrose Avenue
Mr. Jonathan Stansell, resident on Piercy Street
Ms. Barber Melton, member of the Affordable Housing Task Force
Ms. Patty Beaver, representing the Council of Independent Business Owners
Mr. David Nash, member of the Affordable Housing Task Force
Ms. Beth Maczka, resident on Greenleaf Circle
Mr. Alan Ditmore, resident in Leicester
Mr. Mike Romero, resident on Sugerland Ridge

Mayor Bellamy closed the public hearing at 8:51 p.m.

City Attorney Oast said that a valid protest petition has been received and that 6 out of 7 Council members must vote in favor of the rezoning for it to occur. He said that remarks made about the County's sale of the property is not an issue before Council as it has nothing to do with land use. He reminded Council that if the property is rezoned the rezoning follows the land and MHO may not always be the property owner.

In response to Councilman Davis, Ms. Cogburn said that the property is still owned by Buncombe County.

In response to Councilwoman Manheimer, Director of Transportation Ken Putnam explained the City's effort to make the intersection of Long Street and Edgewood Road safer. He noted that mirrors are a fix for limited site distance and they have worked quite well. He explained the downside of making the intersection an all way stop (rubble strips are noisy) and another option of making Long Street one-way from Edgewood Road.

When Councilwoman Manheimer asked about MHO escrowing money for traffic calming on Edgewood, Mr. Putnam cautioned Council in setting a precedence of placing conditions to make traffic improvements on low impact projects (those that are anticipated to generate less than 100 vehicles per hour). If we do proceed with traffic mitigation, the City has a traffic calming policy (which may take several months) that will need to be followed. If this is a condition, then the devices should be put in before the Certificate of Occupancy is issued for the finished project.

Councilwoman Manheimer said that there are sidewalks only on a portion of Long Street and wondered if it is on the list of streets identified for future sidewalks. City Manager Jackson said that it is not on a list at this time.

Councilwoman Manheimer said that Public Works Director Cathy Ball has provided her with a figure of $25,000 for the sidewalks on Long Street. Ms. Ball also advised her that Long Street has varying widths and we may need to acquire some right-of-way to complete a sidewalk project.

Councilwoman Manheimer understood that MHO will try to put in a sidewalk on Larchmont from their site to Merrimon Avenue working with the Post Office. Mr. Putnam confirmed that if the Post Office gave MHO permission for the sidewalk, MHO could install the sidewalk to Merrimon Avenue.

In response to Councilwoman Manheimer about a sidewalk on Long Street, Mr. Putnam said that MHO's contractor could work with the City to put the sidewalk in, assuming the right-of-way was there. As a City, we can make the choice of building the sidewalk ourselves or allow a contractor to come in and do it.

In response to Councilman Bothwell, City Attorney Oast said that the City can work with the Post Office to ask if they can voluntarily address some of the back-up concerns regarding parking and the drop-boxes.

In response to Councilwoman Manheimer, Ms. Cogburn said that when City staff evaluates an application for a conditional zoning, they look at several things, including the number of bedrooms. Under the existing zoning, 37 units are allowed, which could be 37 3-bedroom units.

In response to Councilwoman Manheimer, Ms. Cogburn said there is a Housing Trust Fund loan proposal submitted by MHO, but that has not been reviewed by City Council. It will not come forward to Council unless this project is approved.

In response to Councilwoman Manheimer regarding notification, Ms. Cogburn said that we do more than required by State law. We have (1) sent notices to property owners within 200 feet of the project; (2) posted a "Z" sign to capture those that drive by; and (3) advertise in the newspaper. In this project, staff has spent an enormous amount of time communicating with people about this project. She feels that this has been a very open process with large turn-outs.

In response to Councilman Bothwell, Ms. Cogburn said Planning staff has reviewed the sketch-up images from the architect and felt confident in what was presented was accurate.

In response to Councilwoman Manheimer, Ms. Cogburn said that all infrastructure costs will have to be paid by the developer. When the developer goes back for final TRC approval, the waterline will have to be fully engineered to the satisfaction of the Water Resources Department.

In response to Councilman Russell, Mr. Stevens said that actual statistics on their occupancy show that their average residents per bedroom is 1.1 persons. In this development there will be approximately 103 people, not the 246 mentioned by Mr. Holt.

Councilman Bothwell felt this project might help to eliminate traffic congestion on Merrimon Avenue. He explained that when we get the higher density, we will be able to afford to run the buses every half-hour. Once we get half-hour buses, more people will use them. This is a piece of how we can build the City out to make transit work for everyone.

Councilman Smith felt the traffic concerns are important whether or not this project is constructed. He believed in increasing corridor density in order to incentivize affordable housing and sustainable growth in our community, especially on our transit lines. He felt this density will provide a buffer between the urban corridor and the established neighborhood. He felt these proposed buildings will come to be an integral a part of this neighborhood as those older buildings are to those neighborhoods. He felt this will provide a lot of people long-term affordability. To increase density on our urban corridors will decrease our energy use, decrease sprawl thereby preserving open spaces, decrease Asheville's carbon footprint, increase transit usage, increase our socio-economic diversity in downtown and fulfill some of the recommendations from the Affordable Housing Plan and the 2025 Plan. It will allow people who work in Asheville to be able to live in Asheville.

In response to Mayor Bellamy, Mr. Stevens reiterated the vetting process for applications.

When Mayor Bellamy asked if we could condition the project always have a reputable management company associated with the property, City Attorney Oast said that Council can specify that a property manager be there during the day along with a point of contact for all hours in order to respond to concerns.

Mayor Bellamy asked for a commitment that sidewalks would be constructed from the site all the way to Merrimon Avenue on Larchmont. Mr. Stevens said that they have spoken with the Post Office and they are open to the idea. Assuming the Post Office agrees, MHO will pay to install the sidewalk on Larchmont down to Merrimon Avenue.

In response to Mayor Bellamy, Mr. Tony Hauser, Civil Engineer for the project, explained the measures that would be installed to bring the site up to the City's stormwater standards.

In response to Mayor Bellamy, Mr. Stevens said that there was no way MHO could get tax credit financing for 36 units.

Councilman Davis felt that it was important to have overflow parking. Mr. Stevens presented a letter from Sun Trust Bank that they would look favorably upon leasing overflow parking spaces, however, they lease their property and their lease expires in October of 2012. They have been leasing that property since 1987 and they do have a lease extension available. He felt they can agree to the condition that we will negotiate in good faith with Sun Trust Bank to achieve extra parking, if needed. They will work in good faith with whoever owns the property.

In response to Councilman Russell, Ms. Cogburn explained as best she could of why the property is currently zoned Institutional. She recalled that when the UDO was being adopted in

the late 1990's staff was instructed to make as few non-conformities as possible. Because the Naval Reserve Center was on the property it was zoned Institutional.

Based on the findings and staff analysis provided in the report, Vice-Mayor Newman moved for the adoption of Ordinance No. 3837, approving the conditional zoning for the project identified as the Larchmont, located at 785 Merrimon Avenue to rezone from Institutional District to Urban Residential/Conditional Zoning District for the development of a 60-unit apartment complex, including approval for a request for modifications of the design standards for entrance location, front setback and buffer width restrictions, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90-degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on the site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) That the units be maintained as affordable units; (7) That MHO escrow up to $10,000 to be used for traffic calming devices, including speed humps, along Edgewood Road between Merrimon Avenue and Kimberly Avenue. Conditions and procedures outlined in the existing City's Traffic Calming Policy still need to be followed as well as good traffic engineering principles related to the actual design and placement of traffic calming devices; (8) That sidewalk on Larchmont will be extended all the way to Merrimon Avenue contingent upon approval by the Post Office; (9) That MHO will continue negotiating in good faith to secure an option for overflow parking; and (10) That MHO provide a professional screening process for clients who apply to reserve a place at the development consistent with information presented at this meeting. This motion was seconded by Councilman Bothwell.

In response to Councilman Davis about resurfacing Larchmont, Mr. Putnam said that even though there are several pavements ahead of Larchmont, the developer will be making two utility crossings across Larchmont and when those repairs are made there will be some opportunity for road repair.

Councilwoman Manheimer asked City staff to make Long Street a priority for improvements, including a sidewalk.

Vice-Mayor Newman noted that in our pedestrian plan a street like Long Street would be a relatively low priority compared to some other areas. But, assuming this significant infill development is approved, he felt that Long Street would probably go up the prioritization list based on the demand compared to what was there in the past.

Mayor Bellamy was disappointed that throughout this process Mr. Holt and others were called names. When people have questions or don't always agree with something, people get upset. What makes Asheville great is to have people come to the table who have different opinions and be able to say what they believe. If people had not sent e-mails or voiced their concerns many of these questions would not have been asked about this project. She didn't want our community to become "one thought – one mind." It's not wrong to ask questions about who will be your neighbor. She apologized for the name-calling for those who stood up for a different opinion. She felt this project has been made better because of the dialogue. She felt this process was very transparent. She hoped that MHO will continue to communicate with their neighbors, perhaps with a newsletter, to let them know what is happening throughout the project.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell carried unanimously.

At 9:50 p.m., Mayor Bellamy announced a short recess.

ORDINANCE BOOK NO. 26 – PAGE 62

It was the consensus of Council to move the new business items up to be considered before the unfinished business.

V. NEW BUSINESS:

A. RESOLUTION NO. 10-88 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE USE OF DOWNTOWN STREETS FOR THE BELE CHERE FESTIVAL

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of a resolution authorizing the City Manager to approve the use of downtown Asheville streets for the Bele Chere Festival.

The City of Asheville produces the annual Bele Chere Festival in downtown Asheville. The Festival requires that many downtown streets are closed prior to and during the three-day event and as downtown Asheville continues to develop adjustments to the festival layout are necessary.

The map shows the streets that will have festival activities as well as street closings and includes the use of the Ashville Civic Center.

The Festival layout is designed by the Parks, Recreation and Cultural Arts Department with approval by the Asheville Fire and Police Departments. This is the same footprint that was used at the 2009 Bele Chere Festival.

The Bele Chere Board considered the Bele Chere layout on October 7, 2009, and recommends its approval. The Recreation Board considered it January 1, 2010, and recommends to City Council to approve the Bele Chere layout.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of operating the city to the highest level of responsibility by identifying resources for strategic initiatives and creates meaningful performance measure for programs and services.

Pros:

- Allows the City the ability to communicate information about Bele Chere to the community in advance.

Con:

- It closes streets in downtown Asheville.

There is no fiscal impact to approving the festival layout.

Staff recommends City Council to approve a resolution authorizing City Manager to approve the Bele Chere festival layout as indicated by the festival map.

At the request of Mayor Bellamy, Ms. Ruggiero said that she would look at relocating the music stage from right in front of the Vanderbilt Apartments on Haywood Street.

At the request of Councilman Davis, Ms. Ruggiero said that they would work with the event organizer of the local sports car club, noting that the N.C. Dept. of Transportation would need to be included in the discussion as well.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 10-88. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 447

B. RESOLUTION NO. 10-89 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Public Art Board.

Ms. Jenny Bowen has resigned from the Public Art Board, thus leaving an unexpired term until December 31, 2011.

On March 9, 2010, City Council instructed the City Clerk to arrange interviews for Kathleen Lyons, Honor Moor, and Jaan Ferree.

After Council spoke highly of the candidates, Kathleen Lyons received 1 vote, Honor Moor received 5 votes and Jaan Ferree received 1 vote. Therefore, Ms. Moor was appointed as a member of the Public Art Board to serve the unexpired term of Ms. Bowen, term to begin immediately and expire on December 31, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 449

Councilman Bothwell moved to rescind the appointment of Ms. Holly Shriner to the Planning & Zoning Commission because of the lack of transparency in the appointment process and the strong outcry from the community about that lack of transparency. This motion was seconded by Councilman Smith.

Vice-Mayor Newman raised the point of order that this item has not been noticed nor is it a part of the agenda. He would object to the motion as he felt we are violating the rules we have established as a Council on having items placed on the agenda. People who might have an interest in participating in this discussion have not been given the opportunity to come and participate.

Councilman Russell agreed with Vice-Mayor Newman. He understands the request; however, he felt Council should adhere to their rules for placing items on the agenda.

Councilman Bothwell said that under Roberts Rules of Order that you don't have to every potential motion on the agenda for a meeting. He deferred to City Attorney Oast as to whether or not he could make a motion.

City Attorney Oast said that the Mayor is the presiding officer and can rule motions in or out of order. Council's rules do provide for a motion to rescind as one of the motions a Council member can make. A motion to rescind is a main motion. Under Roberts Rules, if a motion to rescind is made without notice, as has occurred here, under some circumstances a supermajority would be required to adopt it. However, since all of Council is present, this will require a simple majority vote from Council. Ms. Shriner's appointment is not effective until April 1 and if Council wants to undue the appointment, they can rescind the action.

Mayor Bellamy said she would carry the motion through since there was a motion and a second. However, when we talk about transparency, this is contrary to the process.

Councilman Davis stated that Ms. Shriner received four votes and felt it wasn't proper to say she is not qualified because they were not transparent. Quite frankly, other candidates weren't any more transparent than she was. Council just didn't ask the right questions. He will not vote for removing Ms. Shriner.

Councilman Smith felt that points made are valid and in the future he will not be seconding motions that are brought to this body outside of the rules that we agreed upon at our retreat.

Mr. Steve Rasmussen felt that the Planning & Zoning Commission is an important body and one that the community needs to trust. He suggested Council rescind the appointment and allow Ms. Shriner to reapply.

Mr. Alan Ditmore felt that if applicants cannot serve on a board due to direct financial gain, the Council will never get anyone to serve on their boards.

Rev. Christopher Chiaronmonte felt there is an appearance of impropriety. He suggested Council rescind the appointment and let her reapply, after an evaluation of Council's appointment process.

Mr. Barry Summers said that since passion is created in land use issues, the bar for appointments needs to be set higher. He felt Council's appointment process was flawed and urged Council to rescind the appointment and start over again.

Mr. James Judd felt that Council should have diverse expertise on the board and noted that after reviewing all the potential candidates credentials, Ms. Shriner did not have any planning or zoning experience. He questioned Council's reasoning on why they voted in support of her appointment.

City Attorney Oast explained conflict of interest provisions.

Councilman Russell noted that all interviews were open to the public. Ms. Shriner stated that she was a property owner on Merrimon Avenue and was involved with local process during the Merrimon Avenue rezoning. If there is a project that falls under the conflict of interest provision she can recuse herself. He felt that she will be able to look at both sides without a predetermined position.

Vice-Mayor Newman objected to the assertion that the appointment process was not open. It is a process that is used all the time. Every single member of Council has the opportunity to interview any candidate who puts in an application. All candidate applications were before Council when interviews were decided on. The interviews held in an open, publicly announced meeting. Some members of the public do attend the interviews. The appointments are discussed in an open meeting and any member of Council has the opportunity to request the appointment be delayed and request more interviews. Ms. Shriner was not one of his votes; however, he rejected the insinuation that the appointment was not done in an open manner.

Councilman Bothwell wanted to make it clear that he made the motion not to remove Ms. Shriner per se. It's not that he's opposed to her serving on the Commission. What he found to be an affront was in the course of the interview she said that she was a property owner along Merrimon Avenue, but she didn't indicate that she had been attending meetings about the Deal Buick property at which the Unified Development Ordnance (UDO) was discussed. She seemed to present to him an innocence of any knowledge about the UDO, which he didn't think represented the facts. To the extent that that wasn't made clear, we were not participating in the kind of openness disclosure that the Governor and the legislature called for last year. As far as the potential for discussing it at the Council meeting, that was partly because he is a novice here

and didn't understand we were allowed to discuss it. Vice-Mayor Newman polled the members of Council without any nominations. That was his misunderstanding and had he known, he would have argued the case. He felt all that should have been done in a more public way. The interviews are a public meeting but no one attends them. The formal meeting is televised and this is where the information gets out to the people in the community. The interviews are not meaningful public, even though they are legally public. He has been getting a lot of feedback from the community who are real distrustful of the process. And it's because of that apparent lack of transparency that he made the motion. He then withdrew his motion and simply asked Ms. Shriner to withdraw her application and submit to reapplication. To him, this was not a transparent process.

VI. UNFINISHED BUSINESS:

A. RESOLUTION NO. 10-87 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A ONE-YEAR AGREEMENT WITH WNC COMMUNITY MEDIA CENTER (FORMERLY KNOWN AS URTV INC.) FOR THE MANAGEMENT OF PUBLIC ACCESS

At 10:25 p.m., Vice-Mayor Newman moved to excuse Councilwoman Manheimer and Councilman Russell from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

Director of Administrative Services Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to sign a one-year agreement with the WNC Community Media Center (formerly known as URTV, Inc.) for the management of public access.

At its meeting on January 26, 2010, the City Council directed staff to negotiate an agreement with URTV, now known as the WNC Community Media Center, for the management of public access. Council instructed staff to ensure the agreement clearly addressed (1) compliance with open meetings and public records law and (2) compensation and payment terms for the duration of the agreement. Council also requested staff provide information about the pros and cons of continuing to appoint members to the WNC Community Media Center board.

Staff has negotiated a one-year agreement with the WNC Community Media Center covering the period April 26, 2010, to April 26, 2011. Under the terms of the agreement, the City of Asheville will pay the WNC Community Media Center $60,000 for management of the public access channel. The City will disburse $60,000 in two equal payments of $30,000 on or before May 1, 2010, and September 1, 2010. In addition, the agreement includes clauses that require the WNC Community Media Center's compliance with standards set forth in North Carolina public records and open meetings laws. In exchange, the WNC Community Media Center will operate the public access cable channel and manage a media production facility available for public use.

Compensation

During the course of negotiating this agreement, the WNC Community Media Center originally requested $100,000 in compensation for managing the public access channel. The additional revenue was requested to hire a new full-time staff member and expand multi-media training and related services provided by the media center. This funding request, however, would exceed the total amount of PEG fees collected by the City during the contract period, and would require a General Fund allocation to make up the difference. Given current economic and budgetary conditions, staff recommends against increasing compensation beyond what PEG fees can support. They said that without the entire $100,000 they may not be able to sustain operations long-term into the future and that they will be seeking additional increase funding from Buncombe County.

Board Appointments

At the January 26, 2010, City Council meeting, staff recommended that City Council discontinue appointing members to the WNC Community Media Center board. Based on staff's recommendation, City Council asked for additional information about the pros and cons of appointing board members.

Programming on public access channels is constitutionally-protected by the First Amendment, and as such, governments cannot make editorial or content-based programming decisions. For this reason, public access channels are typically managed by third-party organizations like the WNC Community Media Center.

The WNC Community Media Center is a non-profit corporation with its own Articles of Incorporation and bylaws. The City of Asheville contracts with the WNC Community Media Center as a vendor to provide a service, management of the public access cable channel and media center. The contract serves as the city's mechanism to set forth performance requirements and standards for the WNC Community Media Center. Although the City has made appointments to the WNC Community Media Center board, those appointments do not make the WNC Community Media Center a public agency nor the board a public body.

The Council's appointments to the WNC Community Media Center board may give the City influence over decisions made by the board, including programming standards. Although this may be perceived as a benefit to the City, it also subjects the City to criticism and possible legal challenges arising from the Board's activities.

It is staff's recommendation that these decisions be made by a board that is entirely independent of city government. This recommendation is consistent with best practices in North Carolina. Staff has been unable to find another city in the state that makes appointments to the community's public access board.

A benefit of making appointments to the WNC Community Media Center board may be receiving regular updates on media center activities from appointees. Staff would recommend Council continue to name a Council liaison to the WNC Community Media Center for this purpose.

Pros:

- The agreement provides for the continued operation of a public access cable channel and public media center in Asheville.
- The agreement addresses concerns expressed by City Council regarding open meetings and public records, and clarifies the City's payment terms for management services.

Cons:

- The loss of the use of PEG funds for government television expenses currently covered by the City's General Fund.
- According to the WNC Community Media Center's director, the long-term financial sustainability of the facility will require increased revenue from the City and Buncombe County.

Under the proposed agreement, the City will pay the WNC Community Media Center $60,000 to manage the Public Access Channel. This payment will be offset by 60,000 in PEG fee revenue, which represents 60% of the total PEG fees collected by the City between FY 2009-2010 and FY 2010-11. Thus, there is no additional impact on the City's General Fund budget. PEG fees are collected from cable subscribers and must be spent on public, government, or education access activities.

City Attorney Oast said that under the federal law, the City is not permitted to exercise any control over content, with the exception of ensuring that content is not obscene. When there have been attempts made to do that, sometimes lawsuits are filed and the attempts to do that have been stricken down under First Amendment grounds. To the extent that the City would have appointments to a board like this, it might be seen as an attempt by the City to exercise some sort of editorial control over the content of the station and in his view would expose the City to being named as a defendant in one of the lawsuits, should something like that happen. We do have the ability, through the management agreement, if we think the station is being operated improperly, to exercise some degree of control over the contract, but he would not want us to be in a position of exercising editorial control.

Staff recommends that City Council approve the resolution authorizing the Mayor to sign the agreement with the WNC Community Media Center for management of public access. Staff further recommends removing the clause allowing City Council to make appointments to the WNC Community Media Center board from the agreement.

It was the consensus of Council to include in the management agreement the financial compensation of $60,000 with the inclusion of the language in the extension agreement related to open meetings and public records.

After a brief discussion, it was the consensus of Council to continue making appointments to the WNC Media Center Board and to include that as part of the agreement.

Mr. Alan Ditmore felt the membership fees were too expensive and the public records language should be retroactive.

Mr. Alan Rosenthal explained that he has a lifetime ban from entering the WNC Media Center offices. There is an appearance of impropriety and no transparency with this board. He urged Council not to extend this management agreement and asked for a letter of apology along with the trespass notice being rescinded.

Mr. John Blackwell noted that he too is banned from the WNC Media Center offices. He spoke in opposition to the current management of public access and hoped they would get a new manager.

Rev. Christopher Chiaronmonte spoke in support of the management agreement and felt staff is doing an excellent job. He said they are very busy and suggested Council appropriate the $100,000 they requested.

Mr. Steve Rasmussen urged Council to retain its membership on the board as the public does have the expectation of oversight.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-87, including (1) the $60,000 compensation; (2) language in the extension agreement related to open meetings and public records; and (3) Council to continue making appointments to the WNC Community Media Center Board. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 446

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alan Ditmore urged Council not to cut family benefits, in order to provide same sex domestic partner benefits, because those benefits include health insurance, which include contraception.

The following claims were received by the City of Asheville during the period of February 26-March 18, 2010: Elaine Seymour (Water), David Hyatt (Water), Ryan Hanson (Streets), Robert Shroat (Sanitation), Mike Lintz (Water), Martha Calloway (Sanitation), Progress Energy (Streets), Bob Gelder (Streets), John Fry (Transit), Pat Huffernan (Fire) and Earl Lee Gray (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:53 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 13, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Webelos Den of Cub Scout Pack 72 led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Dawa Hitch, Tim Jennings, Kevin Haughinberry, Dwain Taylor, Tony Chapman, Bernard McDowell, Battalion Chief John Presley, Captain Robert Singleton, Engineer Andy Randalls, Sr. Firefighter Carla Brank, Firefighter John Robertson, Captain Eric Velez, Captain Mike Russell, Lt. Wallace Welch, Lt. Jamee Crawford, Sgt. Stony Gonce, Megan Young, Jane Barbee, Mike Smith, Scott Sutton, Dwight Danner, Director Cathey Trimnal, Rick Thomas and Michael Kyle as key personnel that went above and beyond their job descriptions to deliver an exceptional level of public service during the major snow storm on December 18, 2009; (2) Assistant Fire Chief David McFee for the designation of "Chief Fire Officer" from the Commission on Professional Credentialing; (3) Athletics Program Supervisor Mark Halstead for receiving the Recreation and Parks Award by the N.C. Adult Soccer Association; and (4) Chief Financial Officer Ben Durant who is leaving Asheville after 12 years of service.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

At staff's request, Mayor Bellamy pulled Consent Agenda Item "J".

At the request of Mayor Bellamy, Consent Agenda Item "D" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 23, 2010

B. RESOLUTION NO. 10-90 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO ACCEPT STATE FUNDS FOR THE OPERATING EXPENSES OF THE TRANSIT SERVICE ROUTE TO AND FROM THE TOWN OF BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to accept State Funds for the operating expenses of the transit service route to and from the Town of Black Mountain.

The NCDOT has agreed to contribute funds to be used for the operating expenses of transit service to and from Black Mountain and the Asheville Transit System has agreed to operate the subject service.

Route # 28 and the Black Mountain Trailblazer Route were established in 2002 following a collaborative effort between NCDOT and the Land-of-Sky Regional Council as a result of a number of the region's counties and municipalities who passed resolutions in 2000 asserting the need for fixed route bus service connecting urban areas not in close proximity to each other.

The subject service operates seven times a day, six days a week. All funding is provided by the State of North Carolina (maximum of $306,146), the Town of Black Mountain ($18,500), Mountain Mobility ($5,500), and Fare Box Revenue ($23,348). The total budgeted cost for Fiscal Year 2009-10 is $353,494 and the total cost also covers the pass-through funding to Mountain Mobility for the operation of their route in Black Mountain. These funds are programmed in the current transit operating budget, with no City funds being spent. Ridership on the subject route during FY 2008-09 was 55,038, up 30% compared to the prior year.

NCDOT is funding the route from November 1, 2009, to June 30, 2010, and has recently notified the City of Asheville that future funding for this route might be discontinued beginning next fiscal year. NCDOT has expressed concerns related to compliance with Intercity routes as defined in FTA Circular 9040.1F Section 5311 (f). The City of Asheville has made all efforts to address NCDOT concerns and to comply with such definitions. Following those criteria, the route was redesigned, including stops, scheduling, and fare structure, but proximity to the Town of Black Mountain makes it ineligible for Intercity funding (The Town of Black Mountain is in the same urbanized area as the City of Asheville).

City staff is currently exploring alternatives to be able to continue the route next fiscal year, but due to the level of funding, the route may suffer drastic service cuts or disappear completely.

This action complies with (1) the 2025 City Development Plan by helping to develop a transit system that is capable of meeting the needs of all residents and visitors to the region; (2) the current Strategic Plan by helping to establish and improve a multi-modal transportation plan including sidewalks, bicycle paths, traffic signal pre-emption, transit, and other system improvements; and (3) the Green Focus Area to "Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements".

The Transit Commission supports the subject action.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city.

Con:

- There are no disadvantages to the City of Asheville.

The City of Asheville will receive State Funds in the maximum amount of $306,146 and other funds in the amount of 47,348 for a total of $353,494 to cover operating expenses of the

transit service route to and from the Town of Black Mountain. These funds are already programmed in the current transit operating budget, with no City of Asheville funds being spent. As such, no budget amendment is required.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation for the acceptance of funds to be expended for service to and from Black Mountain.

Director of Transportation Ken Putnam responded to Mayor Bellamy's inquires regarding Warren Wilson funding for this route.

Mr. Putnam said that the funding is in danger on July 1 and they will be meeting with the N.C. Dept. of Transportation later this week.

It was the consensus of Council, at Mayor Bellamy's request, to send a letter to our federal legislators about Asheville not being recognized as an intercity route as it will affect the bigger funding issue of transit.

RESOLUTION BOOK NO. 33 – PAGE 1

C. RESOLUTION NO. 10-91 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE NATIONAL POLLUTION PREVENTION DISCHARGE SYSTEM PHASE II RENEWAL APPLICATION

Summary: The consideration of a resolution authorizing the City Manager to sign the National Pollution Prevention Discharge System (NPDES) Phase II Renewal Application in order to comply with the Environmental Protection Agency (EPA) Federal Non-Funded Mandate.

In 1998, EPA adopted a rule known as the NPDES Stormwater Phase II rule. This rule applies to all municipalities with a population less than 100,000 that own or operate a Municipal Separate Storm Sewer System. The City currently is a Phase II compliant city and must renew this permit. The permit is renewed every 5 years.

The NPDES Phase II requirements include continuing to implement the following: Public Education and Outreach, Public Participation and Involvement, Illicit Discharge Detection and Elimination, Construction Site Runoff Control, Post Construction Runoff Control and Pollution Prevention and Good Housekeeping measures.

This action aligns with the Green and Sustainable goal from Council's strategic plan, in that it (1) Provides environmentally sustainability by protecting water quality in our area; (2) Provides protection to downstream property owners by regulating the water quantity that discharges from developments; and (3) Provides community outreach and education related to stormwater quality for the community.

Pros:

- The City will satisfy all current State and Federal minimum requirements for participation in the NPDES Phase II program
- The City is already a Phase II city and will continue to promote water quality
- The City will promote water quality in our area

Con:

- The NPDES program is a non-funded federal mandate to the City.

This program is funded through the stormwater enterprise fund. The current cost to meet the requirements of this program is approximately $1.62 million. No additional impact is expected by the renewal.

City staff recommends that City Council adopt the resolution authorizing the City Manager to sign the National Pollution Discharge Elimination System Phase II Renewal Permit Application and any other paperwork necessary to comply with the EPA Federal Non-Funded Mandate.

RESOLUTION BOOK NO. 33 – PAGE 2

D. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE DOWNTOWN AFTER 5 EVENTS ON MAY 21, JUNE 18, JULY 16, AUGUST 20 AND SEPTEMBER 17, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE ALL GO WEST FESTIVAL ON APRIL 24, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY EVENT ON APRIL 17, 2010

These items were removed from the Consent Agenda for individual votes.

E. RESOLUTION NO. 10-95 - RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor of the City of Asheville to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

Recertification of the Consortium is necessary to access US Department of Housing and Urban Development HOME Partnership Act funds. The City of Asheville receives approximately $1.4 million annually from this source. These funds directly support affordable housing projects in Asheville and the four county Consortium, and leverage an average of $9 of other funds for every $1 of HOME funds invested.

A. Asheville Regional Housing Consortium

A consortium of area local governments is entitled to receive funding from the U.S. Department of Housing and Urban Development under the HOME Investment Partnerships Act that they would be unqualified to receive individually. A cooperative regional approach to providing housing avoids duplication of effort and promotes a more effective delivery of services.

In 1993, the City of Asheville and other units of local governments in Buncombe, Henderson, Madison, and Transylvania Counties formed the Asheville Regional Housing Consortium, enabling the City of Asheville to receive and administer HOME funds on behalf of the Consortium.

B. Recertification

In order to the Asheville Regional Housing Consortium to continue to receive federal funding, The U.S. Department of Housing and Urban Development requires such Consortia to be

formally re-designated every three years. The Mayor must execute the agreement re-designating the City of Asheville as a member of the Consortium for another three year period.

This resolution supports City Council's Strategic Plan in the area of affordable housing. Renewing the Joint Cooperation agreement with the Asheville Region Housing Consortium will continue the City of Asheville's efforts to offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities."

Pros:

- The City of Asheville will continue to receive approximately $1.4 million in HOME Partnership Act funds that directly support affordable housing projects.
- The City of Asheville will maintain its status of lead entity for an additional three years in the Asheville Regional Housing Consortium continuing a joint cooperation with local municipalities avoiding a duplication in effort and promoting a more effective delivery of services.

Con:

- There are no cons to renewing this Agreement.

Participation in the Asheville Regional Housing Consortium will allow the City of Asheville continued access to approximately $1.4 million in funds that directly support affordable housing projects.

City staff recommends the Mayor support the continuation of participation in the Asheville Regional Housing Consortium for a further three year period by executing the Recertification Agreement.

RESOLUTION BOOK NO. 33 – PAGE 12

F. RESOLUTION NO. 10-96 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO BEGIN THE MAY 11, 2010, FORMAL CITY COUNCIL MEETING AT 4:00 P.M.

In response to Councilman Bothwell, Economic Development and Civic Center Director Sam Powers explained that on May 11 there is an opportunity to showcase the Civic Center in full function. He said that the Civic Center Commission will be sending out an invitation to various elected officials to a reception (with sponsors underwriting the cost of the event) to observe the economic impact that a sold-out concert has on the downtown area on a Tuesday night.

RESOLUTION BOOK NO. 33 – PAGE 13

G. RESOLUTION NO. 10-97 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS RELEASING COMMUNITY ACTION OPPORTUNITIES FROM THE DEED OF TRUST AND PROMISSORY NOTE FOR PROPERTY LOCATED AT 25 GASTON STREET UPON COMPLETION OF THE REID CENTER ANNEX ROOF REPLACEMENT

Summary: The consideration of a resolution authorizing the City Manager to execute any and all documents that will release Community Action Opportunities (formerly known as Opportunity Corporation of Madison-Buncombe Counties) (herein "CAO") from the Deed of Trust and Promissory Note for property located at 25 Gaston Street upon CAO's successful completion of the roof replacement of the Reid Center Annex.

By Resolution No. 98-36, City Council authorized the exchange of real property between the City and CAO which involved the real property owned by the City located at 25 Gaston Street in March of 1998. Pursuant to the terms and conditions of the purchase agreement, CAO was to provide: 1) $10,000 payable at the time of transaction, and 2) a promissory note of $26,000 consisting of $10,000 cash plus a donation of building materials in the equivalent of $16,000 for a foot bridge to span Town Branch as a connector to the future Town Branch Greenway. As part of that exchange, CAO executed a Promissory Note and a Deed of Trust against the property, recorded in Deed Book 2010 Page 579, in order to secure the payments to be made to the City. CAO fulfilled the cash payment totaling $20,000 but has not fulfilled the donation of $16,000 in building materials since the Town Branch Greenway has not been constructed. The greenway corridor was reconfigured and the foot bridge is no longer needed.

CAO leases the Reid Center Annex from the City in which it operates the Lonnie Burton Head Start Center. The annex is located at 133 Livingston Street adjacent to the 25 Gaston Street property. The roof on the center has outlived its useful life and leaks during rain events causing interior building damage.

CAO proposes utilize the value of the $16,000 in building materials stated in the promissory note and Deed of Trust and Promissory Note and apply it to the roof replacement cost of the Reid Annex. CAO will use the $16,000 value plus a grant they will receive from the American Recovery Reinvestment Act to pay for the Reid Annex roof replacement at no cost to the City.

Once the project is complete, CAO will donate the roof to the City. Upon donation, the City would release CAO from the Deed of Trust and Promissory Note.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action further complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department resources with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:

- Provide a funding source to support capital improvement to the Reid Annex, a city-owned building.
- Supports the standards of maintenance and capital improvement to meet community expectations.

Con:

- None

The expenditure for the roof replacement will be fully funded by CAO and with no expense to the City; thus, there is no net fiscal impact to the City's operating or capital improvement budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute any and all documents that will release CAO from the Deed of Trust and Promissory Note for property located at 25 Gaston Street, upon CAO's successful completion of the roof replacement of the Reid Center Annex.

RESOLUTION BOOK NO. 33 – PAGE 14

H. ORDINANCE NO. 3838 - BUDGET AMENDMENT TO COVER THE COST OF SNOW STORMS

Summary: The consideration of a budget ordinance amendment, in the amount of $295,020, from Fund Balance to cover the cost of snow storms.

During the period December, 2009 to the end of February, 2010 the City of Asheville experienced higher than expected snow fall and prolonged freezing temperatures. We received 29.4 inches of snow whereas the median snowfall for Asheville is 13.3 inches.

During the budget process we estimate winter event costs based on the median snowfall and what we have experienced the past few years. During the winter storms for 2009 – 2010 budget estimates were over expended in order to pay overtime, purchase salt and sand, and repair and fuel vehicles. Funds were transferred from accounts which normally would be utilized for repairing and maintaining infrastructure needs such as concrete curb, concrete sidewalks and paving etc. Without reimbursement to these affected accounts, further detrimental effects will occur to our infrastructure.

The winter storm from December 18 – 23, 2009 was declared a disaster under declaration number FEMA 1871 DR NC. Staff have completed consultations and calculations with FEMA field staff and arrived at a total of $368,035.62. There are additional checks and balances FEMA is required to perform, before approving, however, there usually isn't much difference if any to the initial totaled submitted. In an ideal situation the FEMA funds would offset the additional expenditures if received immediately, unfortunately, the funds probably will be received the latter part of the current fiscal year or the beginning of the next fiscal year. The reimbursement time frame will not allow planned repairs and maintenance to our infrastructure in our current fiscal year. Allowing a budget amendment utilizing fund balance will allow maintenance and repairs to continue in a timely manner, with the end result fund balance will be reimbursed when FEMA funds are received.

Table of Costs

	Budget	**Actual**	**Estimate**	**Total**
Material	$70,000	$191,037		($121,037)
Overtime	$46,577	$94,890		($48,313)
Fleet	$41,000	$117,687	$17,000	($93,867)
Tip Fees	$7,917	$22,265		($14,348)
Other			$17,455	($17,455)
Totals	$165,494	$428,391	$34,455	($295,020)

This action complies with the City Council Strategic Operating Plan, Fiscal Responsibility sustaining meaningful performance levels for programs and services.

Pros:

- Maintenance and repair of infrastructure will be maintained at initial budget levels allowing for repair and maintenance needs.
- FEMA funds received will offset the transfer of funds from fund balance.

Cons:

- Without transfer of funds to the identified accounts infrastructure will further deteriorate.
- Fund balance is temporarily reduced $295,020.

Fund balance is temporarily reduced by $295,020 but will be replenished when FEMA funds are received.

City staff recommends City Council adopt the budget amendment to appropriate fund accounts.

Administrator of Public Works Services Richard Grant responded to Mayor Bellamy when she asked about state and federal reimbursements.

ORDINANCE BOOK NO. 26 – PAGE 67

I. ORDINANCE NO. 3839 - BUDGET AMENDMENT TO SUPPORT RECREATION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of $10,543, from a contribution from the Asheville Parks and Greenways Foundation, to support recreation programs.

The City of Asheville in the Parks, Recreation & Cultural Arts Department received a contribution of $10,543 from the Asheville Parks and Greenways Foundation. These funds flow to the designated programs at the request of the donors. These funds will go to support programming in the following areas:

$2,726 to support general programming at the Aston Park Tennis Center.

$7,817 to support general programming in the Recreation Division.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

The City's Fiscal Year 2009/10 budget for Parks, Recreation and Cultural Arts will increase by $10,543. This increase is funded by $10,543 in contributions from the Asheville Parks and Greenway Foundation. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to adopt a budget amendment authorizing the City Manager to increase the Parks, Recreation & Cultural Arts budget by $10,543 consisting of $2,726 for Aston Park Tennis Center, and $7,817 for the Recreation Division.

ORDINANCE BOOK NO. 26 – PAGE 69

J. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 2010, TO CONSIDER AN INSTALLMENT PURCHASE CONTRACT FOR CONSTRUCTION OF THE LIVINGSTON COMMUNITY CENTER, SWIMMING POOL IMPROVEMENTS AND THE ACQUISITION OF LARGE VEHICLES

This item was deleted from the Consent Agenda for consideration.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda, with a letter being sent to our federal legislators regarding Asheville's designation of an intercity route. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 10-92 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE DOWNTOWN AFTER 5 EVENTS ON MAY 21, JUNE 18, JULY 16, AUGUST 20 AND SEPTEMBER 17, 2010

RESOLUTION NO. 10-93 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE ALL GO WEST FESTIVAL ON APRIL 24, 2010

RESOLUTION NO. 10-94 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY EVENT ON APRIL 17, 2010

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the (1) "Downtown After 5" outdoor special events; (2) All Go West Festival on April 24, 2010; and (3) Asheville Earth Day event on April 17, 2010.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at "Downtown After 5" and allow for consumption at this event.

  "Downtown After 5" will be held on Friday, May 21, June 18, July 16, August 20 and September 17, 2010, from 5:00 p.m. to 9:00 p.m. within the boundaries of the 100 block of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

- Dogwood Alliance in conjunction with Yellow Dog Entertainment, LLC has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the All Go West Festival and allow for consumption at this event.

  The All Go West Festival will be held on Saturday, April 24, 2010 from 12:00 p.m. to 10:00 p.m. within the boundaries of Westwood Place, Waynesville Ave. & Michigan Ave. and will be free and open to the public.

- Lake Eden Arts festival in conjunction with Mountain Roots Management has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at "Asheville Earth Day" and allow for consumption at this event.

  "Asheville Earth Day" will be held on Saturday, April 17, 2010 from 11:00 a.m. to 10:00 p.m. within the boundaries of Martin Luther King Jr. Park and will be free and open to the public.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Asheville Downtown Association, the Dogwood Alliance and the Lake Eden Arts Festival

Con:

- Potential for public safety issues

For the "Downtown After 5" events, the fiscal impact will be overtime pay for Asheville Police officers per City co-sponsorship agreement. There is no fiscal impact to the All Go West Festival or the Asheville Earth Day festival.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the "Downtown After 5" events, the All Go West Festival and the Asheville Earth Day Festival.

Vice-Mayor Newman moved for the adoption of Resolution Nos. 10-92, 10-93, and 10-94. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 10-92 - RESOLUTION BOOK NO. 33 – PAGE 3
RESOLUTION NO. 10-93 - RESOLUTION BOOK NO. 33 – PAGE 6
RESOLUTION NO. 10-94 - RESOLUTION BOOK NO. 33 – PAGE 9

III. PRESENTATIONS & REPORTS:

A. CIVIC CENTER COMMISSION UPDATE

Mayor Bellamy was saddened to note that long-time Civic Center employee Freddie Chapman has passed away unexpectedly earlier this week. Mr. Chapman was a great employee and a great person, and he will be missed by his co-workers and family. She asked everyone to keep Mr. Chapman's family in their thoughts. On behalf of City Council, she expressed Council's deepest sympathy to Mr. Chapman's family.

Chairman Mike Burke introduced the Commission members of John West, George Keller, Elizabeth Jones, John Broadbooks, J.L. Thompson and Joel Storrow.

The Commission aligns with Council's strategic plan under financial sustainability; facility improvements; event quality and diversity; community relations; and job development.

Using a chart, he showed the 2009 venue usage along with the breakdown of the diversity in the 2009 events.

He highlighted the partnership with Bele Chere for facility usage. Their image enhancement supports the strategic plan and targets local and regional media.

The Go Green Initiative includes (1) biodegradable cups; (2) increased recycling of plastics; (3) increased recycling of containers; and (4) grant application for pilot project between Civic Center/Sustainability Office.

Regarding the Thomas Wolfe Auditorium, we are building relationships with the Asheville Area Center for the Performing Arts.

Regarding the Capital Improvement Program (CIP), (1) The Commission was instrumental in launching the much needed roof project which is expected to be completed in May 2010; and (2) Civic Center CIP is critical to continuing capital improvements that are required to obtain high attendance, high visibility, events, etc.

Cooperative actions include (1) Working with the City Manager, the Commission helped define the qualifications to be used when evaluating applicants for the Civic Center's Director position; and (2) In conjunction with the Civic Center staff, the Commission assisted with prioritizing items for future Capital Improvement Plan requests; customer input was gathered through patron facility questionnaires.

Social media includes (1) Additional marketing and public relations as per strategic plan; (2) Social media is a key platform; and (3) Special offers for Facebook fans.

Regarding economic impact, regional events draw 50% from ≥ 75 miles. Local events create impact for restaurants and retail. A key event was the Avett Brothers Concert on New Year's Eve.

Significant future opportunities include (1) Southern Conference bid; (2) possible future Big South bid; and (3) increased programming from promoters.

The future is bright for the Civic Center.

In response to Vice-Mayor Newman, Mr. Burke explained the Southern Conference bid and said that short-term we need locker rooms, scoreboards, electrical and seating in the arena.

Councilman Davis said that they are developing a coalition of different partners for the Southern Conference bid and will be bringing it forward to Council soon.

On behalf of City Council, Mayor Bellamy thanked Mr. Burke and the entire Commission for their efforts on the Commission.

B. ECONOMIC STIMULUS PACKAGE UPDATE

ORDINANCE NO. 3840 - BUDGET AMENDMENT TO SET UP PROJECT BUDGETS FOR AN ARRA-FUNDED COMMUNITY DEVELOPMENT BLOCK GRANT AND A COMMUNITY DEVELOPMENT BLOCK GRANT FOR THE CONSTRUCTION OF SIDEWALK ON NORTH LOUISIANA AVENUE

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

She said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) staff is seeking approval of two technical budget amendments, in the amount of $123,648, for an ARRA-funded Community Development Block Grant and a regular Community Development Block Grant, in the amount of $117,000, for construction of sidewalk on North Louisiana Avenue.

The grant of CDBG-R and CDBG funds for these projects was approved by City Council in May 2009. Because the City is considered a sub-recipient of these CDBG grants, a technical budget amendment is needed to set up these project budgets so that the city can spend the granted funds.

The City has received funding from an ARRA-funded Community Development Block Grant (CDBG-R) and a regular Community Development Block Grant Department for the N. Louisiana sidewalk project. The portion of the project using the CDBG-R funds is ready for construction. City Public Works crews will install sidewalk, curb and gutter, and underground drainage structures along the west side of N. Louisiana Avenue from Patton Avenue north to the cemetery entrance. The next phase of this project will extend the sidewalk to the existing stretch of sidewalk at 370 N. Louisiana Avenue. That phase is not yet ready for construction. Funding to

continue the sidewalk north to the city limits has not yet been identified. These sidewalk segments are part of a larger cooperative project to eventually bring sidewalk from Patton Avenue to Mosswood Road near Emma Elementary School. City Council has already approved the budget amendments for the three other grants that have been awarded to the city on behalf of the larger project.

This project supports the City Council's strategic plan sustainability goal of fully leveraging funding from the State and other funding sources for regional transportation improvements.

The grant will cover 100% of the costs of the N. Louisiana Avenue Sidewalk Project, so there is no impact on the City's current General Fund budget. Additional funding is being sought to continue the sidewalk north to the city limits as this has not yet been identified.

Pros:

- Improves city transportation facilities by building sidewalk and by improving pedestrian connections to transit routes.
- Provides long term investment in the City's infrastructure.

Con:

- None

City staff recommends City Council adopt these technical budget amendments, in the amount of $123,648, for an ARRA-funded Community Development Block Grant and a regular Community Development Block Grant, in the amount of $117,000, for construction of sidewalk on North Louisiana Avenue.

In response to Vice-Mayor Newman, Mayor Bellamy noted that the sidewalk would be from Patton Avenue all the way up to Emma Elementary and a little beyond that into the residential area – noting the different sources of funding.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3840. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 71

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 97 UNDERWOOD DRIVE

ORDINANCE NO. 3841 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING ONE LOT AT 97 UNDERWOOD DRIVE

Mayor Bellamy opened the public hearing at 6:03 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville by annexing one lot at 97 Underwood Drive. This public hearing was advertised on April 2, 2010.

Larry Holbert and Ronnie Gray (L & R Rentals) have petitioned the City of Asheville for the annexation of one (1) lot located at 97 Underwood Road in South Buncombe County containing a total of approximately 1.96 acres. The area is not contiguous to the primary corporate limits but is contiguous to the satellite corporate area at the Asheville Regional Airport. The area is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

The petition as submitted was for the annexation of a much larger parcel at both 97 and 99 Underwood Road (8.95 acres). The petitioner has since subdivided the property and desires to have only the 1.96 acre portion containing 97 Underwood Road annexed. The parcel meets all applicable requirements for annexation of noncontiguous areas contained in the North Carolina General Statutes.

Pursuant to N.C. Gen. Stat. sec. 160A-58.2, a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on April 30, 2010.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Con:

- Marginal costs for rural fire department debt service and calls for service/patrol.

As the property was recently subdivided there is no tax value assigned to the property. An estimate taking a proportionate value of the previously unsubdivided property projects a value of $296,584. Such a valuation would generate approximately $1,246 in ad valorem tax revenue annually. The required debt service payment (one time payment) to the Skyland Fire Department is estimated to be $280.95. Any other marginal costs would come from calls for service or patrol.

City staff recommends that City Council adopt the ordinance annexing the property at 97 Underwood Road.

Ms. Marcel Andrews, representing the property owners, looked forward to being a part of the City of Asheville.

Mayor Bellamy closed the public hearing at 6:06 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3841. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 73

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF CITY-OWNED PROPERTY AT 411 DEAVERVIEW ROAD

ORDINANCE NO. 3842 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A CONTIGUOUS AREA AT 411 DEAVERVIEW ROAD

Mayor Bellamy opened the public hearing at 6:07 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance for annexation of City-owned property at 411 Deaverview Road. This public hearing was advertised on April 2, 2010.

In 2009, the City of Asheville obtained two (2) parcels at foreclosure auction. One (1) of the parcels had been previously annexed into the City as a requirement for obtaining Housing Trust Fund loans for the Villas at Cedar Hill development. As part of the financing, the senior lender, Blue Ridge Savings Bank, secured the other parcel (PIN 9628274164) at 411 Deaverview Road as collateral. When the developer defaulted on the senior lien, the bank put the parcels up for sale at foreclosure auction. The City bid on the parcels to protect its investment in the property and was able to purchase the land at below market value. It is the intent of City staff to sell the properties and use the proceeds to repay the Housing Trust Funds advanced on the property. The collateral parcel is not yet a part of the City. The City proposes to annex this parcel to allow any future development on the site to contribute to the City tax base.

The parcel is 6.38 acres in size and has a tax value of $162,000. It contains a vacant residence.

Pursuant to N. C. Gen. Stat. sec. 160A-31, a public hearing must be held prior to adopting an ordinance annexing City-owned property. If City Council decides to proceed with this request, it is proposed that the annexation become effective on May 31, 2010.

Pros:

- Provides for an urban level of service for areas adjacent to the existing city limits.
- Brings in a parcel currently in City of Asheville ownership avoiding later involuntary annexation.

Con:

- Marginal costs for rural fire department debt service.

Because the property is owned by the City, there would be no immediate ad valorem tax revenue generated. Once sold, the property would contribute to the tax base at an amount determined by the development of the property. The required debt service payment to the West Buncombe Fire Department is estimated to be $150.00, which must be paid within forty-five (45) days of the annexation effective date. This is a one-time payment.

City staff recommends that City Council adopt the ordinance annexing the property at 411 Deaverview Road.

Mayor Bellamy closed the public hearing at 6:08 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 3842. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 75

V. UNFINISHED BUSINESS:

A. MOTION APPROVING THE FEE WAIVER REQUEST FOR PACK SQUARE CONSERVANCY FOR THEIR EVENT ON APRIL 17, 2010

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a fee waiver for use of Reuter Terrace in Pack Square Park by the Pack Square Conservancy (PSC) to conduct the Painting to Percussion event.

At its meeting on April 12, 2010, the Recreation Board considered a joint partnership agreement between the City, County of Buncombe and PSC for the maintenance and operations of the Pack Square Park. The partnership agreement will make the park available to PSC for its events, activities and programs, and waive all facility rental and city permit fees associated with the use of the park.

The Recreation Board recommended considering the partnership agreement at a later date once it can obtain more information and be better prepared to make such recommendation. In lieu of the agreement, PSC wishes to request a fee waiver. The fee amount surpasses the fee waiver authority of the Recreation Board.

PSC will conduct the Painting to Percussion at Reuter Terrace in Pack Square Park on April 17, 2010, at 10:00 a.m. to 2:00 p.m., and requests a fee waiver of City fees associated with the park use totaling $1,378 ($1,300 facility rental fee and $78 building safety inspection fee).

PSC is a non-profit 501 (c) 3 organization that resides within the Asheville city limits whose mission is to create a vibrant town square and public park providing citizens and visitors to the region with a social, economic and cultural center that celebrates the area's unique character.

In return, PSC leads the process and funding to construct Pack Square Park and will donate the park to the City, and continue to create new programming to keep the park vibrant and active for citizens and visitors.

Pro:

- Facility rental fee waiver request meets all the required criteria associated with the recreation facility rental fee adjustment policy.

Con:

- Reduce the annual revenue budget for City facility rental fees and permits.

The lost revenue for facility rentals and permits is $1,378.

Staff recommends City Council approve the PSC request to waive $1,378 in facility rental and building safety inspection fees for the use of Reuter Terrace at Pack Square Park on April 17, 2010, at 10:00 a.m. to 2:00 p.m. for the Painting to Percussion event.

Mr. Gary Giniat, Executive Director of Pack Square Conservancy, said that the entire Park is open and urged Council to waive their facility rental and building safety inspection fees.

In response to Councilman Russell, Mr. Simmons said that the joint partnership agreement (including fee waivers) will be coming to Council in the near future for action.

Councilman Davis moved to approve the fee waiver request of $1,378 for Pack Square Conservancy for their event on April 17, 2010. This motion was seconded by Councilman Smith and carried unanimously.

B. RESOLUTION NO. 10-98 - RESOLUTION ADOPTING THE CITY OF ASHEVILLE'S LEGISLATIVE PROGRAM FOR THE 2010 "SHORT SESSION" OF THE NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast said that this is the consideration of a resolution establishing the City of Asheville's Legislative Agenda for the 2010 Session of the North Carolina General Assembly.

On March 9, a presentation was made to Council with some suggestions for legislative consideration in the 2010 Session of the North Carolina General Assembly. That report also contained an explanation of some of the limitations on matters that could be considered in the 2010 "short session."

Since that meeting, further information has been assembled with respect to some issues of local interest, and we have obtained information from the League of Municipalities and other cities regarding their legislative priorities and agendas. In addition, several Council members have asked about possibilities for legislative action.

We obtained a package from the League of Municipalities containing the League's "Advocacy Agenda" and "Core Principles" for 2009-2010. That package also contained the legislative agendas for 17 North Carolina municipalities for 2009-10. These local agendas did not follow a standard format. Most of them contained both federal and State legislative requests. A substantial portion of the federal requests were for appropriations or earmarks for specific projects (e.g., road improvements, sewer outfall). Some State legislative agenda items were addressed to issues particular to the requesting municipality (e.g., de-annexation, fire truck purchase). Most if not all of the local legislative agendas stated positions on State legislative matters, such as annexation and collective bargaining; in some cases, local legislative agendas adopted or endorsed the League's agenda in whole.

Drawing on the information and sources referenced above, a proposed legislative agenda has been developed that addresses local issues, as well as matters of state-wide concern. Because of the limitations on local legislation in the short session, the items as to which local legislation is requested are those that have been discussed before (Woodfin), or where clarification of existing law may be needed (energy efficiency, intranet).

Some Council members have suggested that Council seek or support legislation as to other matters, such as public financing of local elections. Depending on Council's direction, these items can be added to the resolution currently before Council, or may be the subject of a later resolution after appropriate research. Finally, the Chamber of Commerce will not adopt its legislative agenda until May, and Council may wish to express its position as to some items on that agenda in any consideration of matters of general or regional concern.

These legislative requests are consistent with multiple objectives of the City's Strategic Operating Plan, including (a) working with other local governments to address service delivery and public safety issues, (b) supporting green building and energy conservation, (c) working cooperatively with legislators to implement practical water system management and voluntary annexation policies.

City Attorney Oast then reviewed the following local issues:

1. Introduce a local bill to reconfigure the boundaries of Asheville and Woodfin to:

    a) Eliminate pockets of unincorporated area between the two municipalities;

    b) Resolve jurisdictional confusion in the area of UNC-A (including land set aside for future growth), and Broadway/I-26/River Road interchange;

    c) Authorize agreements regarding service delivery to affected private properties.

    It was the consensus of Council to include this in the 2010 Session.

2. Introduce a local bill or support general legislation to clarify status of local intranet facilities in connection with the Video Service Competition Act of 2006.

It was the consensus of Council to include this in the 2010 Session.

3. Clarify recent legislation regarding financing of energy efficiency improvements [note: staff is currently drafting the program design, which includes recommendations for financing, administration, and project eligibility. This program is scheduled for Council consideration for May 25. Other municipalities are involved in similar efforts, and legislation may be requested to clarify local authority.]

   City Attorney Oast responded to questions raised by Mayor Bellamy regarding whether this includes commercial property and clarity on the disclosure of funding.

   It was the consensus of Council to include this in the 2010 Session.

4. Introduce a local bill providing for annexation agreements for certain developments that receive city water service.

   It was the consensus of Council to include this in the 2010 Session.

5. Support of passenger rail service to Western North Carolina (which resolution was adopted by City Council on March 23, 2010).

   It was the consensus of Council to include this in the 2010 Session.

He said that Councilman Bothwell has suggested that Council seek or support legislation as to public financing of local elections. With Council's direction, he would be happy to research that, noting that it can be added to the resolution currently before Council, or may be the subject of a later resolution after appropriate research.

He added a few items of State-wide interest, such as annexation and municipal incorporation reform where the League of Municipalities is working to represent municipal interests, and has drafted the resolution to state that Council supports the League's position on these items. However, the State-wide issues have not been the subject of much consideration by Council, and are not subject to the same time constraints or other limitations as local bills. Also, there are some issues of State-wide concern that are not reflected in the League of Municipalities' material, such as collective bargaining by public employees, regulation of electronic gaming, and preservation of municipal revenues. Accordingly, Council may wish to defer consideration of some or all of these items, or add to them. Those State-wide issues are as follows:

1. Support League of Municipalities 2009-10 advocacy agenda as to the following issues:

   a) Annexation
   b) Air Quality
   c) Water Resources
   d) Municipal Incorporation
   e) Infrastructure Financing
   f) Energy Sustainability
   g) Local of Alcohol Establishments
   h) Sanitary Sewer Overflows
   i) Stormwater Fees
   j) Electronic Notices

An issue of State-wide concern is collective bargaining by public employees. It would require local governments to recognize collective bargaining with respect to public safety employees. North Carolina, by law, prohibits collective bargaining with public employees. He understands this new law would require the recognition of labor unions and require collective

bargaining for police, fire and emergency personnel. With Council's direction, he would research this further. If there is any interest in addressing this legislatively, he felt contact should be made to the federal congress and senate

Mayor Bellamy said that the League of Municipalities is opposed to the bill (H.R. 413), not on the basis of a position on collective bargaining, but on the basis that such employment policy is best made at the state and local level. The League is asking for the City's position on this bill and our thoughts on the League joining in on a case saying that the federal government may have overstepped its boundary if the bill passes. Communications from the League request action with 48 hours. She felt it would be appropriate for Council to direct the City Attorney to research this further on how it will have big implications on how we do business in the City of Asheville and the future of our organization.

After discussion, it was the consensus of Council to (1) instruct City Attorney Oast to provide Council with additional information on the bill regarding the legislation of collective bargaining by public employee; and (2) instruct the City Manager to provide information on the impact on our organization if the bill passes.

Councilman Bothwell explained his request for Council's support of a bill that has already passed the state house which would permit a municipality to consider public financing of local elections. It does not commit to anything, but just gives cities the opportunity to consider public financing of local elections.

After discussion, it was the consensus of Council to instruct City Attorney Oast to provide Council with additional information on the bill permitting a municipality to consider public financing of local elections.

After discussion, it was the consensus of Council that while the League is a great advocate for cities, City Council could not endorse all issues in their 2009-10 advocacy agenda and requested the City Attorney to provide Council with more information on their various issues.

When Mayor Bellamy brought up the non-consensual towing legislation that was introduced last year, it was the consensus of Council to instruct the City Attorney to investigate if that legislation needs to remain active of if the bill is no longer necessary.

At the request of Vice-Mayor Newman, it was the consensus of Council to instruct the City Attorney to a bill that would create a prohibition on local decision-making regarding use of wind energy within local jurisdictions in the western half of the State.

It was the consensus of Council to have Mayor Bellamy (and two other Council members) meet with Senator Nesbitt and Representative Goforth regarding a local bill providing for annexation agreements for certain developments that receive city water service.

RESOLUTION BOOK NO. 33 – PAGE 15

Closed Session

Mayor Bellamy announced a 20-minute recess at which time Council will conduct a closed session.

At 6:57 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property

located on Shelburne and Sand Hill Roads, and known as the Waller Tract, and property located on Swannanoa River Road near the intersection of Fairview Road, by purchase, option, exchange or lease. The property is Villas at Cedar Hill. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:27 p.m., Councilman Russell moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Smith and carried unanimously.

VI. NEW BUSINESS:

A. ORDINANCE NO. 3843 - ORDINANCE ADOPTING FISCAL YEAR 2010-11 FEES & CHARGES, EFFECTIVE JULY 1, 2010

Budget Director Tony McDowell said that this is the consideration of an ordinance approve proposed fee adjustments for the FY 2010-2011 budget.

The proposed FY 2010-11 fee adjustments have been reviewed by the Council Finance Committee. If the full Council approves the Finance Committee's fee recommendations, it will add an additional $218,000 in revenue to the FY 2010-11 General Fund budget.

In addition to the General Fund fee adjustments, the Finance Committee also reviewed proposed increases to the prices of the annual pass, monthly pass, and eleven (11) ticket books in the Transit Fund. These price increases were recommended by the Transit Master Plan and would bring in approximately $47,000 in additional revenue.

Finally, staff is requesting that Council approve the FY 2010-11 Water Resources Fees. Staff initially proposed a 9.0% fee increase for the water utility charge and the capital improvement fee. Based on feedback received from Council, staff developed alternatives to the 9.0% increase that was initially proposed. Staff is now recommending that Council adopt a 5% rate increase for Capital Improvement Fee and Consumption charges for FY 2010-11. This rate increase will allow for a 1% transfer of Water Resources revenue to the General Fund per the Sullivan Act Amendment. This 1% transfer will provide approximately $341,000 in revenue for water-related infrastructure projects in FY 2010-11. He provided Council with a list of possible projects that could be funded with Sullivan Act monies over the next five years if the 5% water rates increases are continued in future years. This recommendation is consistent with the "Alternative 1" water rate structure that was presented to Council at its budget worksession on March 23, 2010.

Staff is requesting that Council take action tonight on the fee recommendations so that the additional revenue from the fee adjustments can be included in the Manager's Proposed Budget, which is scheduled for presentation to Council on May 11th. The additional time will also allow staff to begin communicating fee changes to citizens, customers and stakeholders so they are aware of changes that will be implemented with the adoption of the budget. Every department will be responsible for developing and implementing a communications plan to let citizens know about fee changes.

As noted above, the General Fund fee changes recommended by the Finance Committee would produce approximately $218,000 in additional revenue, which will be used to help close the projected budget gap in FY 2010-11.

Staff recommends that Council adopt the Finance Committee recommendations regarding fees and charges, including recommendations for transit passes and water rates.

Councilman Russell, Chair of the Finance Committee, felt that some of the fees are practical changes and fees are a good way to tax the end users. However, as the Finance Committee discussion on the fees became more complicated, he pulled back his support. He could not support any fee increases.

Vice-Mayor Newman questioned if Council votes on these fees now, will there be opportunity for additional discussion since the budget won't be finally adopted until June. Mayor Bellamy felt that staff needs approval of these fees as they need to notify the community of the changes prior to July 1. Councilman Russell also noted that by Council endorsing these fee changes, it will allow the City Manager to bring Council a balanced budget. If the fees are not endorsed, staff will need to find another $218,000 for the General Fund somewhere else.

Councilman Bothwell moved to approve the General Fund fee adjustments (including the Transit Fund fee adjustments). This motion was seconded by Councilman Smith.

Mr. Fred English urged Council to save wherever possible and then reach out to the City taxpayers.

Councilwoman Manheimer said that departments looked at what their true overhead costs were for providing specific services and in many cases they found that they were not recovering the true cost. That was the concept in looking at these fees – cost recovery. In that regard, she supported the fee increases.

Vice-Mayor Newman clarified that the motion does not address the business license fee.

Mayor Bellamy did not support the motion as most of them affect the building industry which is being hit the hardest during this economic climate. Regarding transit fee increase, 70% of the riders have no other means of transportation. Even though the fees are minor, for a person barely making it, they will feel the increase.

Each Council member voiced their opinion on why they could or could not support the fee increases.

The motion made by Councilman Bothwell and seconded by Councilman Smith carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no."

Councilwoman Manheimer moved to approve the 5% water consumption fee. This motion was seconded by Councilman Davis.

Councilman Russell understood the need for a consistent stream of revenue for improvements; however, we just did $40 Million of improvements over the last 4-5 years. Since our estimates on contracts are coming in lower than expected, he felt we should work with those cost reductions. He could not support the motion to increase the water consumption fee.

Mayor Bellamy supported the motion because when we issued the $40 Million bonds, we told the Local Government Commission that we had a plan to repay back those dollars. We need a dedicated source to pay back the bonds and make the improvements necessary to the system.

Councilman Bothwell hoped that Council will look at a graduated rate which will encourage further water conservation.

Councilwoman Manheimer explained how Asheville is managing their water system in a thoughtful way. As a member of City Council, she felt an obligation to make sure we have a balanced budget and that we are not running our water system into the ground.

Councilwoman Manheimer felt to not support the motion on raising fees places an unfair burden on the rest of Council as they must do the responsible thing and pass a balanced budget for the City. It is not a luxury to vote no for the rate increases.

The motion made by Councilwoman Manheimer and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Russell voting "no."

Councilwoman Manheimer moved to approve the 5% water Capital Improvement Plan fee. This motion was seconded by Councilman Bothwell.

In response to Mayor Bellamy, Water Resources Director Steve Shoaf explained that at the March 23 worksession, he presented a 5% increase this year for the consumption charge and a 5% increase for the Capital Improvement Fee, but no further increases in the Capital Improvement fee in subsequent years until the budget is out of balance. This year, in order to generate the revenue we need (due to the loss of large water customers) we included the 5% Capital Improvement Fee.

Councilman Davis could not support the Capital Improvement Fee as he felt it affects the smaller businesses.

Vice-Mayor Newman felt that in the next year we need to look comprehensively at where we are going with this long-term. We have high residential water rates but these are user fees that directly affect the cost of living in this community. He felt it was important to look at the overall rate structure that is as fair to families that live in Asheville and we need to be careful about some of rates where it could affect the employment. He is also encouraged that we will be looking at a rate structure that does encourage conservation.

Councilman Bothwell said that thanks to the Sullivan Acts, water rates are one of the only way we can draw revenue from outside the City limits.

Councilman Smith agreed that we need to re-examine the rate structure with an eye on conservation. Small businesses and medium-size employers will be affected by the rate increase and we need a plan to support then.

Mayor Bellamy could not support the motion. She recalled a different conversation at the March 23 worksession, but requested that going forward, we develop a clear plan to let people know about future rate increase so they are aware that the rates will rise in future years.

In response to Vice-Mayor Newman, City Manager Jackson said that regarding the projects that could be funded with Sullivan Act monies staff will work from the list of projects provided to Council that add up to $1.9 Million (assuming the rate increase of $341,000 and the $1.6 Million already in the budget).

The motion made by Councilwoman Manheimer and seconded by Councilman Bothwell carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

Vice-Mayor Newman did not support an increase in business license fees for small businesses or manufacturing; however, he would not be opposed to increasing the fees on some large retail facilities that bring people into Asheville from all of western North Carolina.

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B. RESOLUTION NO. 10-99 – RESOLUTION OF SUPPORT FOR UNIVERSITY OF NORTH CAROLINA SCHOOL OF PHARMACY SATELLITE CAMPUS IN ASHEVILLE, N.C.

City Manager Jackson said that the University of North Carolina Pharmacy School will develop a satellite campus in Asheville. The program is to accomplish that through a partnership with community and long-standing regional partners including Buncombe County, Economic Development Coalition, University of North Carolina-Asheville, Mission Hospitals, MAHEC (Mountain Area Health Education Center), and WNCHN (Western North Carolina Health Network -- a consortium of 16 western North Carolina hospitals. To accomplish this, in addition to having that mix of partners collaborating in a lot of different ways to make the curriculum feasible involves preparing facilities for what will eventually be a revenue neutral educational degree program. There is a wrap-up program with this to create this school and the 50+ professional jobs associated with that. The wrap-up cost is approximately $2.5 Million – investing in the science building at UNC-A, creating the classroom and the laboratory space necessary and to provide for the attraction and employment of the start-up costs associated with building the school. Buncombe County has pledged $600,000 to that $2.5 Million effort which will be spearheaded by the Chamber of Commerce. Based upon our past participation in this type of job creation, staff recommends City Council authorize the Mayor of the City of Asheville to sign the resolution of support, and to direct the City Manager to include an amount of up to $100,000 in economic development support funding in the city's 2010-11 budget process if required to help in the initial capital costs for starting the branch campus in the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-99. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Bothwell voting "no."

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C. BOARDS & COMMISSIONS

The following candidates applied for a position on the Downtown Commission: Rachael Bliss, Robert Winner, David Hitch, Henry Watts, Tony Fraga, Michael Tietz, Rebecca Hecht, Alan Levy, Merry Caplan, Hillary Cole, Luke Perry, Jeremy Gillespie, Eric Rainey, Bill Allison, Terry Meek, Rodney Hardy Porter, Philip Ellis, William Langdon, Jimi Rentz, Woody Kloesel, Joseph Bernard Malki, Jared Breneman, Erin Mosher, David Nutter, Karen Kotiw, Claire Reeder, Susan Griffin and Laurie K. Miller. Out of those candidates, it was the consensus of Council to instruct City Clerk Burleson arrange interview for Rebecca Hecht, Henry Watts, David Nutter, Jimi Rentz and Karen Kotiw.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Jeff Meadows alleged that his retirement (as seen in Resolution No. 93-74) has been breached. Mayor Bellamy instructed City Manager Jackson to contact Mr. Meadows regarding his allegations.

Ms. Maria Lomeli-Garcia, Junior at Asheville High School, and Mr. Terrell Muetta, 7th grader at A.C. Reynolds Middle School, said they were youth advocates representing Teens Taking Action, which is a peer education program through the Planned Parenthood Health Systems. They said that the month of April is "Sexually Transmitted Infections Awareness Month" and they wanted everyone in the community to understand the risks of unsafe practices and to recognize the dire consequences. They spoke about the importance to raise awareness. Mayor Bellamy said it was troubling to hear the numbers. She thanked the students for increasing Council's awareness and suggested they attend meetings of the Buncombe County School

Board, Asheville City School Board, and Buncombe County Commissioners as they can address the funding necessary to educate our students.

Mr. Fred English spoke about the national debt and the amount every person owes.

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and the location of the police sub-station on Haywood Street.

Vice-Mayor Newman invited the public to a town hall meeting in the Public Works Building on Monday, April 19, 2010, from 5:30 p.m. – 7:00 p.m., for a public discussion about the Asheville Energy Independence initiative.

Mayor Bellamy urged the community to support Asheville as Google's Gigabit broadband demonstration network by going to googleavl.com to nominate Asheville.

A civil action has been commenced in Federal Court on March 26, 2010, from Cherie C. Byrd v. City of Asheville, Asheville Police Department and Eric Lauffer. The complaint is for discrimination based on sexual harassment. This matter will be handled by an attorney outside the City Attorney's Office through Asheville Claims Corporation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:28 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 27, 2010 – 3:30 p.m.
Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Director of Administrative Services Lauren Bradley explained that this is a follow-up worksession from March 23 worksession. She then summarized all the major building blocks that staff is planning on building into the proposed budget. After today staff will spend the next days putting together the budget document which will be presented to Council on May 11. If there is any feedback from Council, today would be the time to advise staff. This is not the last time for Council to provide feedback as there is another budget worksession on May 25. The budget is proposed to be adopted by City Council on June 22.

Ms. Bradley gave a quick recap of the March 23 worksession and advised Council of the following mix of strategies to balance the budget: (1) **Expense Reductions/Managed Savings - $2.3M** (a) Reduce overtime, temp services, contracts and other line items; and (b) Savings from expired annexation agreements; (2) **Expense Reductions/Service Impacts - $1.5M** (a) Re-engineer Brush Collection; (b) Reduce hours at community centers; (c) Reduce Outside Agency funding; and (d) Cost-sharing for Co-sponsored Events; (3) **Revenue Enhancements - $825,000** (a) Fees and Charges - $200,000; (b) Parking Fund recurring transfer - $125,000; and (c) Parking Fund one-time transfer - $500,000. The **Adjusted Budget Gap as of March 23 - $1M**

She then summarized the budget balancing strategies. Regarding revenues: (1) Fees and Charges - $200,000; (2) Parking Fund Transfer – $625,000 (a) $125,000 in revenue to offset increases in cost of transit service; and (b) $500,000 from parking fund reserves to offset the loss of federal funding; (3) No fund balance appropriation; and (4) No tax rate increase. **Total Revenue Increase = $825,000.** New information is that Asheville is eligible for $480,000 from the Federal Transit Administration that can be used toward operational transit expenses in Fiscal Year 2010-11.

Regarding expenditures for the selective hiring freeze (1) Actively manage vacancies to fill only essential positions; (a) Includes equivalent of 15 management and development review positions (i) Examples: Assistant Transportation Director, Superintendent of Recreation, Budget Research Analyst, CEO Supervisor, etc.; and (2) Does not include public safety positions or Public Works field positions. **Total Savings from Selective Hiring Freeze = $878,000**

Regarding expenditures for managed savings (1) Includes savings from line items and re-engineering (a) Reduce overtime, temp services, and contracts; (b) Reduce training, printing, other line items; (c) Savings from expired annexation agreements; (d) Fire Department Vacation Deferral Program resulting in overtime savings; and (e) Re-engineering of street patching through Street Cut Enterprise Fund. **Total Managed Savings = $2,293,000**

Regarding expenditures for employee compensation (1) Original budget projections included a $500,000 compensation pool for cost of living adjustment; (2) Across-the-board cost of living adjustment was sacrificed to avoid layoffs; and (3) FY 2010-2011 budget proposal includes funding for a $300 pay supplement for approximately 629 full-time employees who earn $41,722 (area median income) or less (a) Total cost of the pay supplement is $190,000; (b) **Net savings from proposed compensation package = $340,000.**

Current year health care (1) Expenditures are expected to exceed original budget estimates by $2.5 million; (a) 25% increase in claims costs in 2009; (2) Revenues are projected to exceed budget by $800,000; (3) Staff is recommending a budget amendment to adjust health care budget (a) $1.7 million from insurance fund reserves; and (b) $800,000 in additional revenue; and (4) Strategies to reduce health care costs in FY 2010-2011 (a) Creation of a Blue Ribbon Task Force on Health Care.

Regarding health benefit expenditures (1) Healthcare Benefit Changes (a) 5% increase to premiums; and (b) Increases in co-payments for primary care, specialists, ER and urgent care visits; and (2) Plan Changes – "High" Option (a) Implementation of a $300 deductible and (b) Introduction of 90/10 co-insurance, where employees are responsible for 10% of the cost of services (i) Maximum annual out-of-pocket for co-insurance set at $500 for individuals, $1000 for families. **Total Savings from Healthcare Changes = $300,000**

Also regarding health benefit expenditures (1) Staff is seeking Council consensus approval on FY 2010-11 Healthcare Program changes today; (2) Council approval of creation of Blue Ribbon Task Force on Health Care and current year budget amendment at formal meeting; (3) Open enrollment for employees to take place in mid-May; and (4) Opportunity to inform and educate employees about program changes.

Regarding expenditures, service reductions include (1) Reduction in Community Center hours ($385,000) (a) Programs will be rescheduled and managed by full-time staff or discontinued; and (b) Reduction in part-time and temporary staff; (2) Evening transit service optimization ($174,000) (a) The gap between daytime and evening transit service will be closed and evening service will stop at 10:30 p.m. (b) Discontinue evening service on the least utilized route (affects a daily ridership of about 45 people); and (c) consider the availability of federal funds and parking reserves to continue this route; (3) Brush Collection once per month ($250,000) (a) Brush will be collected once per month and (b) Later in the year, the City will launch on demand collection via telephone or Website; (4) Reduction in Outside Agency funding ($40,000) (a) 20% reduction in total Outside Agency allocation; (5) Reduction in co-sponsored event support ($50,000) (a) Events would pay 50% of the costs for permits and labor; and (6) Reduction in APD overtime ($215,000). **Total Savings from service reductions = $1,114,000.**

She then explained the Capital Improvement Program and the use of the $925,000 discretionary funding for projects.

After the presentation, Council members discussed the different mix of strategies used to balance the budget.

Due to the one-time $480,000 from the Federal Transit Administration, Mayor Bellamy initiated discussion of whether Council wanted to keep the $500,000 in the Parking Fund and use the $480,000 to offset the loss of federal funding or continue on the path of using the $500,000 from the Parking Fund to offset the loss of federal funding and use the $480,000 for something else.

Possibilities for using the $480,000 included (1) half-hour bus service on Merrimon; (2) seed money to get the Transit Master Plan furthered in the next budget year; (3) use some of this money to suspend some of the Park fees across the board for this budget year as we help the for-profit and non-profit sectors adjust to the new fee schedule; (4) get through this budget year and then decide on the use of the $480,000; (5) possible capital needs; and (6) keep the Parking Fund monies in the Parking Fund for future parking downtown.

After discussion, it was the consensus of Council to not transfer the $500,000 from the Parking Fund reserves to offset the loss of federal funding. The $480,000 would be used for transit services.

Councilman Smith was concerned that Council just adopted a fee policy and now we are talking about fee waivers.

It was the consensus of Council to proceed with the strategies outlined in the selected hiring freeze (total savings of $878,000).

Regarding managed savings, Mayor Bellamy was concerned with the reduction of overtime, temp services and contracts, in particular the 50% cut in the Parks, Recreation & Cultural Arts Department part-time labor, and how the additional burden of responsibilities will affect existing employees and programming, in particular afterschool and summertime programs. She suggested reducing the General Fund contribution to the Parks capital budget as other budgets have taken cuts, e.g., Housing Trust Fund and Civic Center. Parks, Recreation & Cultural Arts Director Roderick Simmons said that the $534,000 in the Parks capital budget is for deferred maintenance. Budget Director Tony McDowell explained that the $300,000 for the golf course irrigation project was on a list, along with a couple of other projects, that the City was going to borrow money for; however, that financing did not move forward. Since that financing did not happen, he said that over a 20 year period, the minimal debt service savings would be approximately 10% ($30,000 a year).

It was the consensus of Council to proceed with the strategies outlined in managed savings (total savings of $2,293,000); however, Mayor Bellamy could not support this due to concerns expressed above (additional burden on staff).

It was the consensus of Council to proceed with the strategies outlined in the employee compensation (total savings of $340,000).

Regarding health care, Councilman Russell, Chair of the Finance Committee, said that the Committee reviewed this information and was comfortable with the health care benefits as outlined by Ms. Bradley. It was the consensus of Council to proceed with the health care strategies as outlined by Ms. Bradley (total savings of $300,000).

Vice-Mayor Newman, Chair of the Housing & Community Development Committee (HCD), briefly reviewed the following 2010 outside agency program recommendations, noting that the Committee was challenged this year to make significant cuts to this program. The maximum amount the HCD recommends to be made available is $163,400, which is 80% of last year's funding. They have adopted four funding principles for this year's program: (1) No new organizations will be accepted into the program this year; (2) Only organizations providing a direct service to the City of Asheville or providing direct youth and family services will be eligible for funding this year; (3) No organization will be eligible for more than last year's funding level (he explained the three exceptions); for most organizations, the maximum funding level is set at 80% of last year's award; and (4) Applications will be required from eligible organizations (ones that perform various afterschool functions – Children First, One Youth at a Time, YWCA and Housing Authority Youthful HAND). Those four applications are being considered for funding, but they are not recommended for funding at this time. After they submit their applications, then there will be a secondary round of specific recommendations made on those four agencies.

The list of eligible organizations and maximum funding eligibility is provided below, as are the names of organizations funded last year but not recommended for funding this year. The HCD proposes to reconsider the nature and extent of the Outside Agency Program next spring.

Outside Agency Analysis
Funding Eligibility Roster and maximum Available Amount
Eligible for 2010 Funding

Outside Agency	Summary Statement	2009 Funding	2010 Maximum Funding
Child Abuse Prevention Services, Inc.	General operating support targeted to parenting education and outreach ($6,000)	$ 6,000	$ 5,000
Children First /Communities in Schools	Project MARCH: after-school safe-haven program at three housing complexes in the City	$ 22,500	$ 17,800
Design Center	Coordinating community and design professional work on public infrastructure projects	$ 5,000	$ 5,000
Homeward Bound of Asheville-AHOPE	A HOPE Day Center outreach, intake and support for homeless persons. Operates mornings seven days a week, and afternoons Monday through Friday	$ 20,000	$ 20,000
One Youth at a Time	Provides mentoring, job training and placement assistance to at-risk students	$ 7,000	$ 5,600
YWCA of Asheville and WNC	Support Our Students (SOS) is an afterschool and day-long summer camp for at-risk students; with screening and intervention services for students involved with gangs	$ 10,000	$ 8,000
Housing Authority-Youthful HAND	After-school program for children residing at Lee Walker Heights housing development will purchase lap-top computers for the students' use	$ 5,000	$ 4,000
ABCRC	Fair Housing	$ 50,000	$ 50,000
Economic Development Coalition	Economic development services	$ 50,000	$ 40,000
Asheville Greenworks	Graffiti removal; tree planting	$ 10,000	$ 8,000
Not Eligible for 2010 Funding			
Asheville Art Museum		$ 5,000	0
Center for Diversity Education		$ 1,200	0
Hall Fletcher PTO		$ 5,000	0
Kids Voting Buncombe County		$ 1,000	0
Meet the Geeks		$ 3,000	0
United Way 2-1-1 and Hands On		$ 5,000	0
Total		$ 205,700	$ 163,400

Regarding outside agency funding, Mayor Bellamy felt the Design Center should be reduced to be consistent with the other agencies that are not directly linked to City services.

Councilman Davis felt the City should contract with the Design Center as needed rather than providing them outside agency funding.

It was the consensus of Council to proceed with the outside agency funding as recommended by the HCD Committee, except to reduce the Design Center 2010 funding from $5,000 to $4,000 (total savings of $40,000)..

Councilman Bothwell said that since brush collection will be once a month it should be coordinated with street sweeping.

It was the consensus of Council to proceed with the service reduction of brush collection (total savings of $250,000).

It was the consensus of Council to proceed with the reduction in co-sponsored event support; however, Mayor Bellamy did not support this action (total savings of 50,000).

It was the consensus of Council to proceed with the reduction of the Asheville Police Department overtime; however, Mayor Bellamy did not support this action (total savings $215,000).

It was the consensus of Council to proceed with the Capital Improvement Program and use of discretionary funding as outlined by Ms. Bradley.

In response to Mayor Bellamy, City Manager Jackson said that when the budget rolls around this time next year, Council will see significant improvements in the way the capital budget is laid out.

Councilman Russell wanted staff to make it very clear what are one-time expenditures vs. payments over the years.

There was a brief discussion, initiated by Mayor Bellamy, about asking our state legislators to allow the City to use 2.5% out of the 5% transfer from the Sullivan Act monies for streets and sidewalks. Although all Council supported this request, it was the consensus of Council that now is not the right time to make the request.

Additional information Council requested included: (1) how much would it cost to provide half-hour bus service on Merrimon Avenue; and (2) what is the least utilized route and details on what we would be losing; (3) what the programming would look like with the Parks, Recreation and Cultural Arts 50% part-time labor cuts, especially related to after school care and summertime programs; (4) where can Parking Fund monies be applied; (5) information in the budget that clearly explains how we invest in sidewalks and a breakdown of those costs; (6) description of what on-going work the City does on an annual basis with state and federal grants for sidewalk construction; and (7) clearly identify in the budget book, without having to go to another section, what projects are pay as you go vs. financing.

At 4:38 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – April 27, 2010 - 5:00 p.m.
Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY AS "MOTORCYCLE AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming May, 2010, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Roger Williams who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING MAY AS "FOSTER CARE MONTH MONTH"

Vice-Mayor Newman read the proclamation proclaiming May, 2010, as "Foster Care Month" in the City of Asheville. He presented the proclamation to Ms. Becky Kessel who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MAY AS "HISTORIC PRESERVATION MONTH"

Councilman Davis read the proclamation proclaiming May, 2010, as "Historic Preservation Month" in the City of Asheville. He presented the proclamation to Mr. Paul Reeves, President of the Preservation Society of Asheville and Buncombe County, and others, who briefed City Council on some activities taking place during the month and explained the importance of historic preservation.

Mr. Reeves presented the City of Asheville the 2009 Griffin Award for their renovation of 364 Charlotte Street, E.W. Grove's Office.

D. PROCLAMATION PROCLAIMING MAY 16-23, 2010, AS "NATIONAL PUBLIC WORKS WEEK"

Mayor Bellamy read the proclamation proclaiming May 16-23, 2010, as "National Public Works Week" in the City of Asheville. She presented the proclamation to Parks, Recreation & Cultural Arts Department representatives: Kathy Connor and James Ball; Public Works Department representatives Jennifer Mazza and Bryant Williams; Transportation Department

representatives Yuri Koslen and Barb Mee; and Water Resources Department representatives Michelle Massey and Amy Eckel.

II. CONSENT AGENDA:

At the request of Council, Consent Agenda Items "B", "D", "E", "H", "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 13, 2010

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2011 TRANSPORTATION DEMAND MANAGEMENT GRANT PROGRAM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE PROGRAM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION NO. 10-100 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER INCREASING BROWN & CALDWELL'S AGREEMENT FOR ENGINEERING SERVICES FOR THE WILLIAM DEBRUHL WATER TREATMENT PLANT BACKWASH LAGOON PROJECT

ORDINANCE NO. 3844 - BUDGET AMENDMENT FOR THE WILLIAM DEBRUHL WATER TREATMENT PLANT BACKWASH LAGOON PROJECT

Summary: The consideration of a (1) resolution authorizing the City Manager to sign a change order increasing Brown and Caldwell's agreement for engineering services to $123,335.24 for the William DeBruhl WTP Backwash Lagoon project; and the associated budget amendment, in the amount of $15,570.

Brown and Caldwell was originally hired by the City through a competitive process to provide the Design, Permitting, Bidding, and Construction Services for the William DeBruhl Water Treatment Plant Backwash Lagoon project in the amount of $49,088.00. The initial contract dated June 5, 2009, provided for the Design, Permitting, and Bidding services only. Change Order # 1 in the amount of $58,678.00 allowed Brown and Caldwell to perform Construction Services, which included a preconstruction meeting, inspections, record drawings, and other construction-related tasks. Due to the complexity of the construction, additional site inspections are required for the duration of the contract. Change Order # 2 in the amount of $15,569.24 will allow Brown and Caldwell to perform additional site visits. The original contract amount, Change Order # 1, and Change Order # 2 add up to $123,335.24.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval of the engineering change order will allow the City to move forward with the project in the current fiscal year in order to ensure compliance with applicable state/federal laws.

Con:

- Failure to award the engineering change order may delay the project beyond the current fiscal year, which may result in fines from NCDENR for being out of compliance with applicable state/federal laws.

The funds needed for this change order ($15,569.24) will be reallocated from another capital project that will receive replacement funding in a future fiscal year.

City staff recommends City Council (1) approve the City Manager to sign a change order increasing Brown and Caldwell's agreement for engineering services to $123,335.24 for the William DeBruhl WTP Backwash Lagoon project; and (2) approve of the budget amendment in the amount of $15,570.

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ORDINANCE BOOK NO. 26 - PAGE 91

D. RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN RBC BANK AND THE CITY OF ASHEVILLE TO FINANCE THE PURCHASE OF TWO FIRE TRUCKS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION AUTHORIZING NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT FOR THE CONSTRUCTION OF A COMMUNITY CENTER ON LIVINGSTON STREET AND SETTING A PUBLIC HEARING ON MAY 25, 2010

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 10-103 - RESOLUTION APPROVING SETTLEMENT WITH SWANNANOA CLEANERS FOR PROPERTY DAMAGE AT 165 COXE AVENUE

Summary: The consideration of a resolution approving settlement of a claim for property damage.

In the Spring of 2009, Swannanoa Cleaners discovered that the foundation of the southwest corner of its building on Coxe Avenue had settled as the apparent result of underground soil erosion. Because the claim involved property damage, it was referred to the Asheville Claims Corporation (herein "ACC"). The building is located on Coxe Avenue, but backs up to Federal Alley, a publicly maintained alley that has city storm water facilities buried within it. One of the storm drainage pipes runs very close to the rear wall of the Swannanoa Cleaners building, and the building is actually constructed over part of the pipe and encroaches into the alley by about three feet. An investigation revealed a downstream blockage in the pipe that caused water to back-up and leak out of the pipe, causing the erosion.

A crucial issue in determining whether the City has liability for damage of this nature is whether the City had notice of the condition causing the problem, in this case, the blocked pipe. The evidence of such notice in this case is conflicting, but would be enough to survive a motion to dismiss and a motion for summary judgment, in the opinion of the City's and ACC's legal counsel, necessitating a trial at which the outcome would be uncertain.

The cost to Swannanoa Cleaners for repairs to its building was approximately $100,000. After review and investigation of this matter by Risk Management and ACC, a settlement was negotiated with Swannanoa Cleaners for $75,000. Since this amount exceeds the City Manager's settlement authority of $25,000, City policy requires Council's approval of the settlement.

In addition, in order to address the encroachment issue, the City will initiate proceedings to close the part of Federal Alley immediately adjacent to the Swannanoa Cleaners building. This closure will not affect the public's ability to use the alley.

Pros:

- Resolves a disputed issue of property damage.
- Avoids the cost of a trial with an uncertain result.
- Maintains relations with downtown business community.

Con:

- Cost to the City (Asheville Claims Corporation).

This $75,000 settlement will be paid from funds already budgeted in the Insurance Fund.

Adoption of the resolution, approving the proposed settlement, is recommended.

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G. RESOLUTION NO. 10-104 - RESOLUTION CONFIRMING CITY COUNCIL SUPPORT OF PARTICIPATION IN THE YWCA'S "STAND AGAINST RACISM" EVENT ON APRIL 30, 2010

Summary: The consideration of a resolution for City Council support for the City's participation in the YWCA's "Stand against Racism" effort

The YWCA of Asheville is participating in a nationwide "Stand against Racism" event to be held April 30, 2010, and has requested community organizations plan events in support of the overall effort to acknowledge racism still exists in our community.

An organized relay walk for City of Asheville employees and other interested participants is being proposed. City employees would use their lunch hour to sign up for time slots throughout the day in which they would walk a predetermined route, in groups, through the Eagle/Market Street area of downtown.

Each group would use a pedometer to log how far they walked. At the end of the day a measurement of the number of miles the City of Asheville walked in a "Stand against Racism" would be released.

Short video interviews in which participants share what standing against racism means to them would be taped as groups complete their leg of the relay walk. The interviews would then be posted of City of Asheville websites.

Pros:

- Participation in the event will allow individuals the opportunity to express their desire to stand against racism during their lunch hour.
- The relay walk and associated videos will make a visual statement about the City's support of YWCA of Asheville's mission of ending racism.

Con:

- Eradicating racism involves much more than making a visual statement.

As participation in the event would take place during employee lunch hours, there is no significant fiscal impact involved in organizing the relay walk.

City staff recommends City Council adopt a resolution of support for a City of Asheville relay walk in support of the YWCA's "Stand against Racism" effort.

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H. RESOLUTION APPROVING THE LIST OF EVENTS FOR SUPPORT FOR OUTDOOR SPECIAL EVENTS IN ASHEVILLE FROM JULY 1, 2010 TO JUNE 30, 2011

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. BUDGET AMENDMENT TO AMEND THE HEALTH CARE BUDGET

CONSIDERATION OF A MOTION CREATING A BLUE RIBBON TASK FORCE ON HEALTH CARE TO REVIEW BENCHMARKS AND POLICY DECISIONS RELATED TO THE CITY'S HEALTH INSURANCE PROGRAM

These items were removed from the Consent Agenda for discussion and/or an individual vote.

J. BUDGET AMENDMENT TO INCREASE THE BUDGETED AMOUNT FOR OUTSIDE LEGAL SERVICES

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for and received public comments on all items on the Consent Agenda, prior to any of them being removed by City Council.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2011 TRANSPORTATION DEMAND MANAGEMENT GRANT PROGRAM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for the FY 2010-11 Transportation Demand Management (TDM) grant program and enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for administration costs of the program.

TDM programs are programs which promote an alternative transportation option to the single occupant vehicle. Included among these alternatives are carpooling, vanpooling, telecommuting, transit, bicycle, flexible work hours, compressed work weeks, and parking policies and price structures.

NCDOT's Public Transportation Division is funding TDM programs across the state to support the provisions of the Ambient Air Quality Improvement Act of 1999, Senate Bill 953, to address growing concerns over ground level ozone pollution from motor vehicles and the need to

deal with increasing vehicle miles traveled (VMT) and NOx emissions. This bill established the goals of reducing emissions of nitrous oxides (NOx) from motor vehicles by 25% by 2009 and reducing the growth of VMT in the State by 25% by 2009.

This program funds up to 50% of the total administrative costs including salaries, fringe benefits, marketing, etc.

There are six TDM strategies that the City of Asheville's TDM program is required to employ in order to accomplish the TDM Program Goals set by NCDOT. They are:

1. Conduct marketing efforts/activities identified in a marketing plan.
2. Coordinate with local transportation and land use planning efforts.
3. Facilitate ridematching services through the ShareTheRideNC website.
4. Promote the Best Workplaces for CommutersSM Program.
5. Collect and calculate data on VMT and NOx reductions through TDM activities.
6. Operate in a manner consistent with the NCDOT goals regarding making our transportation network safer, move people and goods more efficiently, and making our infrastructure last longer.

The City's TDM program began in August 2005 and was administered under the French Broad River Metropolitan Planning Organization (MPO) and the City of Asheville's Transportation and Engineering Department. When the functions of the MPO were relocated to the Land of Sky Regional Planning Council, the TDM program remained as part of the City's Transportation Planning Division. The North Carolina Department of Transportation (NCDOT) is currently evaluating the future of the TDM program in Western North Carolina and during FY 2010-11, a visioning study will be prepared. This study will be funded by Federal and State Funds at an 80/20 ratio.

Programs currently being administered are, but not limited to:

- The PASSport (employer bus pass) Program
- The Emergency Ride Home Program
- Strive Not to Drive – annual promotional event
- Share the Ride NC – Statewide ridematching program

During April 2010, the City of Asheville will apply for the FY2011 TDM Grant. In June 2010, the Board of Transportation will vote on whether or not to approve the funds in the maximum amount of $99,979 for the City of Asheville's TDM Grant. The 2010/11 budget for this program is currently in the City of Asheville's budget process.

This TDM program supports the City of Asheville's 2010/11 Strategic Plan by helping to promote emission-reducing options, as well as supporting multi-modal transportation promoting the use of transit through programs such as the PASSport program.

Pros:

- The current 50% match is reimbursed by NCDOT.
- To date, these statewide programs have reduced the growth of VMT by 24.6% - the goal for Senate Bill 953 was 25%.
- This program funds 50% of the TDM Coordinator position.

Con:

- The City is required to provide a 50% match which equals $49,989.

The total project cost is $99,979; 50% of this total will be paid by NCDOT and 50% by the City. Funds to cover the required 50% City match are included in the Transportation Department's budget request for the FY 2010-11 Annual Operating Budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to apply for the 2011 TDM grant program and enter into an agreement with the NCDOT for administration costs of said program.

Transportation Director Ken Putnam responded to various questions from Council, some being, but are not limited to: confirmation that this funds a staff position; responsibilities of the staff position; information on the results seen and results that could be produced as a result of this position; statistics to show the reduction of vehicle mile travelled are a result of these programs; and is the City's 50% match coming out of the General Fund.

Vice-Mayor Newman moved to approve the City Manager to apply for the 2011 Transportation Demand Management grant program and enter into an agreement with the N.C. Dept. of Transportation for administration costs of the program. In addition, he requested staff produce an analysis for Council going forward on what results we are seeing from the various Transportation Demand Management initiatives that fall under this program so Council can continue to evaluate whether the program is meeting with success or it might be logically placed elsewhere. This motion was seconded by Councilman Bothwell.

Councilman Davis felt that due to our economy, we should have that analysis prior to approving this action.

Vice-Mayor Newman and Councilman Bothwell withdrew their motion.

Councilman Smith moved to continue this action until May 25, 2010, in order to give staff enough time to produce the analysis requested by Vice-Mayor Newman above. This motion was seconded by Vice-Mayor Newman and carried unanimously.

D. RESOLUTION NO. 10-101 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN RBC BANK AND THE CITY OF ASHEVILLE TO FINANCE THE PURCHASE OF TWO FIRE TRUCKS

Summary: The consideration of a resolution authorizing execution of a $1.29 million installment purchase financing contract for fire trucks.

The City of Asheville Capital Improvement program (CIP) includes $1.29 million previously appropriated by City Council to finance the acquisition of two fire trucks.

The Finance Department sought proposals from 5 local and regional banks. Three proposals were received, the best of which was submitted by RBC Bank at an initial taxable interest rate of 3.58% per annum for a term of 5 years. RBC's proposal makes use of the Build America Bonds Program, which provides a rebate from the Federal Government in an amount equal to 35% of the interest paid on the loan. Taking into consideration the federal rebate of 35% from the Build America Bonds program, the effective interest for the City is **2.327%**

The proposed resolution authorizes an installment purchase contract between the City of Asheville and RBC Bank for the purchase of the fire truck and authorizes the City Manager, City Attorney and Finance Director and City Clerk to execute and deliver any and all necessary documents. Pursuant to a previously adopted reimbursement resolution, proceeds from this financing contract will allow the City to reimburse itself for the cost of the two fire trucks, which have already been procured.

Pros:

- Provides funding of capital expenditures at a very favorable effective interest rate.
- Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.
- Reimbursing this capital purchase with the proceeds of the financing, as opposed to paying for the purchase by using the City's available cash balances, increases the currently available funds by allowing the restoration of fund balance.

Con:

- Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

The annual debt service payment for this financing is approximately $289,000 per year. Funds are already included in the City's proposed debt service budget to cover this cost.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute an installment purchase contract and closing process with RBC Bank for the acquisition of the fire trucks.

Councilman Russell noted that fire trucks are very expensive and hoped that we look carefully at these big purchases going forward.

In response to Mayor Bellamy's confirmation that we are purchasing three fire trucks in two years and the needs in upcoming years, City Manager Jackson said that on May 11 during the budget presentation Council will have the opportunity to review that information in detail. He will provide Council with the prioritized replacement schedule for police cars, fire trucks, brush trucks, and other major pieces of equipment. He said that he will also provide Council with a memorandum on what meets the criteria from the School of Government for financing.

Councilman Russell moved to adopt Resolution No. 10-101. This motion was seconded by Councilman Smith and carried unanimously.

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E. RESOLUTION NO. 10-102 - RESOLUTION AUTHORIZING NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT FOR THE CONSTRUCTION OF A COMMUNITY CENTER ON LIVINGSTON STREET AND SETTING A PUBLIC HEARING ON MAY 25, 2010

Summary: The consideration of an initial resolution authorizing negotiation of an installment purchase contract and calling for a public hearing on May 25, 2010.

The current capital improvement plan includes funds previously appropriated by City Council to finance the construction of a community center on Livingston Street in Central Asheville.

The proposed initial resolution asks Council to confirm that it is in the City's best interest to enter into an installment purchase contract with a financial institution to fund the Livingston Street Community Center and to provide for a public hearing on these matters. This resolution is a legal formality required by North Carolina General Statutes before the process of securing financing can officially begin.

Pros:

- Allows the City to comply with the legal requirements of the Local Government Commission (LGC) regarding installment purchase financing

Cons:

- There are no cons associated with ensuring that legal requirements have been met before securing financing for the Livingston Street Community Center.

The City will secure approximately $1.07 million to finance approximately half of the construction costs associated with the Livingston Street Community Center. The remaining construction costs will be financed primarily with grants and donations. The projected annual debt service costs associated with the $1.07 million in debt proceeds ranges from $120,000 to $95,000. Funds are already included in the City's proposed debt service budget to cover this cost.

City staff recommends City Council adopt an initial resolution authorizing negotiation of an installment purchase contract and calling for a public hearing on May 25, 2010.

In response to Councilman Russell, Treasury Services Manager Pat Liguori said that this will be a 15-year note.

Councilman Russell requested that future staff reports outline the terms of the notes in the fiscal impact statement.

Councilman Davis moved to adopt Resolution No. 10-102. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

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H. RESOLUTION APPROVING THE LIST OF EVENTS FOR SUPPORT FOR OUTDOOR SPECIAL EVENTS IN ASHEVILLE FROM JULY 1, 2010 TO JUNE 30, 2011

Summary: The consideration of a resolution approving the attached list of events for support for outdoor special events in Asheville valued at **$114,295.40** for support of outdoor special events from July 1, 2010 – June 30, 2011.

During the recent Request for Proposals (RFP) process, 33 organizations met the eligibility requirements for outdoor special event support for events from July 1, 2010 – June 30, 2011.

Given current economic limitation, staff recommends support for six events based upon the historical tradition, economic impact, and uniqueness of the event. These events are Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay Festival, and Shindig on the Green. Support for events includes permit waivers (i.e. park usage permits, building/fire safety permits, etc.) and labor costs (i.e. police support, sanitation, public works).

Staff is further recommending that the city recover $57,148 (50% of the total requested support costs) from these event organizers for each event. Moving to this tiered program would create a business model where the City of Asheville is not providing a 100% level of subsidy for outdoor special events but where the City would share in the costs with event organizers, thereby saving the City of Asheville a total of $57,148 for FY10/11.

This does not support a specific goal, objective, or action item of the City Council Strategic Operating Plan. This does support the current Parks, Recreation, Cultural Arts and Greenways Master Plan by making organizations aware of the value of their support from the City and by providing clear criteria for support.

Pros:

- Events stimulate the local economy.

- Helps local organizations raise money.
- Provides additional quality cultural programming and diversity.
- Expands and enhances special events and festivals in Asheville.
- General Fund will recover 50% of event support cost.

Cons:

- Events have labor costs to the City in the amount of $85,617.
- Events put a strain on City resources such as Police, Fire, Sanitation, Park Maintenance, etc.
- Lost revenue from permit fee waivers in the amount of $28,678.
- Events contribute to decline on infrastructure such as parks.
- Some events close streets.

The fiscal impact to the City for the six events after recovering 50% of the cost from event organizers is $42,808.50 in labor costs and $14,339.50 in forgone permit fee waiver revenue for a total of **$57,148** of city support between July 1, 2010 – June 30, 2011. Funds are included in the projected FY10/11budget to cover this impact.

Staff recommends that City Council approve the list of outdoor special events below support based on the available budget for FY10/11 and recover 50% of cost from event organizers.

	total requested permit fee waivers FY11	total requested labor cost FY11	total requested support FY11	Permit & Labor Cost for Event Organizers	City Subsidy
Asheville Drum Circle	$3,875	$0	$3,875	$1,938	$1,938
Asheville Greek Festival	$10,742	$1,342	$12,084	$6,042	$6,042
Asheville Holiday Parade	$1,562	$39,462	$41,024	$20,512	$20,512
Downtown After 5	$2,143	$14,780	$16,923	$8,462	$8,462
Goombay Festival	$2,942	$26,869	$29,811	$14,906	$14,906
Shindig on the Green	$7,414	$3,164	$10,578	$5,289	$5,289
Anchor Event Total	$28,678	$85,617	$114,295	$57,148	$57,148

Ms. Mary Shirley urged Council to co-sponsor the 2010 Mountain Area Memory Walk.

Ms. Oralene Simmons, representing the Martin Luther King Association of Asheville and Buncombe County Inc., urged Council to waive fees for the annual Martin Luther King celebration.

Mr. Bryon Greiner, President of the Downtown Association, urged Council to waiver fees for the Downtown After 5 events and the holiday parade.

Ms. Kitty Love, Executive Director of Arts2People, encouraged Council to support their interest in maintaining quality cultural programming content.

Councilman Bothwell moved to adopt a resolution approving the list of outdoor special events from July 1, 2010, through June 30, 2011. This motion died for a lack of a second.

Mayor Bellamy noted that some members of the community didn't have the opportunity for feedback prior to City Council and wondered if there was an opportunity to get that feedback and talk about some transitional programs opposed to straight cuts. She also felt that the City needs to do a better job of communicating and giving ample notice of changes so they can plan their activities accordingly.

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that the Finance Committee reviewed this action, as well as the Recreation Board. Both bodies are open to the public. Direction is needed so departments know how much to allocate for these services. The effective date of this action would be July 1, 2010.

Council member each voiced their thoughts on co-sponsorship of the different organizations, noting the difficult budget year. Council has looked at this issue for the past two years and have looked for a fair way to support organizations while managing costs.

Vice-Mayor Newman agreed with Mayor Bellamy and suggested a transition process where this year there be a 25% cut and then next year a 50% cut so it will give the organizations more time to plan for that.

Councilwoman Manheimer suggested staff explore the concept of a partnership with some of the organizations so they can advertise the City's endorsement.

Mayor Bellamy also felt we need to revisit our policy on costs, e.g., using volunteers in some public safety roles, the number of City public safety people are needed, or having to pay permit fees for bagging meters during a City holiday. We need to try to help the organizations be successful if we can't give them the tools.

Vice-Mayor Newman moved to continue this matter until May 25, 2010, in order to give staff time to come back with alternatives based on Council feedback. This motion was seconded by Councilman Russell and carried unanimously.

I. ORDINANCE NO. 3845 - BUDGET AMENDMENT TO AMEND THE HEALTHCARE BUDGET

MOTION CREATING A BLUE RIBBON TASK FORCE ON HEALTHCARE TO REVIEW BENCHMARKS AND POLICY DECISIONS RELATED TO THE CITY'S HEALTH INSURANCE PROGRAM

Summary: The consideration of two items related to the City of Asheville's Health Insurance Program including (1) an amendment to increase the budget for the Health Care Program by $2,500,000 to cover costs in the current fiscal year that have exceeded original budget estimates and (2) a recommendation to form a Blue Ribbon Task Force on Health Care to review benchmarks and policy decisions related to the city's health insurance program.

(1) FY 2009-2010 Healthcare Budget Amendment

As discussed with City Council during the Quarterly Financial Updates and recent Budget Worksessions, the City has experienced a significant increase in healthcare costs over the last five years due to several factors, including overall general inflation in health care costs, the occurrence of a number of high dollar claims, and the impacts of an aging workforce. In calendar year 2009 alone, the City experienced a 25% increase in the cost of medical, vision and drug claims.

With costs rising so dramatically in the past year, the adopted fiscal year budget for the health care program ($11.2 million) has proven to be inadequate. Based on expenditure trends through the first nine months of the fiscal year, staff estimates health care expenses will end the

year at $13.7 million, or $2.5 million above the original budget. There are also several health care related revenues, such as employee contributions and insurance recoveries, that will exceed the original budget estimates by $800,000.

To cover health care costs in the current fiscal year that are projected to exceed budget, staff recommends that City Council appropriate:

- $800,000 in additional revenue, and
- $1.7 million from the Insurance Fund's fund balance.

(2) Blue Ribbon Task Force on Healthcare

Staff is recommending a number of program changes, including increases to employee premiums and adjustments to plan benefits, to address the trend of rising health care costs. Additionally, city staff also recommends that City Council consider forming a Blue Ribbon Task Force on Healthcare. The task force's work may include an evaluation of best practices to determine the optimal range of health insurance-related benefits afforded to employees, cost-for-service comparisons, employer-employee cost-share analysis, review of the Asheville Project, as well as other areas of interest.

The task force would convene and meet July-December, and the group's work and final recommendations would coincide with the onset of the FY 11-12 budget process (January-February, 2011). City staff, including the Human Resources director, as well as employee benefits staff, would support the task force's work.

Staff would recommend that membership on the task force be comprised on three to five citizens with a background in Human Resources and health insurance management in a medium to large organization. City Council could call for applications to be made through the City Clerk's office, and staff would review and recommend appointments to City Council by June 22, 2010.

Information about the health care budget amendment and associated changes to the health care plan have been reviewed by the City Council Finance Committee and will be discussed at the City Council budget worksession on April 27, 2010.

Pros:

- Provides an adequate budget for the projected FY 2009-10 expenditures in the Health Care program.
- Support staff efforts to make structural changes to the city's health care program to curtail the impact of rising costs.
- Creates a citizen-led task force by which best practices and innovation can be recommended to ensure the city's health care program is efficiently and effectively managed.

Con:

- Reduces the available fund balance in the Insurance Fund.

The Healthcare Program is a part of the City's Insurance Fund, which also includes the Workers Compensation and Liability insurance programs. As of June 30, 2009, the available fund balance in the Insurance Fund totaled $10.4 million. The $1.7 million appropriation requested tonight will lower the estimated June 30, 2010 Insurance Fund fund balance to $8.7 million. Based on standard benchmarks, fund balance should generally equal 6 to 9 months of a fund's operating expenses. At the current rate of expenditure in the Insurance Fund, 6 to 9 months worth of expenses equates to $7.74 to $11.62 million. Thus, the Insurance Fund's estimated fund balance of $8.7 million on June 30, 2010 will remain within the range of an acceptable level.

City staff recommends City Council: (1) approve the budget amendment to appropriate $2,500,000 to fund expenses in the Health Care Program, and (2) approve the creation of a Blue Ribbon Task Force on Health Care and call for applications to the Task Force through the City Clerk's office by May 31 so that staff can make recommendations for appointments to Council no later than June 22, 2010.

Councilman Russell, Chair of the Finance Committee, said that they felt it was a good idea to create a Task Force to look at our health care package.

In response to Mayor Bellamy, Director of Administrative Services Lauren said that this budget adjustment does not include General Fund dollars.

Due to past experience with the Blue Ribbon Civil Service Board Task Force, Mayor Bellamy felt it was important to have a staff component in the Blue Ribbon Healthcare. During the discussion on domestic partner benefits, she asked for, and it was supported by Council, to develop a task force of staff members to talk about health insurance, policies and plans. She hoped that was in place and that a representative from that committee be on the Blue Ribbon Healthcare Task Force.

City Manager Jackson said he is in the process of forming an employee benefits committee and at their first meeting he will ask them to nominate someone to serve on this Blue Ribbon Healthcare Task Force. He felt the committee will be formed next week.

Councilman Russell felt we definitely need to have a Human Resources representative on the Task Force.

Mayor Bellamy agreed that a Human Resources representative should be on the Healthcare Task Force, but also an employee representative (as was an oversight by Council when the Civil Service Board Task Force was established). She could not support the motion creating the Task Force if it does not include an employee representative.

Councilman Russell said that the Blue Ribbon Task Force needs to be an absolutely non-biased group of people that have no personal interest in this discussion. He suggested the Human Resources representative communicate to the City employees. At the end of the process, the Task Force will present a report to Council.

City Manager Jackson suggested five people in the business that manage health benefit plans in the community. We would also have someone there from the Manager's office and someone from the Human Resources Department to aid, assist and offer input. He felt the Mayor had a good suggestion to have someone participate and observe from an employee standpoint. The voting members should come from the five people in the business.

Councilman Smith suggested Councilman Russell serve as the City Council liaison to the Blue Ribbon Healthcare Task Force as he is one of those professionals we would be seeking input from.

Councilman Bothwell moved to adopt Ordinance No. 3845. This motion was seconded by Councilman Smith and carried unanimously.

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Councilwoman Manheimer moved to create a 5 voting member Blue Ribbon Task Force on Healthcare (consisting of people in the business that manage health benefit plans in the community) with Councilman Russell being the City Council liaison and someone from the City Manager's Office and the Human Resources Department to aid, assist and offer input. This

motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no."

J. ORDINANCE NO. 3846 - BUDGET AMENDMENT TO INCREASE THE BUDGETED AMOUNT FOR OUTSIDE LEGAL SERVICES

Summary: The consideration of a budget amendment, in the amount of $15,000, to increase the budgeted amount for outside legal services.

The City Attorney's Office budget includes an item for legal services provided by retained attorneys (outside counsel). This includes assistance for such matters as complex litigation, complex real estate, and patent/trademark matters, where the City Attorney's Office does not possess the appropriate expertise on staff, or where professional/ethical conflicts arise. Outside attorneys are usually from local law firms.

Since December of 2009, the City Attorney's Office has experienced some unanticipated staff shortages that have resulted in an increased use of outside counsel. Also the trial of the Biltmore Lake annexation case, which involved outside counsel assistance, took substantially longer than expected.

It is anticipated that $15,000 additional will cover outstanding invoices, and provide enough funding to get through the last quarter of the fiscal year.

Regarding the City Council Strategic Operating Plan, this action ensures operational effectiveness, and uses local services.

Pros:

- Facilitates provision of legal services not available on staff.
- Enables legal staff to address professional conflict issue.

Con:

- Further reduces an already tight annual budget.

This action will reduce Fund Balance by $15,000.

Adoption of the ordinance is recommended.

Councilman Bothwell moved to adopt Ordinance No. 3846. This motion was seconded by Councilman Smith and carried unanimously.

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III. PRESENTATIONS & REPORTS:

A. CIVIL SERVICE BOARD UPDATE

Mr. Larry Harris, Chairman of the Civil Service Board, outlined their mission as defined by the N.C. General Statutes and updated Council on their three basic functions. Goals and objectives for 2010 are (1) to fulfill their statutory responsibilities by conducting grievance hearings when filed and conducting investigations when warranted; and (2) to review the substantive rules regarding employment as outlined in Section 5 of the Civil Service Act and recommend any changes to City Council.

On behalf of City Council, Mayor Bellamy thanked Mr. Harris and the entire Board for their efforts on this Board.

B. ECONOMIC STIMULUS PACKAGE UPDATE

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is providing an update to City Council on the Energy Efficiency and Conservation Block Grant (EECBG) program performance.

As part of the EECBG program staff is implementing an environmental education program for the community. The focus areas of this program include: recycling, stormwater, energy and climate. The first phase of this educational program focuses on recycling by partnering with the 21st Century Program to work with youth at the Burton Street Community Center. Students developed the community center's recycling station and designed the recycling posters to educate center visitors about the do's and don't of recycling. In addition the students wrote, choreographed and stared in an educational music video about recycling.

Ms. Rachael Doebber showed the music video about recycling and introduced the students who participated in the video.

C. SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT UPDATE

Mr. Matt Raker, Chair of the Sustainable Advisory Committee on Energy & the Environment Committee (SACEE) said that the conclusion of 2009 marks the three year anniversary of the Sustainability Advisory Committee on Energy and the Environment (SACEE). Since then, SACEE has helped the city chart a course towards sustainability through LEED standards, energy reduction goals and advising on policy issues. Our mission explains how we strive to continue on this path:

SACEE's mission is to support the Mayor and Asheville City Council in their charge to integrate sustainable principles related to energy and the environment into City operations and the broader community consciousness, while promoting economic viability, environmental stewardship, and social responsibility - with the intent to improve quality of life for this and future generations, through the following:

- *Policy Guidance*: Provide technical assistance to the Mayor and Council on institutionalizing environmentally sustainable practices by evaluating and developing current and future policies in support of City sustainability commitments.

- *Education:* Increase awareness of matters related to energy and environmental sustainability by developing and implementing outreach and education activities aimed at changing behaviors across a diverse cross-section of the community.

- *Partnership:* Provide leadership and support in creating synergy among public and private partners in the region to maximize efforts towards a more environmentally sustainable future.

The committee reflected upon the mission frequently this past year while the city's sustainability office and program experienced tremendous growth and transition. SACEE, along with the Office of Sustainability, moved from the Department of Public Works to the Administration Services Department. The transition was a smooth one, and resulted in an increased presence of the sustainability office within the city structure and day to day function of city operations. Around the same time SACEE provided policy guidance to Council regarding the

use of the $804,700 of entitlement Energy Efficiency and Conservation Block Grant (EECBG) funds. The EECBG dollars are currently being spent on energy retrofits and renewable energy projects and have created 2 jobs to date.

Early summer 2009 marked a pivotal point in the city's commitment to sustainability when Council, with SACEE's support, adopted the Sustainability Management Plan (SMP). The SMP is the document to guide city operations as they work towards the City Council goal of reducing the municipality's carbon footprint 80% by 2050 at a rate of 2% each year. SACEE is proud to share that The City of Asheville has more than doubled that goal with an annual decrease of 5% from FY 2007-2008 to FY 2008-2009. The most recent carbon footprint is expected from the Office of Sustainability in fall 2010.

Lastly, SACEE worked closely with the Affordable Housing Working Group (AHWG) on green development incentives that the City of Asheville was authorized to develop in 2007 by the State of North Carolina. The SACEE and AHWG partnership efforts in 2009 were focused on a density bonus for developers. The bonus would be offered to developers who design projects with sustainability and affordable housing as a priority. SACEE looks forward to Council reviewing and considering the density bonus.

A full list of SACEE 2009 accomplishments are below as well as the concise goals and objectives of the committee for 2010.

- Worked on Green Density Bonus proposal, including research, determining point values, structure, accountability and rationale. The Committee made a motion in which SACEE supports a joint initiative with the Affordable Housing Working Group that incorporates density bonuses in areas where infrastructure exists to support increased density and services for the greatest number of citizens.

- As an activity of the climate change partnership with Warren Wilson, SACEE co-sponsored the College's conference, "Headwaters Gathering: Southern Appalachia at the Cross Roads." In addition, SACEE sponsored a discussion of local leaders with Majora Carter which focused on developing a green labor force. Attendees included city and county officials, local legislators, Representative Heath Shuler and other local leaders.

- Reviewed and gave input on the Sustainability Management Plan for City operations, endorsed the plan before it was presented to City Council.

- Supported and worked with Council members Cape and Newman on the proposal, now known as the Asheville Energy Independence Initiative. SACEE heard presentations on the initiative as it was being developed and before it was presented to City Council. SACEE sent a resolution to City Council endorsing a phase one pilot program for 2010 for the Asheville Energy Independence Initiative as well as a resolution supporting the use of bonds for fixed asset investment for public facilities for substantial increase in energy efficiency.

- SACEE has made efforts in educating the public and itself about sustainability issues. This included having an internal presentation and discussion about Environmental Justice, and presenting at the Earth Day event at the Public Works building, April 22.

- Regularly heard updates about the Sustainability office, and the progress on grants, community partnerships and internal planning & implementation. Also, SACEE heard regular reports on the data collection of city energy usage and efforts to increase efficiency. Staff kept SACEE up to date on Stimulus funding as it relates to Energy Issues.

- Presenting visitors at regular SACEE meetings included Shannon Tuch (City of Asheville), Margo Flood (Warren Wilson College), Michael Leahy (Asheville HUB), Adam Laucher and Beth Porter (UNCA Interns to City Sustainability Office) and Sherry Ingram of Water Werks.

- The City of Asheville has reduced energy consumption compared to the 2006-2007 baseline. These results will be detailed in the annual report produced by the Sustainability Office.

2010 Goals and Objectives

- Evaluate land use management components of the UDO to provide recommendations for better alignment with City goals and sustainability principles

- Support the City providing leadership and partnering with community partners to develop a plan for community-wide greenhouse gas emissions reduction
  -Need community action plan similar to Berkley, Pittsburg, and many others
  -Model the City of Asheville's internal plan to whole community
  -Ex: 80% in XX years.

As a conclusion SACEE would like to thank City Council for their continued leadership and prioritization of sustainability and climate change concerns.

In response to Councilman Bothwell, liaison to SASEE, Mr. Raker said that the City has an opportunity to send 2-4 voting representatives from our Building Safety Department to the International Building Code revision meeting to help shape the Code.

Vice-Mayor Newman noted that our sustainability results are getting noticed elsewhere and others are hoping to replicate our success.

On behalf of City Council, Mayor Bellamy thanked Mr. Raker, the entire Committee and Maggie Ullman for their efforts and leadership.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY LOCATED AT 18-20 MEADOW ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT

ORDINANCE NO. 3847 - ORDINANCE REZONING A PORTION OF PROPERTY LOCATED AT 18-20 MEADOW ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT

Mayor Bellamy opened the public hearing at 6:50 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone a portion of 18-20 Meadow Road from RS-8 Residential Single-Family High Density District to Urban Place District. This public hearing was advertised on April 16 and 23, 2010.

Mr. Esselstyn said that the property under review with this application is split zoned between Urban Place District (UP) and Residential Single Family High Density (RS-8). The UP portion of the property is located at the bottom of the slope adjacent to Meadow Road. The line dividing the two zoning districts appears to have been established years ago, at a time when this parcel contained tracks for a rail spur, and the railroad right-of-way was used as the dividing line. The railroad tracks have long since been removed, and while the zoning district boundary exists

in zoning maps, it would be extremely difficult, if not impossible, to locate with "survey grade" precision on the ground.

One of the applicant's primary objectives in pursuing this rezoning is to re-establish the line with a description that can be precisely located on a modern survey. Potential developers of the property often wish to know exactly how much of the lot is commercially zoned, and at present, the property owner can not furnish that information, owing to the situation described above.

Another objective of the rezoning is to shift the zoning district boundary north, not all the way to the property line, but far enough up the slope that some retention of the slope could be undertaken without a Conditional Use Permit (CUP) process. A retaining wall related to a commercial development, but within the residential zoning, would constitute an ancillary non-residential use in a residential district, which requires review as a CUP. According to the applicant, the prospect of additional substantial review steps and public hearings, even for a small wall, has discouraged potential developers.

The applicant has requested that the zoning boundary be shifted north to an alignment 30 feet south of the northern property line. Under this proposal, then, a 30-foot strip of residential zoning would be preserved at the highest part of the lot, and the zoning district boundary could be precisely mapped relative to the property boundary. The additional area zoned UP would be roughly one-third of an acre. The northern boundary of the property is also separated from the adjacent residential uses by a 30 foot unopened right-of-way (created for Roebling Circle).

Staff feels that if a substantial retaining wall were to be proposed for this site, it is appropriate that it be reviewed as a CUP. Staff analysis suggests that any wall larger than a modest wall would require modification of the slope on the portion of the property which is proposed to be residentially zoned, triggering the higher standard of review.

Staff also recognizes the sensitivity of the St. Dunstan's historic residential district up the hill from the site, and feels that a significant separation should be maintained between the subject property and those lots. In staff's estimation, the combination of the vertical gap between the areas, the unopened right-of-way, and the proposed 30-foot-strip, as well as the landscape buffering which would be required, would combine to provide a suitable separation.

As of this writing, staff has received one communication from a neighboring property owner regarding this rezoning, and the citizen was simply seeking more information.

At their April 7, 2010, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Amount of property to actually change zoning designations is small.
- Proposed rezoning would allow location of the zoning boundary with high precision.
- Could encourage development and improvement of an underutilized property.

Con:

- Rezoning would allow commercial development slightly closer to the historic residential district than is currently allowed.

Staff views the proposed rezoning as an appropriate remedy and recommends approval.

Mr. Joe Miller, applicant, explained their concern is erosion for any potential development. He showed various pictures of the elevation difference between this property and St. Dunstan's Circle. He urged Council to approve this rezoning request.

Mayor Bellamy closed the public hearing at 6:55 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3847. This motion was seconded by Councilman Davis and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2010 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

RESOLUTION NO. 10-105 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2010 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS

Mayor Bellamy opened the public hearing at 6:56 p.m.

Community Development Director Jeff Staudinger said that this is a public hearing will be conducted to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2010-2011, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year., followed immediately by Council's consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development. This public hearing was advertised on April 16 and 23, 2010.

The City will have available approximately $1.6 Million in CDBG funds and approximately $1.4 Million in HOME funds in the fiscal year beginning July 1, 2010. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 36 programs are recommended for funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

If approved, the HOME funds and some CDBG funds will assist in creating or improving 271 housing units and helping an additional 182 households afford housing Consortium-wide. CDBG funds will also benefit more than 8,500 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute over $29,000,000 of other funding to these programs, leveraging $9.60 for every $1 of HOME and CDBG funds.

A public hearing will be held at the Council meeting of April 27. Comments received at the meeting will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council's Strategic Goals of: (1) Affordable: This plan directly supports the City's affordable housing plan, uses innovative public-private

partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Green and Sustainable: works with regional partners creating green buildings and energy conservation; (3) Safe: Supports employment alternatives for youth at risk of gang exposure; and (4) Job Growth and Community Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $3,000,000 of HUD funding to the City, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $29,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. New assisted housing units to be constructed in Asheville will add significantly to the City's tax base. Staff will bring the FY 2010-11 CDBG and HOME budgets to City Council for adoption in June along with the rest of the City's FY 2010-11 Operating Budget.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2010-11 to the U. S. Dept. of Housing and Urban Development.

Mr. Roy Harris urged Council to support the Plan.

Mayor Bellamy closed the public hearing at 7:03 p.m.

In response to Councilwoman Manheimer, Mr. Staudinger explained what falls into the administration category.

Councilman Smith felt that all the projects deserve more attention and funding; however, we had less funds than last year to allocate. For those groups that did not receive funding, he encouraged them to reapply knowing they have worthy projects.

Vice-Mayor Newman noted that the Asheville Regional Home Consortium is a great model of regional cooperation.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-105. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 26

C. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED STRATEGIC HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2010-2015

RESOLUTION NO. 10-106 - RESOLUTION ADOPTING THE CONSOLIDATED STRATEGIC HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2010-2015

Mayor Bellamy opened the public hearing at 7:08 p.m.

Community Development Director Jeff Staudinger said that a public hearing will be conducted to received comments regarding the proposed Consolidated Strategic Housing and Community Development Plan for 2010-2015, which sets out the proposed priorities, strategies and performance targets for the use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for 2010-2015, followed immediately by Council's consideration of a resolution authorizing adoption of the Plan and submission of this Consolidated Strategic Housing and Community Development Plan for 2010-2015 to the US Department of Housing and Urban Development. This public hearing was advertised on April 16 and 23, 2010.

Every five years, the City is required to prepare a Consolidated Strategic Housing and Community Development Plan to set out broad priorities, strategies, and targets for the use of Community Development Block Grant (CDBG) and HOME funds. This Strategic Plan covers not just the City of Asheville, but also the four-county Asheville Regional Housing Consortium (Buncombe, Henderson, Madison, and Transylvania counties) within which HOME funds are used.

Under the direction of the Consortium Board, staff commissioned a detailed Housing Needs Assessment for the entire Consortium, and prepared a more limited assessment of non-housing community development needs for Asheville. Nine public meetings and 12 focus groups were held to gather community input on priorities and strategies. An on-line poll on priorities received 289 responses.

He reviewed with Council Buncombe County's highest priorities: (1) affordable rental housing, particularly for households earning 60% of median income or less; (2) coordinate housing development with transportation, jobs and services and make efficient use of land and infrastructure; (3) emphasize high quality, energy efficient, environmentally friendly designs; and (4) house those with special needs – the homeless, the frail elderly, persons with mental illness, and people with disabilities and help them succeed through support services coordinated with housing development. Addition priorities include (1) target low wealth neighborhoods for improvements that will improve housing conditions and create strong communities; (2) preserve existing housing and focus preservation efforts to make rental and homeownership housing affordable to promote long-term affordability; and (3) promote homeownership.

He also provided the highest priorities for Henderson County, Madison County and Transylvania County.

He explained the housing achievements for the Consortium for 2005-09 and the housing projection targets for the next five years (annual target is 240 total units and five-year target is 1200 total units).

He provided Council with the homelessness priorities and non-housing community development's highest priorities for the next five years.

Using numbers from the past five years of 2005-09, he provided Council with a list of non-housing outcomes assisted with CDBG funds. He also provided them with non-housing targets for the next five years.

The draft Plan was published on March 28, to allow for a 30-day public comment period. A final public hearing is required during this comment period. Staff will then seek Council's approval of the Plan.

The Annual Action Plan for 2010-2011, which allocates CDBG and HOME funds to specific activities over the next 12 months, is the subject of a separate public hearing and resolution, also on April 27.

This Consolidated Strategic Housing and Community Development Plan directly supports Council's Strategic Goals of (1) Affordable: Directly supports the City's affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, supports the Housing Authority goals to redevelop public housing, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Fiscal Responsibility: Identifies resources for strategic initiatives and creates meaningful performance measure for programs and services, provides opportunity to leverage partnerships for capital improvements and infrastructure projects, and proactively pursues funding opportunities; (3) Green and Sustainable: Outlines how we work with regional partners creating green buildings and energy conservation, and supports implementation of a multi-modal transportation plan; (4) Job Growth and Community Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees; and (5) Safe: Supports recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- The Consolidated Strategic Housing and Community Development Plan enables the City to access federal funding for affordable housing and community development, estimated at $15,000,000 of direct funding over the next five years;
- These funds are used for projects that create affordable housing, create jobs, and improve public infrastructure.
- Other public and private investment in these projects has historically averaged over 9-1, potentially resulting in additional investment of over $135,000,000 in the next five years;

Cons:

- Decision-makers and administrators must recognize that the Plan is a guide, not an unalterable dictate, and should stay alert to changing economic and social conditions. The Plan should not be an impediment to innovation.
- The use of the federal funds is regulated, and care must be taken to ensure compliance in the use and administration of the funds.

The Consolidated Strategic Housing and Community Development Plan provides the mechanism for receipt of significant federal funds by the City and region. These funds are used to primarily benefit low and moderate income persons through affordable housing, economic development, public services and public facilities. Staff costs to administer the program are fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. Projects constructed using these funds have the potential to add millions of dollars to the City's tax base.

Staff recommends approval of the resolution authorizing adoption and submission of this Consolidated Strategic Housing and Community Development Plan for 2010-2015 to the US Department of Housing and Urban Development.

Mayor Bellamy closed the public hearing at 7:18 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-106. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 27

At 7:20 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. SHORT-TERM ACTION PLAN ON THE TRANSIT MASTER PLAN IMPLEMENTATION

RESOLUTION NO. 10-107 - RESOLUTION AUTHORIZING CITY STAFF TO IMPLEMENT CERTAIN OPERATIONAL CHANGES TO THE TRANSIT SYSTEM INCLUDING ON-TIME PERFORMANCE CHANGES, 30-MINUTE FREQUENCY, AND CONSOLIDATING EVENING ROUTES INTO DAY ROUTES

RESOLUTION NO. 10-108 - RESOLUTION AUTHORIZING CITY STAFF TO MOVE FORWARD WITH DEVELOPING A MARKETING STRATEGY TO PROMOTE THE OPERATIONAL CHANGES AND CREATING A NEW "BRAND" FOR THE TRANSIT SYSTEM

ORDINANCE NO. 3848 - BUDGET AMENDMENT TO SET UP THE PROJECT BUDGET FOR THE MARKETING STRATEGY PROJECT

Director of Transportation Ken Putnam said that this is the consideration of (1) a resolution authorizing City staff to implement certain operational changes to the transit system, based on recommendations included in the Transit Master Plan; (2) a resolution authorizing City staff to move forward with developing a marketing strategy to promote the operational changes and creating a new "brand" for the transit system; and (3) a budget amendment, in the amount of $150,000 amending the capital projects budget to account for the $150,000 marketing strategy cost.

As requested by City Council on March 9, 2010, the subject staff report has identified an alternative method to fund the 20% Local match for the marketing strategy cost.

The Transit Master Plan (TMP) was approved by City Council on October 27, 2009. As a part of the plan's approval, City Council asked staff to meet with the Transit Master Plan Steering Committee and the Transit Commission to develop an action plan to begin the implementation process for the Transit Master Plan. City staff met with both groups during November and December 2009 and developed the action plan. The complete report was sent to City Council members on March 2, 2010. The action plan focuses on three operational areas; specifically, operational changes, fare structure, and marketing. The specific recommendations for each area are listed as follows:

- Operational Changes

In order to provide better service to our customers, 30-minute frequency is recommended along the main corridors. In order to accomplish this task, existing routes would be staggered in four corridors; namely, Patton Avenue – Routes 15 and 16, Haywood Road – Routes 1 and 9, Biltmore Avenue – Routes 4 and 8, and Tunnel Road – Routes 13 and 26. Merrimon Avenue would remain at hourly service (In order to achieve 30-minute frequency along Merrimon Avenue, an additional bus would be needed and that is cost prohibitive at this time).

System-wide on-time performance changes are also recommended. Currently, one of the biggest challenges the transit system faces is keeping the buses on-time mainly due to route deviations and Dial-A-Ride service. In order to accomplish this task, existing route deviations will be reduced or eliminated and Dial-A-Ride service will be stopped. The subject action will address driver's concerns with the current route schedules and the pressure they constantly receive from riders to be on-time. First Transit, the City's management company, stresses safety and has an extensive ongoing training program for the bus drivers. This training includes defensive driving, state laws regarding safe driving, accident reporting and investigation, and regular safety meetings. The overall purpose of the training is to ensure that the rider's safety is always the main consideration when using an Asheville Transit bus.

Finally, consolidating the evening routes with the day routes, eliminating the gap, and ending the evening routes earlier is recommended. This change will eliminate the current gap existing between day and evening routes and will provide service to 10:30 pm as recommended in the Transit Master Plan. The evening routes will replicate the day routes as much as possible making system navigation smoother for the rider. This change will save about $65,000 per year.

The total cost to implement the 30-minute frequency on four of the five major corridors and the system-wide on-time performance changes, and the changes to evening service is $44,000. $31,000 of the cost is due to the production and printing of new maps and is included in the marketing section. The remaining $13,000 will be absorbed in the current fiscal year's operating budget.

The timeline to implement these changes would be 120 days beginning after City Council approval.

Although the action plan recommends implementing the system-wide short-term recommendations as proposed in the Transit Master Plan including Sunday service, 30-minute frequency on all five main corridors, and more evening service, City staff is not asking for specific action at this time. This recommendation should be considered as a part of the overall ongoing budgetary process for Fiscal Year 2010-11.

- Marketing

One of the most important elements to enhance the Asheville Transit System, as expressed in the Transit Master Plan, is to develop a marketing strategy that focuses on the creation of a new image for the system and promotion of route changes including system "branding" (logo), color schemes for the buses, signs, and new maps. The City would hire a consultant to support and assist in the implementation of the marketing strategy. Marketing is an eligible expense under the annual Federal allocation, with an 80%/20% ratio (Federal/Local).

The total cost to implement the subject marketing strategy is a maximum of $150,000, with $120,000 being paid by Federal Funds and $30,000 paid by City Funds. $13,000 of the Local match will come from a settlement with Professional Transit Management, the former management company and the remaining $17,000 will come from projected savings in the current fiscal year's transit operating budget. The consulting work represents 33% of the cost, which equates to $50,000. The balance of the cost, $100,000, will be used to produce and print the appropriate schedules and maps.

The timeline to complete the subject task would be 120 days beginning after City Council approval.

This action complies with the current City Council's Strategic Operating Plan for Fiscal Year 2009-10 by helping to support a sustainable community through a strong commitment to long-term planning and fiscal responsibility; and helping to establish a multi-modal transportation plan by making needed transit system improvements.

The Transit Commission and the Transit Master Plan Steering Committee support the subject actions. Both groups actively participated in the process to suggest the recommendations.

Pros:

- On-time performance changes will increase the transit system's reliability and will have a positive impact on the drivers and riders.
- 30-minute frequency on four of the five main corridors will give riders more mobility options and will potentially attract choice-riders to the system.
- The elimination of the evening gap and consolidating the day routes will make system navigation smoother for the rider.
- The marketing strategy will give a fresh image to the transit system, promote the operational changes, and highlight the new buses that the City should receive towards the end of the current calendar year.
- Federal Funds will provide 80% of the total cost of the marketing task, which equates to $120,000.

Cons:

- The total maximum cost of the subject project is $163,000.
- The $13,000 cost to implement the operational changes would be absorbed by the current fiscal year's transit operational budget.
- A 20% local match, which equates to $30,000, is required for the marketing task.

The total anticipated cost of the subject project is $163,000. The $13,000 operational changes cost will be absorbed by the current fiscal year's transit operational budget. The marketing strategy cost of $150,000 will be funded with Federal Funds at the rate of 80% or $120,000 and the balance of $30,000 by the City. The Local match is funded through monies that will come as a $13,000 settlement from the former management company and $17,000 in projected savings from the current fiscal year's Transit Fund operating budget. Throughout the current fiscal year, City staff has been projecting that the Transit Fund operating budget would finish the year with better than budget performance of approximately $56,000. Even by absorbing the subject $30,000 in the current fiscal year's operating budget, Transit should still finish the year about $26,000 better than budget. No additional funding from the General Fund is required for this project.

City staff recommends that City Council adopt (1) a resolution authorizing City staff to implement certain operational changes based on recommendations included in the Transit Master Plan; (2) a resolution authorizing City staff to move forward with developing a marketing strategy to promote the operational changes and creating a new "brand" for the transit system; and (3) a budget amendment amending the capital projects budget to account for the $150,000 marketing strategy cost.

Mr. Mike Fryar did not support spending $150,000 for marketing.

Ms. Hanna Raskin, Chair of the Transit Commission, spoke in support of these short-term initiatives.

Mr. Paul Van Heden, Vice-Chair of the Transit Commission, felt these actions are a start and urged Council to support them.

Councilman Russell felt that he could not support spending $150,000 for a marketing plan.

Mayor Bellamy noted that 80% of the budget will be federal funds and was pleased to see that staff has found an alternative way to raise the City's 20% ($30,000) portion. Transit is an important asset to our community as 17% of our transit users don't have any other means of transportation to get to school and work. We do subsidize the transit system, but we also subsidize other programs that provide services as well.

Councilman Bothwell felt transit benefits the workers and also the businesses that hire the workers. He felt that using transit is cheaper than building new parking spaces.

Mayor Bellamy said that Council has been previously furnished with copies of the resolutions and ordinance and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-107. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 28

Vice-Mayor Newman moved for the adoption of Resolution No. 10-108. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no".

RESOLUTION BOOK NO. 33 – PAGE 29

Councilman Bothwell moved for the adoption of Ordinance No. 3848. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no".

ORDINANCE BOOK NO. 26 – PAGE 100

B. PARKING DECK RATES UPDATE

Transportation Director Ken Putnam said that purpose of the subject memorandum is to provide City Council a final report regarding the impact that the new variable parking rate structure is having on after hour's customers to the City's three parking decks *(The term "after hour's customers" refers to the activities that take place in the City's three parking decks after 7:00 pm on weekdays and on weekends).*

In addition, City staff will provide an update regarding the discount rates for parking in the decks that were approved on October 13, 2009 (Resolution # 09-217).

Prior to the equipment upgrade that was completed in the City's parking decks during September 2009, a flat $1.00 fee was charged to customers exiting the Civic Center Deck and the Rankin Avenue Deck and a flat $2.00 fee was charged to customers exiting the Wall Street Deck after 7:00 pm on weekdays and on weekends *(not including times when the special event fee was in effect)* because the old equipment could not support variable rates. Some customers quickly learned that they could enter one of the City's parking decks anytime during the day and if they waited until 7:00 pm to leave, they would only pay either a $1.00 or $2.00 *(in the Wall Street Deck)* instead of the appropriate fee up to the daily maximum. Not only did this practice decrease potential revenues to the City, it created an unequal rate structure compared to daytime customers.

City staff began the process to replace the old equipment in late 2005. Originally, the equipment upgrade project was going to be included with the Haywood Street Parking Deck project. When that project did not materialize, City staff recommended and City Council approved the funds for the equipment upgrade project in FY 2008-09. In addition, City Council approved the variable rate structure and eliminated the flat fee as a part of the FY 2008-09 budget process. Given the downturn in the economic climate that began in late 2008 and continued in 2009, City staff decided that it would be a good idea to revisit the new variable rate structure before it was

implemented. They met with the Asheville Downtown Association and the Downtown Commission and both groups agreed that City staff should move forward with implementation. City Council also agreed that City staff should move forward and as a result, the new rate structure became effective on September 8, 2009.

Within the first 30 days that the new rate structure became effective, citizens began sharing some concerns with City Council members. The primary concern included the conclusion that long-term customers *(nighttime workers)* were now being "forced" out of the parking decks and onto the streets where on-street parking is free after 6:00 pm. As a result, these long-term customers are now using on-street parking spaces that should be used by restaurant patrons and shoppers.

In order to analyze the primary concern in a fair, logical, and reasonable manner, City staff suggested that parking activity be monitored closely for a six-month time period between October 1, 2009 and March 31, 2010 and then compare the results with the same time period a year ago. City Council agreed with this suggestion and asked that an interim report be presented on February 9, 2010 and the final report to be presented on April 27, 2010.

According to our records, 47,100 after hour's customers used the City's parking decks between October 1, 2008 and December 31, 2008 compared to 46,700 after hour's customers between October 1, 2009 and December 31, 2009. The data indicates that the after hour's parking deck usage has virtually remained at the same level with a decrease of only 400 customers. Much of the decrease could be attributed to the major snowstorm that hit Asheville on December 18, 2009.

Under the old flat rate structure, the City would have received a minimum of $47,100 in revenue *(not accounting for the $2.00 fee in the Wall Street Deck)*. With the new variable rate structure, the City actually received $65,400 in revenue. It should be noted that 44% of the after hour's customers paid less than $1.00 to exit the parking decks. 65% of the after hour's customers *(44% + 21%)* paid less than $2.00 to exit. The total "stay" for these customers was less than three hours with the first hour being free. The remainder of the after hour's customers stayed in the parking decks for three hours or more *(93% stayed in the parking decks for a total time period of less than eight hours with the first hour being free)*.

FINDINGS – FINAL REPORT - According to our records, 86,700 after hour's customers used the City's parking decks between October 1, 2008, and March 31, 2009, compared to 81,300 after hour's customers between October 1, 2009, and March 31, 2010. The data indicates that the after hour's parking deck usage has virtually remained at the same level with a decrease of 5,400 customers. Much of the decrease could be attributed to the major snowstorms that hit Asheville during the winter months. In an effort to encourage citizens to keep their vehicles off of the streets during the snow cleanup periods, free parking was offered to anyone at the three City parking decks. During four of the major snow events, the City experienced a decrease of 8,200 customers in the parking decks, which exceeds the overall total decrease for the six-month test period. Based on this information, a reasonable conclusion can be made that if the snow events had not occurred, the after hour's customers would probably have been higher than the previous year.

Under the old flat rate structure, the City would have received a minimum of $86,700 in revenue *(not accounting for the $2.00 fee in the Wall Street Deck)*. With the new variable rate structure, the City actually received $119,800 in revenue, a 38% increase. It should be noted that 45% of the after hour's customers paid less than $1.00 to exit the parking decks. 66% of the after hour's customers *(45% + 21%)* paid less than $2.00 to exit. The total "stay" for these customers was less than three hours with the first hour being free. The remainder of the after hour's customers stayed in the parking decks for three hours or more *(93% stayed in the parking decks for a total time period of less than eight hours with the first hour being free and 7% stayed in the parking decks for more than eight hours)*.

PARKING DECK DISCOUNT RATES

City Council approved the following discount rates for parking in the decks on October 13, 2009 (Resolution # 09-217):

- A 15% discount for 10 or more monthly parking spaces owned by one individual or agency in the Civic Center Parking Deck.
- A 10% discount of five to nine monthly parking spaces owned by one individual or agency in the Civic Center Parking Deck.
- A 15% discount for 300 or more bulk vouchers purchased at one time by the same individual or agency for hourly parking in any of the City Parking Decks.

Currently, five individuals and/or agencies are taking advantage of the 15% discount affecting 145 parking spaces in the Civic Center Parking Deck and seven individuals and/or agencies are taking advantage of the 10% discount affecting 46 parking spaces in the Civic Center Parking Deck *(During October 2009, a total of 13 individuals and/or agencies took advantage of the discounts)*. Three to four agencies are taking advantage of the 15% discount for 300 or more bulk vouchers purchased at one time for use in any of the City Parking Decks.

CONCLUSIONS

As stated earlier, the purpose of the subject memorandum is to provide City Council with information *(based on actual use of the parking decks for the six-month period from October 1, 2009, through March 31, 2010)* regarding the impact that the new variable parking rate structure is having on after hour's customers. Although, we cannot measure how many customers are now using on-street parking spaces because of the new rate structure, the data suggests that the usage is virtually the same or higher when compared to the time period from October 1, 2008, through March 31, 2009, when the major snow events are removed. The City is currently experiencing a strong demand for parking spaces during the evening hours especially on the weekends.

Another issue that City staff has been monitoring is how well the new parking deck equipment responds to special event activities. This equipment, which now accepts credit and debit cards, responds well during times of normal exiting activity throughout a typical day. It does not respond well during exiting activities for a special event when everyone is leaving at the same time with only one available exit access point for the Rankin Street and Wall Street Parking Decks. Typically, during special events, a special event-parking fee is charged and is collected when the customers enter a parking deck. That way, no time is lost for fee collection as customers leave a parking deck. City staff has experimented with having a special event fee at the Civic Center Parking Deck but not at the Rankin Street and/or Wall Street Parking Decks in an effort to provide choices for all of the customers coming to downtown including the ones that are not attending the special event. Based on customer feedback, that experiment has not worked in a satisfactory manner. In an effort to improve the customer experience, we are now staffing the Rankin Avenue and Wall Street parking decks until 11:00 pm on Fridays and Saturdays throughout the summer *(we also provided an extended service during the months of November and December 2009)*. City staff continues to look for ways to improve the customer experience and we will continue to make appropriate changes.

Based on this information, City staff does not recommend any specific changes at this time. We can and will continue to monitor the parking activity to identify any unusual trends that might develop.

In response to Councilman Smith, Mr. Putnam said that the City Attorney will be bringing a report to Council regarding handicapped parking policy downtown.

Councilwoman Manheimer felt that to park in our decks is a good deal, and felt the City should continue to evaluate whether we are charging a market rate for a destination city such as Asheville.

Mr. Putnam responded to Mayor Bellamy when she suggested providing incentives for handicapped people to park in our parking garages.

VI. NEW BUSINESS:

A. MOTION TO APPROVE DOWNTOWN ASSOCIATION FEE WAIVER REQUEST THROUGH DECEMBER 2010 FOR CULTURAL ARTS PROGRAM IN PRITCHARD PARK

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of a request from Asheville Downtown Association (ADA) to waive park rental fees in the amount of $21,650 and to waive fire, zoning and technical review fees in the amount of $11,076 for a total fee waiver in the amount of $32,726 for a cultural arts program at Pritchard Park.

ADA proposes conducting a cultural arts program at Pritchard Park during the park's regular operation hours according to the dates listed on the attached documents.

The mission of the ADA is to be a voice of the downtown community and to promote and support quality economic, cultural and residential development of downtown Asheville. All of the events conducted by ADA will be free and open to the public.

In 2008, the City supported the cultural arts program in Pritchard Park in which the City allocated $10,000 in cash and waived the park rental fee and fire, zoning and technical review permit fees for a total value of $17,585. In 2009, the City continued to support the cultural arts program and waived park rental fees and fire, zoning and technical review permit fees for a total value of $9,011.

For 2010, the ADA is requesting permit and fee waivers for a total of 117 event days from May 2010 until June 2011. The total event permits include park rental fees (valued at $21,650) as well as fire, zoning and technical review permit fees (valued at $11,076) for a total fee waiver in the amount of $32,726 for the said events.

This would represent a 41% increase in the number of events from last year held by ADA for programming in the park.

The additional events days will put a strain on City resources such as Police, Fire, Sanitation, Park Maintenance and will have a greater impact on the availability and usage of the park by other citizens and groups.

Pros:
- Enhances ADA's ability to provide cultural arts programming in Pritchard Park
- Supports recommendations of the Downtown Social Issues Task Force

Cons:
- Lost revenue from permit fee waivers in the amount of $2,964;
- Lost revenue from park rental fees in the amount of $6,275;
- Reduces the use of the park by other groups or individuals;
- Limits park reservation availability to only Monday's and Wednesdays.
- Events put a strain on City resources such as Police, Fire, Sanitation, Park Maintenance, etc.

Under staff's proposal, the lost revenue to the General Fund for facility rentals, permits and technical review will be $9,239.

City staff recommends City Council to approve waiving of the requested park rental fees for May and June, 2010 in the amount of $6,275, and the fire, zoning and technical review permit fees in the amount of $2,964 for a total value of $9,239; and that the Parks and Recreation Advisory board develop a recommendation for council consideration for the cultural arts program in Pritchard Park for the remaining dates requested by ADA.

Vice-Mayor Newman moved to waive the requested park rental fees for May and June, 2010 in the amount of $6,275, and the fire, zoning and technical review permit fees in the amount of $2,964 for a total value of $9,239; and that the Parks and Recreation Advisory board develop a recommendation for council consideration for the cultural arts program in Pritchard Park for the remaining dates requested by ADA. This motion was seconded by Councilwoman Manheimer.

Mr. Bryon Greiner, representing the Downtown Association, briefly explained the history of programming in Pritchard Park. He said they are not asking for cash, but for fee waivers to program the park 4 days a week. He felt that there would not be a strain on others using the park because not a lot of people are scrambling to rent the Park. Their budget is planned per calendar year, noting the programming includes the holiday parade, and asked Council to waive the fees for 2010 and the programming dates in May/June 2011.

Ms. Kitty Love also explained the history of how the program in the Park first started in 2008. City Council was concerned with how the Park was being used and after a group of citizens looked at best practices and successes in other places, it was determined if you bring more people in the Park it will be used. City Council then appropriated $10,000 seed money to get the programming started. She encouraged Council to approve these fee waiver requests because we have had success with this program. It also benefits the lives of grassroots artists in our community.

One of the artists in the Pritchard Park programming, the Hoop Jam, urged Council to waive the fees. She showed pictures of how her particular business has brought people into the Park.

Mr. Adrian Vassallo, Treasurer for the Asheville Downtown Association, said that they want to not only complement the program but partner with existing businesses downtown. He hoped Council would look favorably upon their request.

Councilman Bothwell wondered if these fee waivers should be a part of the conversation of co-sponsorship that was continued to May 25. He also wondered if we will be setting aside other events in Pritchard Park since the Downtown Association is booking up all Saturdays and Sundays.

Councilman Smith supports the Downtown Association and acknowledges the benefits for downtown, but we are raising fees at one meeting and then waiving them for one organization without consideration of other organizations in other parks. He felt this should be discussed in the other conversation about fee waivers and event subsidies in general. He did not want to look at these fee waiver requests on a case by case basis. As a compromise this time for the Downtown Association he would offer that we waive all fees in Pritchard Park for the entire year for all groups.

In response to Councilman Smith's compromise, Vice-Mayor Newman felt we need to think through all the groups that use Pritchard Park because there might be some that we would have a trouble explaining to taxpayers why we waived their fees for their event. He would not support Councilman Smith's suggestion to waive all fees in Pritchard Park for the year.

In response to Vice-Mayor Newman, Mr. Greiner said that in the fall of 2009 the Downtown Association agreed to take over the programming aspect. They were under the impression that the Friends of Pritchard Park's permit ran until May 31 of this year so they applied for the period of June 1, with the idea that this year's programming would start under their permit. However, they now understand that their permit expired on December 31. They thought everything was in place when they did planned their budge for the entire year.

Vice-Mayor Newman supported waiving the fees through the end of December, 2010. He felt these are different events than co-sponsorship events. We should support this because we are trying to reclaim our space that has been troubled in the past. If we don't support this programming in this Park, we will spend more money for law enforcement.

Councilman Bothwell noted that the nationally known Drum Circle brings in far more people than probably all four days of events to downtown and they are talking about raising fees for them.

Councilman Smith looked forward to discussions of a clear policy as to what we want to do with our parks.

Councilwoman Manheimer noted that some entities who apply for grants for a certain amount of money have to prepare a thorough grant application with all kinds of scrutiny to demonstrate that they are a sound organization to receive the funds. That may be something we need to adopt so we can maintain a more objective posture in what we fund, recognizing that there is value in funding a lot of different programs through fee waivers.

The motion made by Vice-Mayor Newman to waive the requested park rental fees for May and June, 2010 in the amount of $6,275, and the fire, zoning and technical review permit fees in the amount of $2,964 for a total value of $9,239; and that the Parks and Recreation Advisory board develop a recommendation for council consideration for the cultural arts program in Pritchard Park for the remaining dates requested by ADA and seconded by Councilwoman Manheimer carried on a 6-1 vote, with Councilman Smith voting "no."

Mayor Bellamy said that staff has been directed to come back to Council on May 25 regarding co-sponsorships. When staff comes back with whatever is recommended, she asked that the formula not be just for this fiscal year but at least for two years. While we are on a fiscal year calendar (July 1-June 30), others in the community may not be. We need to let the community know what to expect. If we are clear up front with the rules, we won't have so many exceptions at the end.

Councilman Davis moved to waive the requested park rental fees and the fire, zoning and technical review permit fees through the end of December, 2010, with a larger on-going conversation how we deal with Pritchard Park. This motion was seconded by Councilman Russell.

Mayor Bellamy noted that we have volunteers and community partners helping us with our problems. We changed the rules when we stopped giving money and fee waivers without letting them know in advance. She felt that programming in Pritchard Park and the Nuisance Court has really transformed Pritchard Park.

Discussion occurred, initiated by Councilwoman Manheimer, about a long-term partnership agreement with the Downtown Association.

City Attorney Oast said that as a result of the negotiations there is some need for the fee waiver structure between now and the end of the year to change, it can be covered in the partnership agreement.

Councilman Smith could not support the fee waivers; however, he would support a partnership agreement between the parties.

The motion made by Councilman Davis to waive the requested park rental fees and the fire, zoning and technical review permit fees through the end of December, 2010, with a larger on-going conversation how we deal with Pritchard Park and seconded by Councilman Russell carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

B. RESOLUTION NO. 10-109 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES (LARCHMONT)

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing approval of a Housing Trust Fund loan to Mountain Housing Opportunities - Larchmont.

Staff has received an application from Mountain Housing Opportunities (MHO) requesting $400,000 from the Housing Trust Fund (HTF) for the development of sixty (60) affordable rental units at 785 Merrimon Avenue. The application was presented to the Housing and Community Development Committee (HCD) on January 28 and was recommended for approval. A zoning change request from Institutional to Urban Residential Conditional Zoning was heard and approved by City Council on March 23rd.

A. Available Funds

The current available balance in the Trust Fund is $282,909.24. Given the limited resources available, HCD has chosen to commit funds contingent on the anticipated receipt of future program revenue. Disbursements for the Larchmont project are not expected to occur until early 2011. Scheduled HTF payments for the remainder of the calendar year are projected at $146,591. This estimate includes regular monthly payments of principal and interest and scheduled loan payoffs.

Due to uncertainty about continued support from the general fund, this estimate does not include any new appropriations that may be allocated during the annual budget process. Additional program income may be realized through land sales, release fees, and/or early loan payoffs but have not been considered in these projections as the payments would be speculative and the timing of receipt is unknown. Late year construction loan payments have also been excluded given the potential for delays in construction that may require a short-term extension.

B. Project Proposal

The proposed project is a multifamily development on 2.29 acres bordering East Larchmont Rd, east of Merrimon Avenue and directly behind the Grace Station Post Office. The site was formerly occupied by the Naval Reserve Center which has since been demolished. The property is easily accessible to transit, employment, and services and meets many of the City's strategic goals and objectives. The total anticipated project cost is $8.2 million.

The application scored 118 of a possible 130 points. The terms requested are $400,000 at 2.00% interest for 30 years, representing 4.9% of total project cost. Payments will be interest-only with principal deferred. The per-unit subsidy is very low at $6,667. The project will be heavily leveraged with tax credit financing and all units will remain affordable to those below 60% AMI for a minimum of 30 years. There will be a variety of 1, 2, and 3-bedroom floor plans. In response to current community needs, more than 50% of the units will be one-bedroom units. Three (3) units will be ADA compliant and an additional three (3) units will be handicapped visitable.

The project directly supports the City's Strategic Operating Goals in the following areas (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent

affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourages higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- A large number of affordable units will be created.
- Low per-unit subsidy.
- Development team has been successful on similar projects.
- The urban location provides easy access to employment, transit, and services.
- 30 years of guaranteed affordability.
- Very low site development costs.
- The development will obtain Energy Star certification.
- Addresses the need for additional one-bedroom units.
- The project is heavily leveraged with other funding.

Cons:

- The estimated land cost is very high at $30,000 per unit. The developer is confident that they can absorb this cost as a result of the very low site development expense.
- Final sales price of the land has not yet been established (lesser of $1.8 million or the appraised value).
- Land has not yet been appraised.
- The projected rate of sale for tax credits is very optimistic. Failure to find an investor at the projected sales price of .76 cents could substantially reduce equity and create a financing gap that would need to be filled through other sources.

The current balance in the Trust Fund is $282,909.24. There are insufficient funds at the present time to fully fund the proposed development; however, anticipated program revenues in the amount of $146,591 are expected prior to disbursement of the $400,000 to MHO in early 2011. This forward commitment allows the City to support an additional project and utilize existing resources to the fullest extent possible.

If the loan is approved as requested, the available fund balance will be reduced by $400,000 to -$117,090.76; however, additional funds anticipated in the new budget year will return the fund to a positive balance. All disbursements from the Housing Trust fund for the proposed project will be subject to the availability of funds and will be made only upon receipt of program income equal to or greater than $117,100.

The project is new construction and is anticipated to add $8.2 million dollars in new development to the City tax base.

The Housing and Community Development Committee recommends City Council approve a resolution approving a loan of $400,000 to Mountain Housing Opportunities for the development of 60 rental units at 785 Merrimon Avenue.

Vice-Mayor Newman felt this is a good way to utilize our Housing Trust Fund dollars to leverage private investment.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Manheimer moved for the adoption of Resolution No. 10-109. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 30

C. ORDINANCE NO. 3849 - ORDINANCE REGULATING SMOKING IN MUNICIPAL BUILDINGS AND ON MUNICIPAL GROUNDS

Assistant City Attorney Kelly Whitlock said that this is the consideration of an amendment to Chapter 11 of the City's Code of Ordinances pertaining to smoking as a result of the new state law giving local governments increased authority to regulate smoking on municipal grounds and public places.

In 2009, the North Carolina General Assembly enacted a law that creates a statewide prohibition of smoking in restaurants, bars and certain lodging establishments, and also gives local governments increased authority to regulate smoking on municipal grounds and public places. The new law went into effect on January 2, 2010.

Previously, local governments could regulate smoking in government buildings and vehicles but this authority did not extend to parks or other municipal grounds. The new law extends the local government's authority to regulate smoking to "grounds", which is defined as an unenclosed area owned, leased, or occupied by local government, and "public spaces" which is defined as an enclosed area to which the public is invited or in which the public is permitted. While this is a significant expansion of regulatory jurisdiction, it does not include streets or sidewalks within the public right-of-way. The new law specifically prohibits local governments from regulating smoking in certain private premises, including residences and vehicles, tobacco shops, the premises of tobacco products processors/manufacturers, designated smoking guest rooms in lodging establishments, cigar bars, private clubs, and motion picture, television or theater sets.

For counties, a prerequisite to local government action is that a rule or policy must be adopted by the local board of health after July 1, 2009. Pursuant to this provision, the Buncombe County Board of Health adopted a resolution recommending that smoking be prohibited in all County facilities and on all County property. On August 4, 2009, Buncombe County passed an ordinance which extended its smoking prohibition to include Buncombe County grounds and Buncombe County vehicles. Buncombe County's prior ordinance only prohibited smoking in County buildings.

On October, the new law was discussed with the City's Recreation Board and the Public Safety Committee. The Recreation Board recommended that smoking be prohibited in parks and greenways; the Public Safety Committee expressed concern with the enforceability of an ordinance that encompassed so many properties and so much area. In addition to these formal reviews, there have been informal discussions regarding other public facilities, such as Pack Place and the airport, where the City owns the property but does not directly operate the facility. The Civic Center is directly operated by the City but is included here because of its function. Under the current ordinance, smoking in these facilities is regulated by the operating entities. City staff also attended an on-line program sponsored by the School of Government where the effect of the new law was discussed.

On the basis of this information, the following changes have been incorporated into the proposed ordinance:

1. Prohibition of smoking in all City parks and greenways, as recommended by the Recreation Board.

2. Prohibition of smoking on other municipal "grounds" directly controlled or operated by the City (e.g., City Hall, Public Works) except in areas designated by the City Manager (as in current ordinance).

3. Prohibition of smoking within or on grounds of other facilities owned by the City, but operated by other entities (e.g., airport, Pack Place, Civic Center Commission) except as allowed by facility management.

4. Substantial revision of Sec. 11-34 which regulated smoking in businesses to conform to State law, which is more restrictive and pre-empts the local ordinance. Also, replaces the word "business" with the words "public place" to conform to State law usage.

5. Revision of penalties section to conform to State law.

6. Deletion of Sec. 11-32(2) because the Transit Authority no longer exists, and the transit facilities are directly controlled by the City. Transit Commission may be the appropriate agency to delegate.

7. Deletion of Sec. 11-32(6) because the law gives local boards of education authority to adopt and enforce policies regarding smoking in school buildings and grounds.

Continuing to smoke in violation of this ordinance constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than ($50.00).

Pros:

- Provides a healthier environment for City employees and public on municipal grounds
- Eliminates the potential for secondhand smoke on municipal grounds
- Reduces litter of cigarette butts on municipal grounds

Cons:

- Reduces the number of smoking areas available to smokers
- Enforcement challenges due to limited staff and the extensive number of areas affected by the regulations
- Enforcement challenges involving greenways located on private property
- Need for additional staffing
- Need for additional signs

This action complies with the City Council Strategic Operating Plan in the focus area of "green" by increasing downtown cleanliness and beautification efforts.

The changes could potentially have a fiscal impact due to the need for additional staffing and signs. Staff is not able to accurately estimate the impact at this time.

If Council approves of the proposed changes, adoption of the ordinance is recommended.

In response to Councilman Bothwell's concern about enforcement, Ms. Whitlock said that we do recognize that enforcement will be a challenge. The enforcement will be self-policing and the City will have to rely upon complaints by citizens, similar to other regulations that affect our parks, e.g., no drinking, no public urination, not being in the park after hours, etc.

Councilman Smith said that the County has not written a single citation since adoption of their ordinance in August of 2009. Their idea is that it is a community policing effort and where they have found people smoking they are trying to find a way to do better signage. Since there

may be people in violation who do not have the $50 fine, perhaps they could be referred to the Nuisance Court.

City Attorney Oast said that our agreement with the Nuisance Court allows us to specify the kinds of offenses that we can take there and this could certainly be one of them.

When Councilman Smith asked if we choose to police this at Pritchard Park, for example, can we direct some or all of that money to a fee waiver fund, Ms. Whitlock replied that we cannot.

In response to Councilman Smith, Mr. Byron Greiner, representing the Downtown Association, said that they are in favor of banning smoking in parks.

City Attorney Oast said that staff recommends an effective date of July 1, 2010, in order to allow staff to notify the public and put up appropriate signage.

Mr. Dwight Butner felt that any restaurant that has had smoking in the past would want to allow any guest to be able to smoke outside. He suggested if there is going to be active enforcement of the ordinance that we target those aspects of the ordinance which might have an increased risk of public health.

In response to Councilman Bothwell, City Attorney Oast explained that the ban does not include streets and sidewalks, unless the sidewalk runs through the park.

When to Councilman Bothwell asked about the cost of signage, Director of Parks, Recreation and Cultural Arts Roderick Simmons said that he would have to get that information for Council, but we will save some costs because they will be on the same pole as other signs.

Vice-Mayor Newman noted that the Civic Center Commission is an advisory board. He wondered if Council is specifically delegating the authority to them to decide the smoking policy at the Civic Center. Mr. Whitlock said that it does give the authority to the Civic Center Commission to delegate no smoking areas and that they have had this authority since 1993. Councilman Davis noted that the Civic Center has a smoking patio outside.

When Vice-Mayor Newman questioned what the City Manager's approach will be to prohibit smoking on City property, City Manager Jackson said he does not plan to make any revisions to what we have in our buildings at this time. We have limited options available to lessen the risk of second hand smoke, lessen the impact upon non-smokers, out of public view and not near a ventilation intake. He would be happy to take a comprehensive look at what we currently do in City facilities, but it hasn't been an issue.

Vice-Mayor Newman didn't see the logic in saying that on a greenway route where you interact with very few people you can't smoke, but you can stand next to City Hall and have a cigarette. This may be something that the City Manager should report back to Council and look at the County's and Mission Hospitals' experience is going and think through if we should consider a more comprehensive ban on smoking on City properties.

Councilman Russell noted that smoking was prohibited on State Farm facilities nationwide in the 1990's and operation managers designated a small area, usually in the back door, for smokers. He felt this approach has worked well.

Councilman Smith noted that the greatest problem with our air quality is coming from vehicle emissions. From a public health standpoint, banning smoking will help a little.

In response to Mayor Bellamy stressing the need to notify the public about the prohibition and penalty, City Attorney Oast said that education will be on-going and staff will put notice on the

City's website, notices on Parks kiosks, use the City's government channel, possibly insert a flyer with employee's pay stubs, etc.

Ms. Mary Ann West spoke in support of the ordinance.

Mr. Jeff Turner, veteran, felt that Council was taking away people's rights.

Mayor Bellamy said that the City is not prohibiting people from smoking on streets, sidewalks or their homes, only in what they do in the public parks and the public buildings.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3849. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Bothwell voting "no".

ORDINANCE BOOK NO. 26 - PAGE 102

D. RESOLUTION NO. 10-110 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Downtown Commission.

The term of John Rogers, as a member of the Downtown Commission, expired on December 31, 2009.

In addition, there currently exists a vacancy from Brad Galbraith, whose term expires December 31, 2011.

On April 13, City Council instructed the City Clerk to arrange interviews for Rebecca Hecht, Jimi Rentz, Henry Watts, David Nutter and Karen Kotiw.

After Council spoke highly of the candidates, Rebecca Hecht received 3 votes, Jimi Rentz received 6 votes, Henry Watts received 2 votes, David Nutter received 2 votes and Karen Kotiw received 1 vote. Therefore, Rebecca Hecht was appointed as a member of the Downtown Commission to serve a three-year term, term to expire December 31, 2012; and Jimi Rentz was appointed as a member of the Downtown Commission to serve the unexpired term of Mr. Galbraith, term to expire December 31, 2011. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 33 – PAGE 31

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy was pleased to announce that our Sister City group delegation from Osogbo will be in Asheville May 1-10, 2010. She provided Council with an itinerary for the delegates and urged them to participate in as many events as possible.

Mayor Bellamy thanked City staff for their efforts during President Obama's visit to Asheville. His visit will have an impact on our community for years to come.

On behalf of City Council, Mayor Bellamy thanked City staff for their excellent teamwork and quick response during the recent bus accident on College Street. She expressed Council's sympathy to the victims and the family that was impacted.

Mr. Larry Merrill, 62 Cumberland Circle, spoke about the need to pick up brush on his street. Mayor Bellamy advised Mr. Merrill that City Manager Jackson will investigate the concern and follow-up with him.

In response to Mayor Bellamy, City Manager Jackson said that he would reinforce our efforts to notify people of their responsibilities concerning sidewalks in front of their homes or businesses.

Mr. Jeff Turner felt that Asheville's economy will lean more towards entertainment and tourism in the future and appreciated Council's fiscal responsibility.

Mr. Dwight Butner, Chair of the Downtown Commission, suggested Council charge the Downtown Commission to explore the pros and cons of waiving fees.

The following claims were received by the City of Asheville during the period of April 9-22, 2010: Elisha Resper (Parks and Recreation), Douglas Styles (Parks and Recreation), Catherine Wallenborn (Streets), David Jenkins (Engineering), Courtney Dute (Police), Dottie Lawing (Civic Center), Kristy Martinez (Water), Jennifer Coyle (Transit), Margaret C. Estes (Transit), Pete Apostolopoulas (Transit), Susan J. Zakanycz (Transit), Mediterrian Restaurant (Transit), Spa Theology (Transit), Stella's (Transit), PSNC Energy (Water), Sondra Allison (Police), Eugene Paul – Wonderland (Transit), and PSNC Energy (Transit). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:31 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 11, 2010 - 4:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 23, 2010

B. RESOLUTION NO. 10-111 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 8, 2010, TO CONSIDER PERMANENTLY CLOSING A PORTION OF FEDERAL ALLEY

Summary: The consideration of a resolution of intent to permanently close a portion of Federal Alley, near 165 Coxe Avenue, and setting a public hearing for June 8, 2010, to consider the closing.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners, Swannanoa Laundry Inc., and the City of Asheville have requested the City of Asheville to permanently close a portion of Federal Alley. The Greenway Commission will review the proposed closure at their meeting on May 13, 2010

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close a portion of Federal Alley and setting a public hearing on June 8, 2010, to consider the closing.

City Manager Jackson said that the Chairman of the Greenway Commission is in favor of moving forward with this but he requested an opportunity to review the process and procedures for permanent closures.

RESOLUTION BOOK NO. 33 – PAGE 32

C. RESOLUTION NO. 10-112 - RESOLUTION SUPPORTING H.R. 2746 WHICH WOULD PROVIDE FOR INCREASED FLEXIBILITY IN THE USE OF FEDERAL TRANSIT FUNDS BY ALLOWING TRANSIT SYSTEMS OF ALL SIZES TO USE A PERCENTAGE OF THEIR FORMULA FUNDS FOR OPERATIONS

Summary: The consideration of a resolution supporting H.R. 2746 which would provide for increased flexibility in the use of Federal Transit Funds by allowing transit systems of all sizes to use a percentage of their formula funds for operations.

As a result of the 2000 Census, the City of Asheville was reclassified from serving an urbanized area of less than 200,000 in population to one serving more than 200,000 in population. Crossing that threshold meant that the City of Asheville could no longer receive Federal Funds allocated to it through the State Governor's Apportionment Program. Instead, the City of Asheville became a direct recipient and now receives Federal Funds directly from the Federal Transit Authority. However, none of the Federal Funds can be used for operating expenses.

About 40 transit systems throughout the country were affected by the subject reclassification which became effective during Federal Fiscal Year (FFY) 2002-03. In order to ease the financial burden caused by the loss of Federal Funds for operating expenses, exceptions were granted to the affected transit systems. These exceptions began during FFY 2002-03 and have continued through FFY 2009-10. The exceptions have been limited to an amount not to exceed the amount of funding that was apportioned during FFY 2001-02. Table 1 shows the amounts that have been available for the City of Asheville.

Table 1

Federal Fiscal Year	Operating Cost Limitation
FFY 2001-02 (Base Year)	$968,044
FFY 2002-03	$968,044
FFY 2003-04	$703,518
FFY 2004-05	$963,137
FFY 2005-06	$484,022
FFY 2006-07	$242,011
FFY 2007-08	$484,022
FFY 2008-09	$484,022
FFY 2009-10	$484,022

Although the City of Asheville has been able to reduce the financial impact to transit operations by using Federal Funds for preventive maintenance and ADA eligible expenses, we are now facing a deficit of about $500,000 because the exceptions are set to expire at the end of FFY 2009-10. This impact could easily jeopardize the service that has been provided to our citizens for the past several years including evening service and a continual increase in ridership.

The Amalgamated Transit Union along with the Community Transportation Association of America has been working on legislation to allow transit systems of all sizes to use operating assistance as they deem appropriate.

H.R. 2746, presented by Representative Russ Carnahan, D-Mo, would provide for increased flexibility in the use of Federal Transit Funds by allowing transit systems of all sizes to use a percentage of their formula funds for operations. This legislation incorporates the entire "100 Bus Coalition" bill (H.R. 734, 110th Congress), which would allow transit systems in areas above 200,000 in population to use their federal transit formula funds for operations if they are operating less than 100 buses during peak service hours.

In addition, the bill would dispense of the "cliff" that is reached when the population reaches 200,000 by allowing systems in all areas to use at least a portion of their funds for operations – the larger the population, the smaller the percentage that would be able to be used for operating.

Significantly, the bill would encourage state and local governments to invest in transit through a unique incentive program. The legislation provides for the conditional use of federal formula funds for operating purposes based on whether non-federal sources of revenue for a particular transit system increase from one fiscal year to the next. For example, if a transit system receives a five percent increase in state/local investment compared to the previous year, it would be eligible to use up to five percent of its federal formula funds for operations (in addition to the fixed percentage it would be able to use under the new rules discussed above).

Finally, the bill would take advantage of a new program created under the American Recovery and Reinvestment Act (ARRA) known as the "Transit Investments for Greenhouse Gas and Energy Reduction" (TIGGER) program. If a transit system receives a grant under this initiative and can demonstrate that it has reduced its greenhouse gas emissions or energy usage through the use of the grant, it would be eligible to use even more of its federal formula funds for operating assistance.

In summary, this bill would provide transit systems with local control of their Federal Transit Funds, allowing them to preserve critical service and hold down fares during tough economic times so that working people may be offered quality, affordable public transportation. The bill strikes the necessary balance given the challenges facing the Highway Trust Fund. It does not create any new revenue stream for transit operations.

The subject action complies with the City Council Strategic Operating Plan by fully leveraging funding from the State and other funding sources for regional transportation improvements.

Pros:

- The subject action would enable the use of Federal Funds for transit operating expenses for transit systems serving urbanized areas greater than 200,000 in population.
- The subject action would not commit the City of Asheville to any specific action.

Con:

- None

The continued receipt of Federal Funds (Section 5307) for transit operating expenses is crucial for maintaining current service levels and for minimizing the General Fund contribution to the Transit Fund. If the Federal Funds (Section 5307) are not received in future years, the negative financial impact to the City would be approximately $500,000.

City staff recommends that City Council adopt a resolution affirming the importance of allowing urbanized areas with a population of 200,000 or more to be able to use Federal Funds (Section 5307) for transit operating expenses. If approved, City staff will communicate the City of Asheville's support for this bill to our Federal Legislative representatives.

RESOLUTION BOOK NO. 33 – PAGE 33

D. RESOLUTION NO. 10-113 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR PROGRESS ENERGY ON CLINGMAN AVENUE

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electric power lines at Owens-Bell Park.

In connection with improvements being made to Clingman Avenue, a bicycle path/lane is proposed for the east (uphill) side of Clingman Avenue. In order to accommodate this bike path, Progress Energy has agreed to move its existing power transmission lines from the east side of Clingman Avenue to the west side, where it will use existing poles already used by AT&T/Bell South, along the western edge of Owens-Bell Park. Owens-Bell Park is City owned property, and an easement is required because Progress Energy's lines would be in addition to the other utility lines already there.

This action complies with the City's Strategic Operating Plan in that it facilitates the implementation of a multi-million transportation plan and indirectly supports the River Front redevelopment efforts. This action also assists the State in the implementation of its plans. In addition, this action is also in compliance with the City's comprehensive bicycle plan, which calls for the installation of a climbing lane on Clingman Avenue, the main bicycle route to and from West Asheville.

Pros:

- Facilitates installation of climbing lane on Clingman Avenue (main bicycle route to/from West Asheville).
- Will consolidate overhead utilities on one side of street.

Cons:

- Will increase number of utility lines on west side of Clingman Avenue.
- Lines not being installed underground.

There is no fiscal impact.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 34

E. RESOLUTION NO. 10-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PATTON CONSTRUCTION GROUP INC. FOR THE PATTON AVENUE SIDEWALK NORTH SIDE PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Patton Construction Group, Inc. for the project known as Patton Avenue Sidewalk-North Side, City of Asheville Project # PW-03-04-007.

The City of Asheville will receive $150,000 from the N.C. Dept. of Transportation (NCDOT) and has set aside $300,000 of its own funds for this project. A formal request for bids was issued on March 18, 2010, and bids were opened on April 14, 2010. Patton Construction Group, Inc. was the low bidder at $190,500. Presumably due to the current economic conditions, this was well under the original estimate of $547,000. The disadvantaged business enterprise (DBE) goal of 10% was exceeded at 26%. Upon acceptance of the project, NCDOT will pay all $150,000 of their funds. This is a unit price contract and not a lump sum contract.

This project will build a much needed sidewalk along Patton Avenue from Regent Boulevard to New Leicester Highway. The project also includes a small section of North Louisiana Avenue, from Patton to the entrance of The Rush fitness center. Current conditions are unsafe for pedestrians traveling along this route, especially a section on Patton where a steep embankment forces them to walk along the back of curb or even on the street itself. The scope of work includes sidewalk, curb and gutter, drainage, retaining walls, wheelchair ramps, a bus stop, and driveways.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements. This action also complies with the City of Asheville Pedestrian Master Plan in that it provides sidewalk on a street identified in the plan as a need.

Pros:

- Implements a project in the City's adopted pedestrian plan.
- Provides long term investment in the City's infrastructure.
- Improves pedestrian safety.
- Encourages walking, thereby reducing carbon emissions, and promoting physical fitness.

Cons:

- The City will be responsible for future maintenance of the project.
- Project management and contract administration will consume staff time.

The approved budget for this project totals $450,000. As noted earlier in the staff report, this budget consists of $150,000 in funding from an NCDOT grant and $300,000 in City pay-as-you-go funding. The low bid for the project came in at $190,500. With the NCDOT grant covering $150,000 of this cost, the City's share of the cost for the project will be only $40,500. Therefore, it is anticipated that once this project is complete, there will be savings to the City of $259,500 which can be rolled into the City's capital reserve fund and be re-appropriated for other Council-approved capital projects.

City staff recommends City Council adopt the resolution awarding the contract to Patton Construction Group, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount.

RESOLUTION BOOK NO. 33 – PAGE 36

F. ORDINANCE NO. 3850 - BUDGET AMENDMENT TO RECEIVE DONATED MONEY FROM CITIZENS FOR PROCUREMENT OF SUPPLIES FOR THE PURPOSE OF FIREFIGHTER RECOGNITION

Summary: The consideration of a budget amendment, in the amount of $1,400, to receive donated money from citizens for procurement of supplies for the purpose of firefighter recognition.

The Asheville Fire Department has received donations from private citizens for the purpose of firefighter recognition. These donations have been received throughout fiscal year 2009/2010. The department would like to use these funds to purchase supplies for the newly

formed Pipes and Drum Corp. A number of firefighters have voluntarily formed this Corp for the purpose of playing at firefighter recognition events, promotional and retirement ceremonies, and funerals. The Corp practices voluntarily on their own off duty time and is requesting to use these funds to purchase instruments and pay for instruction. The Asheville Firefighters Association is also separately donating money for this purpose.

This action complies with the City Council Strategic Operating Plan in that it helps to attract and retain quality employees and to ensure operational effectiveness by paying sound wages and benefits.

Pros:

- This action allows for recognition of firefighters without utilizing city tax funds. This action also provides for utilization of these funds as the donating citizens intended.

Con:

- None identified

These funds have been obtained through donations from private citizens for the purpose of firefighter recognition. No city tax funds will be utilized.

City staff recommends City Council approve the budget amendment to receive donated money from citizens.

ORDINANCE BOOK NO. 26 – PAGE 105

G, ORDINANCE NO. 3851 - BUDGET AMENDMENT THROUGH A PARTNERSHIP WITH WARREN WILSON COLLEGE FOR PAYMENT OF TWO PART TIME/TEMPORARY INTERNS

Summary: The consideration of a budget amendment, in the amount of $3,000, to appropriate revenue and budget expenditure accounts associated with the payment for one part time temporary intern in the Office of Sustainability and one part time temporary intern the Transportation Department.

The City of Asheville and Warren Wilson College formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. As the City of Asheville continues to focus on affordability, sustainability, and fiscal responsibility, with the City's new Transit Master Plan and the Sustainability Management Plan is looking to provide an integral service to meet these plans goals and serve the citizens of Asheville and the region. Warren Wilson College will provide the funds for payment to these interns upon approval of this budget amendment request.

- The Transportation Internship will provide the student with an opportunity to be involved in the details of implementing significant route changes with the first stage of the Transit Master Plan as well as assist with other office projects.
- The Sustainability Policy Intern will learn about local government policy and administrative policy through working with staff to support the Sustainability Advisory Committee on Energy and the Environment (SACEE) and the City's internal Green Team.

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Expand partnerships with UNC-Asheville, AB Tech and other institutions; and (2) Attract and retain quality employees with an emphasis on local labor pool development opportunities.

Pros:

- Internship supports the Transportation Department in implementing the Transit Master Plan

- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operation

Con:

- None identified.

The $3,000 to payment of intern wages will be provided by Warren Wilson College to be paid through the City of Asheville to the intern.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of intern stipends.

Mayor Bellamy is proud of our partnership with Warren Wilson College.

ORDINANCE BOOK NO. 26 - PAGE 107

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. FISCAL YEAR 2010-11 ANNUAL OPERATING BUDGET PRESENTATION AND MOTION SETTING THE PUBLIC HEARING ON SAID BUDGET FOR MAY 25, 2010

Director of Administrative Services Lauren Bradley said that the budget goals are (1) Address structural issues within the city's budget so that Asheville can continue to achieve long-term fiscal stability (*Asheville 2010: A Financial Crossroads);* (2) Maintain the current tax rate to support financial stability for Asheville families and businesses.; (3) Continue to support our workforce as well as the stability of the region's economy by avoiding layoffs, salary cuts, and furloughs; and (4) Align resources with strategic planning and core services while minimizing service reductions to other areas.

The General Fund overview is (1) overall General Fund budget is decreasing by 1.1% compared to Fiscal Year 2009-10 budget; (2) overall staffing level will decrease by the equivalent of 17.26 full-time positions (including frozen positions); and (3) budget challenges have presented transformational opportunities – innovation, efficiency, strategic planning.

Regarding revenues (1) no property tax increase; (2) 1.5% growth projected in property tax revenue; (3) sales tax budget adjusted downward by $1.0 million; and (4) no Fund Balance appropriation. Revenue enhancements include (1) Council-approved fee adjustments of $200,000; and (2) Parking Fund transfer of $225,000 (a) revenue to offset increases in cost of transit service; and (b) preserves evening service route.

Regarding expenditure reductions (1) managed savings and re-engineering - $2,293,000 (a) reduction in overtime, temp and contract employment; and (b) reduction in travel, training, other line items; (2) service reductions - $975,000 (a) reduction in community center hours and 7 part-time positions; no impact on summer programming; (b) reduce brush collection to once per month; and (c) reduction in outside agency funding; (3) selective hiring freeze - $878,000; (4)

salary freeze - $340,000 (a) pay supplement ($300) for employees at or below area median income (629 employees); and (5) healthcare plan adjustments - $300,000.

Regarding the Water Fund (1) cost savings strategies include freezing 3 vacant positions, delaying vehicle purchases, and other line item reductions; (2) 5% increase in water rates and the capital improvement fee necessary to continue current operations and meet debt service obligations; (3) even with the rate increase, water revenues will be flat compared to the current year budget (a) 9% decrease in water consumption; and (b) 47% decrease in tap/connection fees; and (4) capital budget includes $5.6 million for water capital improvement projects.

Other funds (1) Parking Fund includes $500,000 for a possible debt service payment for a new parking deck on Biltmore Avenue; (2) General Fund subsidy to the Transit Fund will be reduced by $230,000 and replaced by an allocation from Parking Fund revenue and reserves (a) no reduction in Transit Service levels; (3) General Fund subsidy required to balance the Civic Center fund budget will remain essentially unchanged; (4) stormwater fees remain unchanged (a) debt will be issued in FY 1020-11 to fund $2.3 million in major capital stormwater projects; (5) General Fund subside to the Festivals Fund will be reduced by $22,000 (a) staff recommends suspending the Film Festival in 2010 and is exploring the possibility of privatizing the festival in 2011; and (6) a new Street Cut Utility Fund is being created to streamline and optimize the repair of street cuts needed by utility companies (a) the City will repair street cuts and charge the utilities companies for the work; and (b) provides a streamlined and cost effective process for utilities; considered a "win-win."

Major capital projects and investments include (1) fleet replacement ($1.7 million) (a) $1.2 million obtained through financing for a new fire aerial ladder truck; (2) Azalea Road project ($1.9 million); (3) street, sidewalks, and pedestrian safety improvements ($1.14 million); (4) parks and recreation improvements ($535,000) (a) replacement and repair of parks and recreation centers; and (b) $75,000 for land/easement acquisitions for greenways; and (5) Civic Center improvements ($250,000) (a) improvements to facility's lockers and dressing rooms.

Mayor Bellamy said that City Council will have another opportunity to give direction at the May 25, 2010, 3:30 p.m. worksession.

Councilman Davis moved to set the public hearing on May 25, 2010. This motion was seconded by Councilman Russell and carried unanimously.

Closed Session

At 4:16 p.m., Councilman Russell moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Larry Roland and the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 5:10 p.m., Vice-Mayor Newman moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

IV. PUBLIC HEARINGS:

ANNEXATION PUBLIC HEARINGS

Urban Planner Julia Cogburn said that this is the consideration of public hearings to obtain comment on the following twelve areas: Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road.

On February 23, 2010, City Council adopted Resolutions of Intent beginning the annexation process for the following twelve areas: Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road. The Annexation Services Plan for these areas was approved on March 9, 2010, and a public information meeting was held on April 12, 2010. Two people representing businesses affected by the proposed annexations attended this meeting. Remaining steps include:

Adoption of annexation ordinances - May 25, 2010
Effective date of annexations – September 30, 2010

Staff will make a brief presentation concerning the annexation areas and the Mayor should then open the public hearing for the area. Council should hear from the public separately on each area. The staff will bring forward annexation ordinances for Council consideration at the May 25, 2010, meeting.

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE INGLES AREA (301 LONG SHOALS ROAD)

Mayor Bellamy opened the public hearing at 5:18 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Ingles area (301 Long Shoals Road). This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for the Ingles area – (a) 1.5 parcels; (b) 3.6 acres; (c) commercial land use; and (d) meets nonresidential urban use text.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mayor Bellamy said that consideration of the ordinance to annex the Ingles area will be held on May 25, 2010.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SCHENCK PARKWAY AREA (BEHIND 380 LONG SHOALS ROAD)

Mayor Bellamy opened the public hearing at 5:19 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Schenck Parkway area (behind 380 Long Shoals Road). This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) portion of 1 parcel; (b) 0.7 acres; (c) commercial land use; and (d) meets nonresidential urban use text.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mayor Bellamy said that consideration of the ordinance to annex the Schenck Parkway area will be held on May 25, 2010.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE FARLEIGH STREET AREA (BEHIND 380 LONG SHOALS ROAD)

Mayor Bellamy opened the public hearing at 5:19 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Farleigh Street area. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) portions of 2 parcels; (b) 0.6 acres; (c) commercial and residential land use; and (d) meets development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mayor Bellamy said that consideration of the ordinance to annex the Farleigh Street area will be held on May 25, 2010.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE DEERFIELD AREA

Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Deerfield area. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) portion of 1 parcel; (b) 29.3 acres; (c) institutional land use; and (d) meets nonresidential urban use text.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:20 p.m.

Mayor Bellamy said that consideration of the ordinance to annex the Deerfield area will be held on May 25, 2010.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 67 MOUNTAINBROOK ROAD

Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 67 Mountainbrook Road. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) 1 parcel; (b) 4.4 acres; (c) approximately 65 residents; (d) institutional land use; and (e) meets nonresidential urban use test and population density test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:20 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 67 Mountainbrook Road will be held on May 25, 2010.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 73 AND 75 WATERS ROAD

Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 73 and 75 Waters Road. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) portions of 2 parcels; (b) 0.6 acres; (c) 1 dwelling; (d) approximately 2 people; (e) residential land use; and (f) meets population density test, subdivision test, and development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:21 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 73 and 75 Waters Road will be held on May 25, 2010.

G. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 26 ROCKING PORCH ROAD

Mayor Bellamy opened the public hearing at 5:21 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 26 Rocking Porch Road. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) portions of 1 parcel; (b) less than 0.1 acres; (c) one dwelling; (d) approximately 2 people; (e) residential land use; and (f) meets development text.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:21 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 26 Rocking Porch Road will be held on May 25, 2010.

H. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 40 KEASLER ROAD AND 23 SUNNYCREST DRIVE

Mayor Bellamy opened the public hearing at 5:21 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 40 Keasler Road and 23 Sunnycrest Drive. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) 2 parcels; (b) 1.4 acres; (c) 2 dwellings; (d) approximately 4 people; (e) residential land use; and (f) meets population density test, subdivision test, and development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax

listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:21 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 40 Keasler Road and 23 Sunnycrest Drive will be held on May 25, 2010.

I. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 617 UPPER SONDLEY DRIVE

Mayor Bellamy opened the public hearing at 5:21 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 617 Upper Sondley Drive. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) 1 parcel; (b) 0.98 acres; (c) 1 dwelling; (d) approximately 2 people; (e) residential land use; and (f) meets subdivision test and development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:22 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 617 Upper Sondley Drive will be held on May 25, 2010.

J. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF 1445 TUNNEL ROAD

Mayor Bellamy opened the public hearing at 5:22 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of 1445 Tunnel Road. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area - (a) 1 parcel (b) 1.5 acres; (c) commercial land use; and (d) meets nonresidential urban text.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:22 p.m.

Mayor Bellamy said that consideration of the ordinance to annex 1445 Tunnel Road will be held on May 25, 2010.

K. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE WILLOW WINDS LANE AREA

Mayor Bellamy opened the public hearing at 5:22 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Willow Winds Lane area. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area – (a) 1 parcel; (b) 12.1 acres; (c) commercial land use; and (d) meets nonresidential urban use test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy closed the public hearing at 5:22 p.m.

Mayor Bellamy said that consideration of the ordinance to annex the Willow Winds Lane area will be held on May 25, 2010.

L. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE AIRPORT ROAD AREA (PORTIONS OF SHOPPING CENTER; DEVELOPED PROPERTY ON EDGE OF MUNICIPAL SERVICE AREA, INCLUDING AIRPORT ROAD RIGHT-OF-WAY TO BRIAN BOULEVARD AND COUNTY LINE AS WELL AS PART OF ROCKWOOD ROAD)

Mayor Bellamy opened the public hearing at 5:22 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Airport Road area. This public hearing was advertised on April 2 and 9, 2010.

She then made a brief presentation concerning the Services Plan for this area – (12) Airport Road area (a) 18 parcels; (b) 122.1 acres; (c) mostly commercial land use; and (d) meets development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

Mr. Lou Bissette stated that his firm represents Norma Kushigian who owns two of the proposed annexation parcels on Airport Road. She also owns the parcel Normac Manufacturing is located on which is at the rear second parcel. They propose to leave the front parcel facing Airport Road in the annexation plan but to remove the second parcel out of the annexation plan. In return, his client would waive the requirement that the City construct the new sewer line to the front portion. They would agree that the waiver continue until such time as the owner of the front parcel would request that a sewer line be constructed to that parcel. When that occurs, the City would agree to construct the sewer line and his client would agree to voluntarily annex the rear portion. This proposal will reduce the financial burden on the property owner and will also allow the City to delay the expenditures for the sewer line to the front portion.

In response to Vice-Mayor Newman, City Attorney Oast said that in the future if the City decided to annex the rear portion, they would have to construct the sewer line.

Mayor Bellamy closed the public hearing at 5:28 p.m.

Mayor Bellamy said that in the past Council has had an informal policy not to annex manufacturing sites. City Attorney Oast said that at Council's request, we have not proposed the annexation of any areas that have concentration of manufacturing jobs.

In response to Councilman Bothwell, Mr. Greg Shuler said that if we do not need to construct the new sewer line, we would save approximately $185,000 out of the General Fund.

Upon inquiry of Vice-Mayor Newman, Ms. Cogburn said that City staff is supportive of this proposal.

Vice-Mayor Newman said that we need to be mindful of the informal policy regarding annexing manufacturing sites. He felt that if we are going to annex properties that have manufacturing on them, it may warrant us having some additional economic development incentive ideas.

City Attorney Oast said that on May 25, staff will bring an amendment to the Annexation Services Plan to Council to reflect this parcel deletion.

Mayor Bellamy said that consideration of the ordinance to annex the Airport Road area will be held on May 25, 2010.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. BOARD & COMMISSIONS

The following candidates applied for a position on the Recreation Board: Will Callaway, Michael Holgate, Nelson Sobel, Jason Gilliland, Joan Walker, Trina Mullen, Todd Dunnuck, Jeremy Gillespie and Mark Strazzer. Out of those candidates, it was the consensus of Council to instruct City Clerk Burleson arrange interview for Will Callaway, Michael Holgate, Todd Dunnuck and Mark Strazzer.

At the request of Mayor Bellamy, it was the consensus of Council to readvertise the vacancy on the Transit Commission for one month to try to reach those members of our community who ride the buses, especially those that ride the use as their only means of transportation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy invited the public to attend the Governor's Logistics Task Force Meeting on May 17, 2010, from 1:00 – 5:00 p.m. in the Civic Center Banquet Hall to hear about transportation and economic needs for Asheville, Buncombe County and all of Western North Carolina.

Mayor Bellamy updated Council on the Streetsafe Task Force and one of the issues regarding the lack of housing for inmates after incarceration. She will ask the Housing & Community Development Committee to review some information and she may ask for an addendum to the Consolidated Strategic Housing & Community Development Plan for 2010-2015.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 5:46 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – May 25, 2010 – 3:30 p.m.
Worksession

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Brownie W. Newman

Budget Worksession Continued

Director of Administrative Services Lauren Bradley said that the purpose of this memorandum is to respond to questions submitted by City Council members after the proposed budget presentation on May 11, 2010 and to suggest alternatives for the remaining budget schedule.

Throughout Ms. Bradley's following discussion, City staff responded to various questions raised by City Council.

(1) Itemize the economic incentive allocation of $606,250.

This amount is allocated to three existing economic development incentive agreements. The Smith Aerospace allocation is contingent on a required level of job creation and is only paid out if that performance metric is achieved.

- UNC Eshelman School of Pharmacy $100,000
- Biltmore Town Center agreement $459,000
- Smith Aerospace agreement $47,000

(2) How much is budgeted for the Housing Trust Fund? What are the estimates for repayment into the fund during the fiscal year? How much will be available for loans in FY 2010-2011?

The FY 2010-2011 proposed budget includes a $300,000 allocation for the Housing Trust Fund. Estimates for the available loan balance in the upcoming fiscal year are included below.

$307,014	Current balance
-$400,000	Larchmont allocation
$134,123	Receipts from Loan Repayments
$300,000	FY 2010-2011 Appropriation from General Fund
$300,000	Estimated anticipated cash receipt for sale of land Acquired in Villas foreclosure
-$43,201	Administrative Expenses
$597,936	**Estimated Amount Available to lend in FY 2010-2011**

(3) How were reductions in the Parks and Recreation budget identified? Will reductions in community center hours affect staffing levels and after school/summer programming? How will site security be managed?

The goal of reductions in the Parks and Recreation Department was to identify operational efficiencies and cost reductions that would reduce overall operating costs of recreation programs while insuring minimal impact to children's services (afterschool and summer camps) and aquatic operations (i.e., opening of all three pools) and maintaining a focus on the long-term management of recreation services.

Strategies to attain these savings include:

1. Reducing seasonal and part-time staffing hours.
2. Freezing seasonal positions when possible.
3. Reducing hours of filled part-time positions.
4. Phasing out other part-time positions if and when needed.
5. Reducing operational hours of Community Centers and other special facilities (Aston Park Tennis Center, Food Lion Skate Park) while maintaining hours during peak usage times, especially for children's services.
6. Identifying programs that can be consolidated to attain economies of scale.
7. Continuing to cultivate partnerships with schools and non-profits to provide quality cost effective youth programming.

Impacts of these strategies include:

1. All three pools will remain open for the summer season with minor reductions in hours.
2. Community Center After School Programming and Summer Camp and Playground programs will experience minimal impact.
3. Community Centers and special facilities (except pools) will have reduced operating hours on the average of approximately 20-40%.
4. Community Center West will be phased to a turn key operation, similar to Community Center North, over the next six months.
5. Seeking partnerships to manage Licensed After School sites.

Community centers will utilize off-duty police personnel for security during large-scale events. Department staff will utilize security sign-in procedures during peak usage or high volume events.

These adjustments support the Parks and Recreation Master Plan as well as the department's goals for improving the quality of recreation services by focusing on core services (in this case, children's services); creating intentional, outcomes based programming, and; utilizing volunteers and partner agencies to support and expand programming options.

(4) Where is the debt service for City Hall roof and exterior repairs included in the budget?

It will take approximately 12 months to complete the planning and design phases stages of this project. Therefore, the City Hall renovation project is not part of the proposed FY 2010-11 budget. Instead, it is anticipated that the project will be financed through debt in FY 2011-12.

Mayor Bellamy suggested that City Council have offices on the 7th or 8th floors after renovation.

(5) Itemize all of the new debt that will be issued during this budget year.

FY 2009-2010

Due to project timelines and the debt issuance process, some financing packages are not issued in the same budget year that they were approved but will instead move forward in a subsequent year. However, these projects are not itemized in the following year's budget because they have already been approved by the Council. There are several projects approved for financing as part of the FY 2009-2010 budget that will move forward for issuance during budget year 2010-2011.

The budget for Livingston Street (Reid Center) construction was adopted by Council during the current year, and the process for securing the $1.1 million in financing for that project is already underway.

Other projects and purchases included in the current year adopted budget that will be financed during the next budget year include: 1) Auto loader garbage truck ($240,000); 2) Sardis Road Sewer ($1,086,000); and the 3) Airport Road Sewer ($250,000). Due to the timing of these other projects, the financing process has not yet begun for them. Staff anticipates bringing a financing package for these projects to Council in FY 2010-11. The debt service for these projects is included in the proposed FY 2010-11 budget.

FY 2010-2011

As for capital items in the FY 2010-11 proposed budget, only the fire aerial ladder ($1.2 million) and the stormwater projects are slated to be financed. Staff is currently working to finalize the list of stormwater projects and determine the amount of debt funding that will be required.

(6) Please explain the $1.26 million line-item increase in "Administrative Services."

As a part of a series of reorganizations during FY 2009-10, the following divisions were moved under the Administrative Services Department: purchasing, central stores, risk management, City Hall operations, and budget. The FY 2010-11 proposed budgets for each of these divisions is presented under the Administrative Services Department but prior year budgets for these divisions are presented in the departments in which they previously resided. The total budget amount for the divisions that were moved to Administrative Services totals $1,353,454 (see chart below). If the impact of the reorganizations is factored out, the Administrative Services budget would show a decline of $85,820.

Purchasing	360,409
Central Stores	162,216
Risk Management Admin	241,402
Budget & Research	188,839
City Hall Operations	400,588
TOTAL	1,353,454

(7) How do the city's economic development efforts compliment or duplicate the Chamber of Commerce/Economic Development Coalition?

The city's office of Economic Development actively works with numerous other regional organizations and networks to build quality, connected places to attract and retain people, jobs, investment, and innovative businesses. Partner agencies include AdvantageWest, Land-of-Sky and the Economic Development Commission.

The city's economic development efforts have also centered around strategic initiatives and collaborative partnerships to support businesses in the multiple clusters of business districts in the City. The office has stayed actively involved in city development processes, provides assistance for minority businesses, manages the city's real estate and redevelopment of city-owned property, and provides economic planning development services. The office is taking an active role in river redevelopment efforts, and the economic development director position was recently expanded to include management of the Asheville Civic Center.

(8) Outline the remainder of the budget schedule.

June 8 has been held as a tentative date for an additional budget work session if needed. City Council may wish to discuss the need for that worksession based on the public hearing and any outstanding Council questions.

If City Council determines the June 8 worksession is not needed, Council could consider moving budget adoption up from June 22 to June 8. This additional time would be beneficial for staff since they will be loading the budget onto the enterprise software system for the first time. Otherwise, staff will be ready to prepare and provide additional information as requested by City Council on June 8, with formal adoption considered on June 22.

Mayor Bellamy said that due to Council's agenda, she felt that adoption of the budget should remain on June 22.

At 4:07 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – May 25, 2010 - 5:00 p.m.
Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

CHANGE OF AGENDA

At the request of City Attorney Oast, Mayor Bellamy said that a resolution authorizing execution of an agreement regarding extension of sewer service needs to be added to Unfinished Business, prior to the resolution amending the Annexation Services Plan.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 11, 2010

B. RESOLUTION NO. 10-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE FEDERAL FISCAL YEAR 2006-07 AND FEDERAL FISCAL YEAR 2009-10 FEDERAL TRANSIT ADMINISTRATION APPORTIONMENTS AND FOR THE MAYOR TO EXECUTE SAID GRANT

Summary: The consideration of a resolution authorizing the City Manager to apply for the Federal Fiscal Year (FFY) 2006-07 and FFY 2009-10 Federal Transit Administration (FTA)

apportionments in the amount of $1,628,856 and $1,922,849 respectively; and the Mayor to execute said grant.

The City of Asheville plans to apply for the FFY 2006-07 and FFY 2009-10 annual apportionments using a FFY 2006-07 FTA apportionments under the Revised Continuing Appropriations Resolution 2007 and the FFY 2009-10 Federal Transit Administration apportionments under the Hiring Incentives to Restore Employment Act. The annual apportionments (Section 5307) authorizes Federal funding to be used for capital expenses, preventive maintenance, and in some cases, for operating assistance, and planning activities for transit in urbanized areas. The City was reclassified to an urbanized area greater than 200,000 in population as part of the 2000 Census and therefore lost its ability to use Federal Funds for operating assistance. However, the Asheville Transit System will be allowed to use part of this year's and next year's allocation for operating assistance, in the amount of $484,022 each year.

As part of the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal allocation. The County will receive approximately $799,000 of the total allocation. The City and the County had signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The city is responsible before FTA of the use of these funds and owns all the capital items Henderson County purchases with the allocation.

The City intends to use these funds for expenses incurred during FY 2009-10 and for future FY 2010-11 expenses, such as operating assistance, and for capital items allowed under the Master Agreement, such as preventive maintenance, Americans with Disabilities Act (ADA) service, and for other minor capital items (marketing study, small equipment for the buses, etc.). 1% of the allocation must be used for security purposes.

This action complies with the Strategic Operating Plan proactively leveraging funding from the Federal Government and other funding sources for transportation improvements.

Pro:

- These funds were budgeted in the FY 2009-10 and FY 2010-11 City Budgets and they will offset costs related to operations, preventive maintenance, and ADA services.

Con:

- The City has to contribute a local match of 20% for capital items, including preventive maintenance and ADA services; and 50% for operating expenses. The City has already incurred the respective matches for FY 2009-10.

The total amount of FTA transit funding available to the City in FY 2009-10 and FY 2010-11 will be $3,551,705. Approximately $799,000 of this amount will be allocated to Henderson County, leaving $2,752,050 for City transit expenses over that two year time period. The FTA transit apportionments are already included in the FY 2009-10 adopted budget and the FY 2010-11 proposed budget.

City staff recommends City Council authorizing the City Manager to apply for the FFY 2006-07 and FFY 2009-10 Federal Transit Administration apportionments in the amount of $1,628,856 and $1,922,849 respectively; and the Mayor to execute said grant.

RESOLUTION BOOK NO. 33 – PAGE 37

C. ORDINANCE NO. 3852- BUDGET AMENDMENT TO RECEIVE DONATED MONEY FOR THE PURPOSE OF SPECIAL EVENTS AT THE CIVIC CENTER

Summary: The consideration of a budget amendment, in the amount of $5,250, to receive donated money from corporate partners for the purpose of Civic Center Commission events.

The Civic Center Commission has received donations from corporate partners for hosting events to educate key organizations and officials about the economic impact of the Civic Center.

This action complies with the City Council Strategic Operating Plan goal to leverage internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pro:

- This action allows for recognition of the Civic Center with expenses being underwritten by corporate partners. This action also provides for utilization of these funds as the donating organizations intended.

Con:

- None identified.

City staff recommends City Council approve the budget amendment, in the amount of $5,250, to receive donated money.

ORDINANCE BOOK NO. 26 – PAGE 109

D. RESOLUTION NO. 10-116 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE GROVE ARCADE PUBLIC MARKET FOUNDATION INC. AND THE CITY OF ASHEVILLE FOR THE RENAISSANCE COMPUTING INSTITUTE DOWNTOWN ENGAGEMENT SITE

ORDINANCE NO. 3853 - BUDGET AMENDMENT FOR LEASE AGREEMENT WITH THE GROVE ARCADE PUBLIC MARKET FOUNDATION INC. FOR THE RENAISSANCE COMPUTING INSTITUTE DOWNTOWN ENGAGEMENT SITE

Summary: The consideration of a resolution authorizing the Mayor to execute a Lease Agreement between the Grove Arcade Public Market Foundation, Inc. and the City of Asheville for real property located at One Page Avenue, Suite 116, Asheville NC within the historic Grove Arcade building; and the associated budget amendment in the amount of $69,805 with funding provided by the Renaissance Computing Institute at UNC Asheville (RENCI).

On June 1, 2009, the City of Asheville entered into a 12 month lease with the Grove Arcade Public Market Foundation, Inc. for space Suite 116 at the Grove Arcade. This space is utilized by the Renaissance Computing Institute at UNC Asheville (RENCI) for a Downtown Engagement Site. At this time, the City has the option to renew the lease for an additional two year term, at a rate of $2,908.51 per month, with no additional increase. RENCI will fully reimburse the lease cost to the City on a quarterly basis throughout the duration of the lease. RENCI will be responsible for any and all costs related to the occupancy, maintenance and operation of the Downtown Engagement Site.

This action complies with the City Council Strategic Operating Plan by supporting an ongoing collaborative partnership between the City of Asheville and the RENCI at UNC Asheville.

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payments are fully reimbursed by RENCI

Con:

- None

Fiscal Impact:

- There is no financial impact to the City. RENCI will reimburse the City on a quarterly basis for the full cost of the lease.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with the Grove Arcade Public Market Foundation, Inc. on behalf of the City of Asheville, and the associated budget amendment in the amount of $69,805.

RESOLUTION BOOK NO. 33 – PAGE 38
ORDINANCE BOOK NO. 26 - PAGE 111

E. RESOLUTION NO. 10-117 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 28-30, 2010

RESOLUTION NO. 10- 118 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE BEER CITY BREWFEST ON JUNE 5, 2010

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the (1) Mountain Sports Festival on May 28, 29 & 30, 2010; and (2) Beer City Brewfest on June 5, 2010.

- The Asheville Mountain Center has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Mountain Sports Festival and allow for consumption at this event.

  The component of Mountain Sports Festival requesting alcohol will be held on Friday, May 28, 2010 from 4:00 p.m. – 10:00 p.m., Saturday, May 29, 2010 from 10:00 a.m. – 10:00 p.m. & Sunday, May 30, 2010 from 12:00 p.m. to 9:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

- Big Brothers Big Sisters WNC in conjunction with Beer City Festival, LLC has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Brewfest and allow for consumption at this event.

  The Beer City Brewfest will be held on Saturday, June 5, 2010 from 12:00 p.m. to 7:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Spruce Street between the intersections of South Pack Square & College Street, and within the City Hall/Courthouse Parking Lot – backstage to festival operations.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Asheville Mountain Center and Big Brothers Big Sisters WNC.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival and the Beer City Brewfest.

RESOLUTION NO. 10- 117 - RESOLUTION BOOK NO. 33 – PAGE 39
RESOLUTION NO. 10-118 - RESOLUTION BOOK NO. 33 – PAGE 42

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. MEMORIAL DAY

Mayor's Committee on Veterans' Affairs

Ms. Gayle Sovinee, Chair of the Mayor's Committee on Veterans' Affairs, shared with Council their following 2010 events: Memorial Day on May 31, Bele Chere booth on July 23-25; the Veterans' Forum on September 27; and Veterans' Day on November 11.

USS Asheville Celebration

Mr. Ken Vasilik, Chairman for the Subcommittee on USS Asheville, updated City Council on the history of the four USS Asheville's and related activities in Asheville.

Mayor Bellamy proudly invited the public to tour of the USS Asheville exhibit on the First Floor of the City Hall Building.

B. DOWNTOWN COMMISSION UPDATE

Mr. Dwight Butner, current Chairman of the Downtown Commission, reviewed with Council their accomplishments in 2009: (1) Downtown Design Review; (2) develop and recommend to City Council a Comprehensive Strategic Plan and other plans for downtown; (3) evaluate plans and recommendations to City Council; (4) encourage implementation of approved projects; (5) provide recommendations for effective management of the public resources for downtown; and (6) cooperate with and evaluate and represent the recommendations of other organizations, including, but not limited to, the Asheville Downtown Association, property owners, merchants, residents, businesses, tenants, institutions and other members of the downtown community. He then briefly explained their focus for 2010.

On behalf of City Council, Mayor Bellamy thanked Mr. Butner and the entire Downtown Commission for their efforts and hard work on the Downtown Commission.

C. DOWNTOWN MASTER PLAN UPDATE

Ms. Sasha Vrtunski, Project Manager for the Downtown Master Plan, said that the Downtown Master Plan was adopted by City Council in May, 2009. Implementation efforts began

in fall, 2009 and continue with the help of community volunteers serving on implementation committees.

Following the adoption of the Downtown Master Plan, the Downtown Commission decided to appoint an Action Committee to work on implementation. This Action Committee is made up of five subcommittees that correspond with the recommendations in the plan; Arts & Culture; Historic Preservation; Transportation & Parking; Urban Design & Development; and Downtown Management. Progress is underway in all the committees, as noted below:

Arts & Culture - Concentrating on the creation of an Artist Alliance and a forum is being planned for this fall to kick off the Alliance. Has also the subcommittee has discussed the potential for a Cultural Arts Commission and is currently engaged in background research and starting discussions with the Public Art Board about this idea. The Subcommittee is currently concentrating on 4 items from plan: (1) Artist Alliance creation; (2) Coordinating arts calendars; (3) Pack Square Cultural District; and (4) Potential Cultural Arts Commission. Many of the other items in the Plan will flow from the creation of the Alliance and the Commission.

Historic Preservation - Has taken the time to add detail to the recommendations in the plan as they were somewhat vague in this area. These ideas will focus on how our community relates our history to residents & visitors and using the arts, architecture and public places to tell those stories. Staff is pursuing an update of the National Register District of downtown – which could potentially add buildings to the register, which are then eligible for tax credits. The Subcommittee has worked on ideas which add "meat" to Item 1M. These really address the question of how we tell the stories in our downtown, and how we link programs, art and public spaces.

Transportation & Parking – Is bringing together advocates of all forms of transportation. The subcommittee is reviewing the different elements of the plan and giving input on the implementation actions by staff. The Subcommittee is reviewing and monitoring progress on Master Plan items. Federal stimulus funding has enabled the installation of bike lanes on Asheland, Hilliard, Coxe and a climbing lane on N. Lexington. Other items are on hold due to economic downturn or cost, e.g., shuttle, parking reservation system.

Urban Design & Development - This subcommittee had the clearest task, and a very diverse membership reflecting the multiple constituencies that supported the need for the Downtown Master Plan, and changes to regulatory requirements for development or redevelopment downtown. They completed an eight month, 20 meeting evaluation process reviewing the recommendations in the plan for UDO changes, reaching a consensus recommendation on most of the recommendations. On the very few issues where no consensus was reached, they will present the recommendations of both the majority and minority members of the subcommittee. The Subcommittee met 20 times from October 2009 to May 2010. The combed through every piece of Unified Development Ordinance changes recommended in the Plan. They considered benefits, consequences, long term issues and real world costs when looking at each item. The recommendations have been passed onto the Downtown Commission. The Committee is staffed by Jessica Bernstein and Alan Glines.

The findings of this subcommittee began to be presented to the Downtown Commission last week. The DTC may schedule a special meeting to finish their review later this month. The changes will subsequently be reviewed by the Planning & Zoning Commission, the Planning & Economic Development Committee of Council and then City Council. Staff expects recommendations to reach City Council this coming fall.

Downtown Management - Has been seriously exploring the possibility of a community improvement district or business improvement district for downtown Asheville. These

districts traditionally rely on funding through a self-imposed tax district to pay for specific services over and above city provided services. These services can include sidewalk sweeping, downtown ambassadors, additional security, and advertising. The committee is currently looking at the current services provided by the city and other entities and working to discuss what needs to be added to ensure that downtown remains a successful and thriving area. The Subcommittee is studying improvement districts and how it could work in Asheville. Staff has created a draft baseline of current city services to downtown. Over next 2-3 months, the Subcommittee will decide whether to continue pursuing the district, and if so, outreach and education of other downtown property and business owners will occur. A proposal will come to Council only after there is a critical level of agreement in the private sector.

In addition to work by the subcommittees, certain items fall under staff work and are being pursued accordingly. These items are noted in the accompanying Implementation Matrix. One example of this is a grant that has been obtained by the Historic Resources staff to fund updating the National Register Historic District in downtown. This is important because adding buildings to the register can expand the availability of Historic Tax Credits. Likewise, staff pursued and obtained federal stimulus funding to install bike lanes on several downtown streets including Coxe, Hilliard, and Asheland.

Long term items from Strategy 3, which addresses extending a design framework and developing neighborhoods in downtown, have not yet been addressed. Once the UDO and Design Guideline changes recommended in Strategies 4 to 6 are implemented, planning staff will have more time to work on the implementation of Strategy 3. It is likely that in 2011, the Downtown Commission may consider appointing a separate committee that is interdisciplinary in nature to work on implementing the long-term vision laid out in the plan.

Council's Strategic Operating Plan calls for the completion of the master plan and to begin implementation. This one-year update confirms that there has been substantial progress toward that goal. The ongoing energy and commitment of the Downtown Commission and the members of the subcommittees is to be applauded and appreciated.

In general the Downtown Master Plan relies mainly on the efforts of city staff and the non-profit and private sectors. There are specific items which call for public investment such as the Civic Center or transportation improvements. These items will proceed separately to Council as funding is available. No funding is requested at this time.

Ms. Vrtunski asked for Council's input on how they would like to be educated on the Urban Design & Development Subcommittee recommendations for UDO changes, e.g., being invited to a Downtown Commission worksession or hold a City Council worksession on this topic.

Mayor Bellamy thanked Ms. Vrtunski, the Downtown Commission and all the members of the subcommittees for moving this task forward.

In response to Mayor Bellamy about extending the Central Business District, Ms. Vrtunski said that some areas have been recommended for inclusion; however, staff wants to get the building form changes through and then evaluate the boundaries, e.g., the head of Broadway and on Asheland Avenue. Councilman Davis noted that the triangle corner on Broadway is on the Metropolitan Planning Organization list and they will try to move it up.

At Mayor Bellamy's suggestion, it was the consensus of Council that after the Planning & Zoning Commission review of the changes, that possibly two City Council worksession be scheduled (by-passing the Planning & Economic Development Committee).

D. TRANSIT COMMISSION UPDATE

Mr. Paul Van Heden, Chairman of the Transit Commission, said that the mission of the Commission is to be an advisory board to the Asheville Transit System on matters affecting the transit system and its operations.

He provided the Council with an historical overview of the Commission.

The year in review includes (1) new Transit Commission members; (2) Stream-lined the public comment process; (3) Continued to do outreach to riders; (4) Transit Master Plan: Transit Commission members played a critical role in encouraging the passage of the Transit Master Plan - and the first phase of it's implementation; and (5) Securing funding for the plan was one of the commission's top goal in 2010. The commission is extremely grateful for council's support of the precepts set forth by the plan, and looks forward to working with council to make its recommendations a reality.

Their focus for 2010-11 includes: (1) SERVICES/IMPROVEMENTS (OPERATIONAL) (a) Revise routes for better services; (b) Improving on time service; (c) Raising frequency of main corridor routes; and (d) Sunday Service; (2) MARKETING (a) Market to get more riders/unfunded marketing; (b) Ambassadorship; (c) Advertising/Marketing to Riders; (d) Increase rider involvement; and (e) Promoting advertising system to Council and voters; (3) FUNDING SOURCES (a) Exploring Funding Options; and (b) Promoting advertising system to Council and voters; and (4) TRANSPORTATION CONGRESS (a) Encouraging City to take more multi-modal approaches – combine various boards and commissions; and (b) Help other boards and commissions with structure.

In conclusion there is a lot to do, some being (1) Automatic vehicle locator system; (2) Federal livability policy (HUD, EPA, DOT); (3) I-26; (4) Bringing back trolleys; (5) 10 new buses; (6) Instituting transit oriented development; (7) Growing public awareness of transit's value (including bus are and mktg.); (8) Instituting bus rapid transit; (9) Sunday service; (9) Stable marketing budget; and (10) Better street furniture.

On behalf of City Council, Mayor Bellamy thanked Mr. Van Heden and the entire Transit Commission for their hard work.

E. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE LOCAL ENERGY ASSURANCE PLANNING SCOPE OF WORK CONTRACT WITH THE LAND-OF-SKY REGIONAL COUNCIL

ORDINANCE NO. 3854 - BUDGET AMENDMENT TO RECEIVE FUNDS FROM THE LOCAL ENERGY ASSURANCE PLANNING GRANT

ORDINANCE NO. 3855 - BUDGET AMENDMENT INCREASING THE GRANT FUNDING FOR THE KIMBERLY AVENUE RESURFACING PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of three items for approval:

- Resolution authorizing the City Manager to approve the Local Energy Assurance Planning (LEAP) scope of work contract with the Land-of-Sky Regional Council; and the associated budget amendment, in the amount of $209,940, to receive funds.

- Approval of a budget amendment, in the amount of $154,594, increasing the grant funding to the Kimberly Avenue resurfacing project.

Local Energy Assurance Planning

The Local Energy Assurance Planning (LEAP) grant was awarded to the City of Asheville on April 28, 2010, in the amount of $209,940. This grant encourages regional participation in the development of energy assurance planning and requires a city to be the grant applicant. For this reason, as the largest city in the region, the Land-of-Sky Regional Council had requested that the City of Asheville be the grant applicant and fiscal agent. The Land-of-Sky Regional Council (LOSRC) would manage implementation of the project. This was approved by City Council at the regular meeting of September 22, 2009.

The Scope of Work for this grant is the agreement between the City of Asheville and the LOSRC to complete the requirements of this grant which is scheduled for completion in 2012. This Scope of Work includes the following:

- Analyzing the current fuel infrastructure and assess fuel use;
- Creating a regional emergency fuel plan to unify the energy plans in the five county region;
- Assisting governments without emergency fuel plans in developing a plan;
- Developing a plan to mitigate energy supply disruptions;
- Establishing a long range plan that incorporated local bio-fuels, electric vehicles, propane and compressed natural gas to reduce the reliance upon traditional vehicle fuels;
- To create a long range plan to assist in the development of a fuel plan that focuses on non-traditional vehicle fuels;
- Training on developing emergency fuel plans; and
- Compliance with all grant requirements and provisions for ARRA

Pros:

- The Regional Strategic Fuel plan will enable the region to better endure a fuel shortage without breaks in vital services such as law enforcement, volunteer and municipal fire protection, and other emergency services.
- The LEAP grant will give the region the tools to better manage future fuel crisis and mitigate the reliance on fuel from a single source for a more energy independent future.
- Creation of more current or up-to-date energy assurance plans.

Con:

- The City of Asheville will be bear responsibilities as the fiscal agent of the grant for a regional project. This will include ARRA and other additional reporting requirements.

This is a 100% non-matching grant.

City staff recommends City Council authorize the City Manager to approve the scope of work agreement between the City of Asheville and the Land of Sky Regional Council and adoption of the budget amendment in the amount of $209,940.

Kimberly Avenue resurfacing project

The Kimberly Avenue resurfacing project, which is currently underway, will provide milling, repair, resurfacing, and pavement markings on Kimberly Avenue from Edwin Place to Gracelyn Road/Griffing Boulevard. It includes the addition of a bicycle climbing lane on the northbound side of Kimberly within the project limits. The climbing lane is part of the infrastructure recommended for Kimberly Avenue in the city's bicycle plan.

This project was the last of the ARRA projects funded through the French Broad River Metropolitan Planning Organization (MPO) and has been the beneficiary of lower than anticipated

bids on other ARRA projects throughout the MPO. The original grant agreement and budget amendment were approved by the Asheville City Council on August 25, 2009.

The initial estimate for the amount of available ARRA grant funding for this project was $462,000. The budget amendment that City Council approved in August for this project, which totaled $577,500, included this $462,000, as well as $115,500 from the City's General Fund fund balance. Now that all the MPO project contracts have been let and grant amounts revised, the available grant funding for the Kimberly project has been revised upward to $616,594, which is a $154,594 increase over the initial estimate that was budgeted in August. It should be noted that the grant amount includes $17,600 in STP-DA funding. The $17,600 in STP-DA funding will reduce the City's FY 2014 funds awarded by the MPO for Hendersonville Road sidewalk.

This project supports the City Council's strategic plan goals of proactively pursuing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pros:
- Potentially reduces the city's share of project costs
- Improves Asheville's transportation facilities
- Provides long term investment in the City's infrastructure

Con:
- Reduces the FY 2014 Hendersonville Road sidewalk project grant award by $17,600

As noted earlier in the staff report, the Kimberly Avenue project budget includes $115,500 in funding from the City's General Fund fund balance. Based on current cost estimates, it is likely that this entire amount will not be needed for this project. However, staff recommends that the $115,500 remain budgeted in the project to provide a contingency for any unanticipated costs that may arise. Once the project is complete, staff will report back to Council on the final cost of the project and the amount of savings that are available to be returned to the General Fund or used for other capital projects.

City staff recommends City Council adopt the budget amendment to increase the anticipated grant revenue.

When Mayor Bellamy asked for public comment, she received none.

In response to Councilwoman Manheimer, Director of Transportation Ken Putnam believed the Kimberly Avenue sidewalk project will be finished in approximately 3-4 weeks.

Vice-Mayor Newman said that if there are any funds left over from the Kimberly Avenue project that they go back to the Hendersonville Road sidewalk project.

Mayor Bellamy explained the Mobility Fund that the Governor is proposing. She urged the public to contact our legislators to know that we need that additional pool of money which will not negatively impact the Metropolitan Planning Organization funding.

Mayor Bellamy said that members of Council have previously been furnished with copies of the resolution and ordinances and they will not be read.

Councilman Smith moved for the adoption of Resolution No. 10-119. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 45

Councilman Bothwell moved for the adoption of Ordinance No. 3854. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 113

Councilwoman Manheimer moved for the adoption of Ordinance No. 3855. This motion was seconded by Vice-Mayor Newman and carried unanimously.

ORDINANCE BOOK NO. 26 - PAGE 115

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING ON THE FISCAL YEAR 2010-11 ANNUAL OPERATING BUDGET

Mayor Bellamy opened the public hearing at 5:56 p.m.

Director of Administrative Services Lauren Bradley said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal 2010/2011 Annual Operating Budget was presented to City Council on May 11, 2010. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 14 and May 21, 2010. The Fiscal Year 2010/2011 Annual Operating Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value. All essential City services are continued in the Proposed Budget.

Adoption of the Budget Ordinance is currently scheduled for June 22, 2010, at the regularly scheduled City Council meeting.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which can not be changed once adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2010/2011 Annual Operating budget and include public input in considerations on the Budget.

Mr. Mac Swicegood, representing the Council of Independent Business Owners, said that the Stormwater Utility has not performed as promised. Although it appears that a small effort has been made to address a few stormwater infrastructure issues, the fund basically collects money on raindrops from all the citizens and businesses and funds 35 jobs. The utility was sold as a way to fix and repair a dilapidated system. It was never sold as a way to fund additional desk jockeys in the City. We all expect more. Although you plan a $2.3 Million bond this year paid mainly by this fund, the utility has primarily been and continues to be a bureaucratic effort with little to show for all the taxes collected from the City's property owners. Put the hard hats on and make repairs we all were promised. Secondly, Asheville is blessed with an abundance of water. With North Fork, the Mills River, and now Bee Tree as available resources, City Council needs to change its course on conservation and sell water. Now is your time to beat the Sullivan Act – not by legal disputes with Buncombe County and the State of North Carolina but by marketing and selling water to surrounding counties. Since we are not in a drought presently, this needs to be a priority to market and be ready for the next drought when the water is needed in areas that do not have it. Get ready – make the agreements with other systems and make connections to those

systems – and when the time comes – sell it. Ultimately this can help all of us later on by avoiding future rate increase. Finally, the City Council has emphasized and developed a large transit system. This system has the potential to service many citizens. However, as dollars dry up, you must evaluate the system for financial viability. This cannot be sustained as other priorities suffer.

Mr. Fred English felt we need to recruit more industry.

Mayor Bellamy asked City Manager Jackson to see if the City has any money invested in the Clingman Avenue project (which is N.C. Dept. of Transportation project) and to respond to the concerns raised by Mr. Swicegood.

Mayor Bellamy closed the public hearing at 6:03 p.m.

Mayor Bellamy announced that adoption of the budget will occur on the June 22, 2010, meeting.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW LAND USE DESIGNATION FOR ELECTRONIC GAMING OPERATIONS AND ESTABLISHING SPECIAL STANDARDS FOR THEIR REVIEW AND REGULATION

ORDINANCE NO. 3856 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW LAND USE DESIGNATION FOR ELECTRONIC GAMING OPERATIONS AND ESTABLISHING SPECIAL STANDARDS FOR THEIR REVIEW AND REGULATION

ORDINANCE NO. 3869 – ORDINANCE AMENDING THE FEES AND CHARGES MANUAL TO ADD A NEW PRIVILEGE LICENSE FEE TO BE COLLECTED FOR ALL ELECTRONIC GAMING BUSINESSES

Mayor Bellamy opened the public hearing at 6:04 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of (1) amending the Unified Development Ordinance to add a new land use designation for Electronic Gaming Operations (EGO) and establish special standards for their review and regulation; and (2) adoption of a new privilege license fee to be collected for all electronic gaming businesses. This public hearing was advertised on May 14 and 21, 2010.

In 2006, the State of North Carolina adopted legislation that banned video poker and other gaming machines across the state and all machines were phased out by July 1, 2007. Proponents for the video gaming industry responded by adapting machines allowing them to fall under a special provision that allowed the NC State Education Lottery and other sweepstakes games made popular by national food chains (McDonald's, Pepsi Co., etc.). Since then, there have been several legislative attempts to ban or restrict EGOs, but at least two superior (lower) courts have held that the new forms of the games are not covered by the law, and have enjoined its enforcement. There has been no ruling from an appellate court, and the validity of the State law remains uncertain.

In the absence of criminal enforcement measures, numerous municipalities are responding and controlling the proliferation of these businesses through various controls, the most common of which includes the adoption of a Conditional Use or Special Permit process and/or the adoption of a new privilege license fee designed to reflect the profitability of the machines. The Unified Development Ordinance (UDO) is structured such that a use that is not specifically allowed in a zoning district—as a use by right, use by right, subject to special requirements, or conditional use—is not permitted. In the River District, however, all uses are

allowed unless specifically prohibited. Currently, the City does not define or regulate EGOs. As a result of this absence of regulation, several EGOs have attempted to locate in commercial districts in the City, under the umbrella of similar uses, such as "recreational uses, commercial indoor." At least one EGO has opened in the River District, but is subject to no regulations regarding its operation (parking spaces, etc.). Approximately ten (10) separate businesses have been established without permits and have been issued Notices of Violation. Most have complied and ceased their activity awaiting the adoption of new standards; however, several businesses have chosen to remain open after being cited for failing to comply and are currently accruing a $100 per day fine that will continue until compliance is achieved or, the use is ceased. Recently, the Board of Adjustment ruled that EGOs were not encompassed within the use classification of "recreational uses, commercial indoor," which is a permitted use in several districts, and upheld a notice of violation. Part of the basis for that ruling was that EGOs had the potential for substantial cash payouts, and their customers are limited to adults over the age of 18, which is a substantially different kind of business than the family-oriented establishments that typical of that use classification. In view of the regulatory uncertainty at the State and local levels, the need for some consideration as to whether and how to regulate EGOs is apparent. Local governments across the State are confronted with this same issue

After conducting a review of common practices, both locally and across the state, the City of Asheville staff feels that a reasonable response would be to pursue two separate actions.

1) Amend the City's code of ordinances to create a new business designation and some appropriate controls to help mitigate any potential impacts from the businesses, and
2) Adopt a new privilege/business license fee specific to these uses and consistent with other local municipalities.

The first action noted above would require an amendment to the City's *Unified Development Ordinance* and review by the Planning & Zoning Commission and City Council. The second action requires review by the Finance Committee and City Council.

City staff proposes to add the new land use designation to a number of commercial zoning districts that currently allow uses of similar impacts. While most other local governments that have adopted standards have permitted EGO's through a Conditional Use or Special Use permit process requiring approval by the elected officials, Asheville staff proposes to allow the new use as a Use by Right, Subject to special requirements. This would streamline the review process while still maintaining a high level of review and accountability.

After reviewing numerous ordinances from other cities and towns, the most common elements of the newly adopted ordinances include:

1) A new, or expanded, or clarified definition
2) A limit on the total number of machines
3) A limit on the hours of operation
4) A separation requirement from:
    - Residences
    - Other gaming establishments
    - Adult establishments
    - Places of worship
    - Parks, playgrounds, ballfields
    - Daycare centers, daycare homes
    - Schools
    - Libraries
    - Child or family venues (i.e. children's theaters, video arcades, etc.)

The wording amendment Ordinance proposes standards that the staff believes are appropriate for the Asheville community that would allow the freedom to pursue this new business opportunity while also providing for the necessary controls to mitigate any potential land use conflict or public safety concerns.

The fee component is expected to help offset potential impact and public safety/welfare concerns.

The proposed new definition would be:

> ***Electronic Gaming Operation*** means a business enterprise, whether principal or ancillary, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games including but not limited to, sweepstakes, lotteries, games and/or games of chance where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not value of such distribution is determined by electronic games played or be predetermined odds which have a finite pool of winners. This term includes, but is not limited to internet cafes, internet sweepstakes, or cybercafés. Electronic Gaming Operations do not include operations associated with the official NC State Education Lottery or any nonprofit operation that is otherwise lawful under State law (for example, church or civic organization fundraisers) nor shall it include arcade games of skill.

The proposed new standards are as follows:

Electronic gaming operations.

a. Use districts: Highway Business, Regional Business, Central Business District, River, Commercial Industrial.
b. Electronic gaming operations, whether ancillary or primary, with five or more machines shall comply with the following separation requirements:
    - 1000 feet from all other electronic gaming operations and adult establishments
    - 1000 feet from schools, libraries, places of worship, child care centers, public parks/playgrounds, public recreation or community center
    - 500 feet from all residentially zoned properties
    - 200 feet from all non-residentially zoned properties occupied by structures that include residential uses
c. Electronic gaming operations, whether ancillary or primary, with four or fewer machines shall comply with the following separation requirements:
    - 500 feet from all other electronic gaming operations and adult establishments
    - 200 feet from schools, libraries, places of worship, child care centers, public parks/playgrounds, public recreation or community center
    - 100 feet from all residentially zoned properties
    - 50 feet from any non-residentially zoned property occupied by structures that include residential uses
d. For the purposes of this subsection, the distance shall be measured from the closest point of the outer wall of the structure housing the electronic gaming operation to the nearest property line occupied by a protected use, zone, or by any other electronic gaming operation or adult establishment.
e. The Board of Adjustment may consider variances to the development standards found in articles VIII and XI. Variances to separation requirements may only be considered when major geological landforms, limited access highways, or other features that create a substantial divide separate the uses.

f. No electronic gaming operation shall not engage in business prior to 10 a.m. or after 10 p.m. Monday through Saturday and, not prior to 1 p.m. or after 10 p.m. on Sunday. During hours of operation, electronic gaming operations shall be open for direct, unobstructed access by all safety and enforcement personnel. All entrance doors shall remain unlocked while patrons are on the premises. All electronic gaming terminals/machines/computers/gaming stations shall be open and visible from the exterior of the exterior front of the establishment.
g. No person or entity engaged in electronic gaming operations shall allow, permit, or condone any person under the age of 18 to engage or play any game that is included in the definition electronic gaming operations.
h. The maximum number of gaming terminals/machines/computers/gaming stations within an electronic gaming establishment is twenty (20).
i. Any electronic gaming establishment existing prior to the effective date of this ordinance shall comply with the regulations contained within this subsection within 180 days after the effective date of this Ordinance Electronic gaming operations are prohibited in or as a part of any check cashing facility.
j. The machines/terminals must not be prohibited by the State or Federal law and must have all applicable State and local permits and business licenses prior to the opening of the business.
k. If food and/or beverages are served, the establishment must meet any State requirements and the requirements of the Buncombe County Health Department.

The proposed use does not align with stated goals or plans, predominately because it addresses a use intended to be prohibited that is now proliferating due to a judicial interpretation and, therefore, not considered when goals and plans were discussed and adopted. Regulating the use could, help control secondary impacts associated with criminal activity, nuisance complaints and other land use conflicts.

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Pro:

- Regulates a new business that has judicially been interpreted as a legal use

Cons:

- Could eventually be "re-prohibited" by the State of North Carolina General Assembly (although it is unlikely to be taken up during the ensuing short session)
- Would require additional review and enforcement responsibilities when limited resources are available to accommodate new work
- May result in unanticipated impacts and concerns from citizen groups

Staff resources for review, inspection, and enforcement will be required; however, the number of applications is expected to remain relatively small and would not cause an undue burden on staff from a development review standpoint. It is less clear whether the uses could result in the need for additional public safety oversight which helps support the need for an individualized business fee to help offset the need for additional resources.

Before enforcement action was taken, it was estimated that the City of Asheville had up to ten (10) stand-alone EGO's; this does not include the number of establishments that currently support gaming stations as an ancillary use. Should this amendment be adopted, it is expected that many of the original gaming locations would not meet the proposed standards and would have to amortize their use over the proposed 180 days. Additionally, it is anticipated that several business would choose to remove the gaming use to avoid the fees. As a result, it is very difficult

to predict potential revenues but staff estimates that it could result somewhere between $25,000 to $50,000.

In February/March 2009, this proposal was reviewed by: (1) The Planning & Economic Development Committee; (2) The Finance Committee, and (3) The Public Safety Committee.

In all cases, the three committees recommended moving this proposal forward to the Planning & Zoning Commission and City Council for consideration. The Planning & Zoning Commission reviewed this item at their May 5, 2010, meeting and recommended approval 6-0. Interest in making the EGO use a Conditional Use Permit in the Central Business District was discussed but did not garner the support to be incorporate into the formal recommendation.

Staff recommends (1) adoption of the ordinance proposed that establishes a new land use designation and associated land use controls; and (2) adoption of a new privilege/business license fee of $2500 per establishment with a $500 per machine added to the base fee. Fee shall be renewed on a yearly basis.

Should the Council choose not to support this proposal or wish to consider other policy options a few alternatives could include:

- Adopt a new definition for *Electronic Gaming Establishments* and then adding them to the list of permitted uses in appropriate zoning districts. No special requirements included. (not recommended)
- Create a new Conditional Use Permit category for *Electronic Gaming Establishments.* CUP could be applied in certain districts only while remaining a Use by right, Subject to special requirements in other districts.
- Expressly prohibiting *Electronic Gaming Establishments* in the City of Asheville.

Mr. Fred English felt Council should charge the maximum fees.

Mr. William Withers, representing WPM Properties, did not support these regulations as his business is not a nuisance and they are properly run.

Mayor Bellamy closed the public hearing at 6:25 p.m.

In response to Councilman Russell regarding outreach to business owners or the public, Ms. Tuch said that even though the affected businesses are aware of this process as they have been following it from the beginning, she has not made an effort to inform the ancillary businesses. The proposed ordinance has been circulated to the Coalition of Asheville Neighborhoods as well as the other groups on their listserv.

When Councilman Bothwell asked if there are other separation requirements for other uses, Ms. Tuch replied that adult establishments have a stronger separation requirement. In addition, group homes and family care homes have separation requirements that are designed more to prevent a concentration of uses. Regarding the separation requirements for EGO's, we attempted to model that from what other municipalities were doing. She explained that on Sundays it is common for businesses to have shorter hours.

There was considerable discussion from Council. Amongst other things, the discussion surrounded the State's legislation and how other municipalities are dealing with the issue of proliferation and impact of the machines in communities; the rationale of the privilege license fee and cost per machine; the rationale of an implied criminal element of this type of business; whether we want a concentration of the businesses or have them spread to all areas of the city; should there be a cap of the number of machines at one location; and rationale behind the hours of operation, use districts, separation requirements, and 180 amortization period.

Mayor Bellamy said that members of Council have previously received a copy of the ordinances and they would not be read.

Vice-Mayor Newman moved to adopt a new privilege/business license fee of $2500 per establishment with a $2500 per machine added to the base fee. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Mayor Bellamy, Councilman Russell and Councilman Smith voting "no."

Councilman Davis moved to reconsider the motion of the new privilege/business license fee. This motion was seconded by Councilman Russell and carried unanimously.

After further discussion on the license fee, Vice-Mayor Newman moved to adopt Ordinance No. 3869, a new privilege/business license fee of $1000 per establishment with a $2500 per machine added to the base fee. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

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Councilman Davis moved to allow the EGO's in the following use districts: Highway Business, Regional Business, Central Business District, River, and Commercial Industrial. This motion was seconded by Councilwoman Manheimer.

After further discussion about the Community Business I and Community Business II Districts and in order to capture most ancillary operations, Councilman Davis and Councilwoman Manheimer agreed to amend their motion to include 4 or fewer EGO's in Community Business I and Community Business II Districts. The amended motion carried on a 6-1 vote, with Councilman Russell voting "no."

Councilwoman Manheimer moved to cap the number of machines at 20 per establishment. This motion was seconded by Vice-Mayor Newman and carried on a 6-1 vote, with Councilman Russell voting "no."

Vice-Mayor Newman moved to not adopt separation requirements and that staff report back to Council in six months to see if there have been any concerns raised. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no."

Vice-Mayor Newman moved to not adopt hours of operation and that staff report back to Council in six months to see if there have been any concerns raised. This motion was seconded by Councilman Bothwell and carried unanimously. Mayor Bellamy asked that staff pay particular attention to those establishments close to residential districts.

Councilwoman Manheimer moved to adopt an amortization period of 180 days. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

Councilwoman Manheimer moved to adopt all other provisions of the ordinance that do not conflict with the modifications made by Council. This motion was seconded by Vice-Mayor Newman and carried on a 6-1 vote, with Councilman Russell voting "no."

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Closed Session

At 7:25 p.m. Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Larry Roland and the City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The properties are located on the north side of Eagle Street, and the south side of Swannanoa River Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 8:23 p.m., Councilman Russell moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Smith and carried unanimously.

C. PUBLIC HEARING REGARDING AN INSTALLMENT PURCHASE CONTRACT WITH BB&T TO FUND THE LIVINGSTON COMMUNITY CENTER PROJECT

Mayor Bellamy opened the public hearing at 8:30 p.m.

Treasury Services Manager Pat Liguori said that it is necessary for City Council to hold a public hearing authorizing the negotiation of the installment purchase contract with BB&T to fund the Livingston Street Community Center.

On April 27, 2010, City Council adopted a resolution authorizing negotiation of an installment purchase contract and setting a public hearing.

The current capital improvement plan includes funds previously appropriated by City Council to finance the construction of a community center on Livingston Street in central Asheville. This public hearing is a legal formality required by the North Carolina General Statutes before the process of security financing can officially begin.

Pro:

- Allows the City to comply with the legal requirements of the Local Government Commission regarding installment purchasing financing.

Con:

- There are no cons associated with ensuring that legal requirements have been met before security financing for the Livingston Street Community Center.

The City will secure approximately $1.1 million to finance approximately half of the construction costs associated with the Livingston Street Community Center. The remaining construction costs will be financed primarily with grants and donations. The projected annual debt service costs associated with the $1.1 million in debt proceeds ranges from approximately $123,000 to $76,000. Funds are already included in the City's Proposed FY 2010-11 debt service Budget to cover the debt service costs.

City staff recommends City Council hold the public hearing regarding an installment purchase contract with BB&T to fund the Livingston Street Community Center project.

Mayor Bellamy closed the public hearing at 8:31 p.m.

Mayor Bellamy said that a resolution approving an installment financing contract will be considered by City Council at their June 8, 2010, meeting.

V. UNFINISHED BUSINESS:

A. CONSIDERATION OF OUTDOOR SPECIAL EVENT CO-SPONSORSHIPS AND PARTNERSHIP AGREEMENTS FROM JULY 1, 2010, THROUGH JUNE 30, 2010

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of outdoor special event co-sponsorships and partnership agreements from July 1, 2010, through June 30, 2011.

At its meeting on March 4, 2010, staff presented a recommendation to the City Council Finance Committee to co-sponsor six anchor events (Asheville Drum Circle, Asheville Greek Festival, Asheville Holiday Parade, Downtown After 5, Goombay, Shindig on the Green) in the form of full permit fee waivers and in-kind labor support, a package valued at $114,295. In addition, staff recommended that 27 additional events be granted full permit fee waivers estimated in value at $26,032.

Subsequently, during the FY 2010-2011 budget process, staff received feedback from Council to seek opportunities for revenue enhancement and full cost recovery for services supported by fees. At the March 23 budget worksession, staff proposed an alternative cost-sharing proposal for event co-sponsorship as a way to enhance revenue and promote full cost recovery. At that worksession, Council asked for specific information about how a reduced event co-sponsorship model would work. Staff developed a proposal where organizers of the six anchor events would be responsible for paying 50% of their event costs (permit fees and/or in-kind labor costs) and no additional permit fee waivers would be granted, which was sent to City Council on April 9 and posted with the April 27 worksession agenda. The minutes of the April 27 budget worksession reflect that it was the consensus of Council to proceed with a reduced co-sponsorship program; however, Mayor Bellamy did not support that action.

The reduced co-sponsorship recommendation was brought forward for formal City Council consideration and adoption at its formal meeting on April 27, 2010. During Council discussion and public comment, four areas of concern were raised about the reductions, including:

- Loss of critical resources to event organizers;
- Providing adequate notice to event organizers to prepare for a reduced level of support;
- Fairness and clarity of eligibility requirements for events, and;
- Lack of consistency in the process for event organizers when support is considered and may change on a year-to-year basis.

City Council directed staff to develop alternatives for event co-sponsorship support based on the discussion at the April 27 meeting. Staff has broken down alternatives for each category of sponsorship below.

Community Event Programming Partnerships & Co-Sponsorships

The City of Asheville charges everyone a fee to permit and have priority use of parks, permitted amenities, or public facilities. These fees cover extra operational expenses associated with events and guarantee space for the permittee. At the same time, some events produced by non-profit agencies or other sister organizations - such as concerts, art shows, cultural celebrations, theater performances, health fairs, sports events, and others – can also directly further the department's core programs. Consequently, reducing or waiving permit fees and

considering in-kind support from city operational departments (i.e., Public Works, Asheville Police Department, Asheville Fire Department) can be an opportunity to leverage the city's ability to provide these programs while reaching a wider and more diverse audience, thus serving a public purpose. As a result, in recognition of the value these events bring the City of Asheville and the broader community, the city has historically offered support to events that meet certain criteria.

In recognition of the historical, economic, and community significance of certain events, staff would recommend developing three-year partnership agreements with the groups who produce six anchor events. These events include: Downtown After 5, Holiday Parade, Asheville Greek Fest, Drum Circle, Goombay and Shindig on the Green. The agreements would provide full support for permit fee waivers (i.e. park usage permits, building/fire safety permits, etc.) and labor costs (i.e. police support, sanitation, public works) not to exceed the dollar value of support established in FY 2010-2011 in future years (currently estimated at $114,295).

In addition to anchor events, the City of Asheville maintains partnerships with several sister agencies that provide programming and support at city parks or facilities targeted for a specific community purpose. These sister agencies include: Friends of the Nature Center, the Downtown Association (via Friends of Pritchard Park) and the Pack Square Conservancy.

To formalize these partnerships and support for specific initiatives, staff recommends developing multi-year agreements for these purposes:

Friends of the Nature Center
To collect fees on behalf of the City and to manage the Nature Center Membership program and special events as defined by the multi-year partnership agreement and approved by the Parks and Recreation Advisory Board.

Downtown Association/Friends of Pritchard Park
Facility use and permit fee waivers for programming in Pritchard Park. The dates and times of programming to be approved by the Parks and Recreation Advisory Board as defined by the multi-year partnership agreement.

Pack Square Conservancy
Facility use and permit fee waivers for programming in Pack Square Park. The dates and times of programming to be approved by the Parks and Recreation Advisory Board as defined by the multi-year partnership agreement.

Permit Fee Waivers

To address concerns about the consistency of fee waivers granted for certain events, staff recommends City Council adopt for FY 2010-2011 a non-profit level fee, which would amount to a 50% reduction in event permit fees, for events that meet the following criteria:

- The event is produced by a registered 501c(3) non-profit verified through documentation;
- The event is open to the general public;
- There are no fundraising activities or aspects to the program or event, and;
- The non-profit permit holder remains responsible for general liability insurance and other related event costs including police coverage, barricades, parking meter closures, and other labor costs and needs associated with the event.

During the year, any event meeting the stated criteria above would be eligible for the non-profit fee. If approved, staff would bring back a Fees & Charges Amendment at the next City Council meeting.

To address the concern that the 27 events that were previously considered for full fee waivers have not had adequate time to plan for reduced levels of support in the coming year, City

Council could consider granting these agencies fee waivers for one additional year, knowing that these events may be eligible for the non-profit level fee the following year.

This action supports the current Parks, Recreation, Cultural Arts and Greenways Master Plan by making organizations aware of the value of their events to the community and by providing clear criteria for support.

Pros:

- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Events stimulate the local economy.
- Provides additional quality cultural programming and diversity.
- Reduces staff time in processing fee wavier requests.
- Provides multi-year consistency.

Cons:

- Anchor events have labor costs to the City in the amount of $85,000, which can put a strain on city resources (police, fire, sanitation, park maintenance, etc.)
- A 50% reduction in permit fees for non-profit organizations would result in lost revenue for the city; however, the city does not budget for this revenue since it tends to fluctuate from year to year.
- Events contribute to decline on infrastructure such as parks.
- Some events close streets.

Partnership agreements will result in lost revenue from permit fee waivers and in-kind labor costs. In-kind labor costs for the six anchor events will be absorbed in existing budgetary allocations. Overtime budgets in FY 2010-2011 have been significantly reduced, and meeting event obligations along with routine service levels may be challenging but not impossible. A non-profit event permit fee level will also result in lost revenue; however, this revenue is not included in the budget due to year-to-year fluctuations, and so there is no budgetary impact from this action.

Below is the event requests for permit waivers and in-kind support:

	total requested permit fee waivers FY11	total requested labor cost FY11	total requested support FY11
Anchor Events			
Asheville Drum Circle	$3,875	$0	$3,875
Asheville Greek Festival	$10,742	$1,342	$12,084
Asheville Holiday Parade	$1,562	$39,462	$41,024
Downtown After 5	$2,143	$14,780	$16,923
Goombay Festival	$2,942	$26,869	$29,811
Shindig on the Green	$7,414	$3,164	$10,578
Anchor Event Sub-Total	$28,678	$85,617	$114,295
Non-Anchor Events			
Asheville Citizen-Times Half Marathon/5K	$884	$3,300	$4,184
Asheville Earth Day	$3,342	$2,286	$5,628
French Broad Cycling Classic	$290	$1,900	$2,190

HardLox Jewish Food and Heritage Festival	$2,482	$800	$3,282
Just Folks Summer Festivals	$4,639	$2,850	$7,489
Martin Luther King Peace March and Rally	$537	$1,520	$2,057
Montford Music and Arts Festival	$342	$5,535	$5,877
Ninja 5K	$162	$950	$1,112
Oktoberfest	$687	$3,134	$3,821
OrganicFest	$1,357	$1,774	$3,131
RiverFest:Save the French Broad	$959	$2,572	$3,531
Shamrock Run	$240	$2,250	$2,490
Spring Market	$206	$3,840	$4,046
Superhero 5K	$162	$1,350	$1,512
Thomas Wolfe 8K Road Race	$365	$4,590	$4,955
WNC Run/Walk for Autism	$914	$562	$1,476
Asheville JCC Falafel 5K & Kids Run	$495	$2,385	$2,880
Smoky Mountain Toy Run	$362	$6,673	$7,035
Asheville Art Museum Art Party and The Big Crafty	$387	$523	$910
Asheville Mardi Gras Parade	$50	$675	$725
Blue Ridge Pride	$639	$1,350	$1,989
Children's Health and Harmony Festival	$617	$374	$991
Earth Day Bicycle Rodeo	$278	$400	$678
Mountain Area Memory Walk	$539	$1,985	$2,524
Mountain Sports Festival	$4,367	$4,376	$8,743
March for Babies	$440	$1,685	$2,125
New Balance Girls on the Run 5K	$290	$4,330	$4,620
Non-Anchor Event Sub-Total	**$26,032**	**$63,969**	**$90,001**
Grand Total	**$54,710**	**$149,586**	**$204,296**

In order to move forward with the recommendations outlined above, staff is seeking Council policy affirmation for the four items listed below.

City Council then discussed at length each item, asking for clarification or further explanation when needed, in particular issues related to labor costs.

(1) City Council affirms that providing support community events and programming is beneficial to the City of Asheville and serves a public purpose.

It was the consensus of Council to provide support for community events and programming as they are beneficial to the City of Asheville and they serve a public purpose.

(2) City Council wishes to continue public support through three-year agreements for six specific events (Downtown After 5, Holiday Parade, Asheville Greek Fest, Drum Circle, Goombay and Shindig on the Green) produced by partner agencies that further the city of Asheville's goals and entail historical, economic and community significance.
   a. City Council is supportive of capping the value of in-kind support for anchor events at an annual amount not to exceed $114,000 for all six events.

Mr. Bryon Greiner, representing the Asheville Downtown Association, supported staff's recommendation for Council support.

Mr. Robert King, representing the Goombay Festival, supported staff's recommendation for Council support.

A representative from Blue Ridge Pride hoped they could be considered as one of the six anchor events in the future.

Vice-Mayor Newman felt it might be appropriate to discuss partnership opportunities with Buncombe County and the Buncombe County Tourism Development Authority to help support the six anchor events since they are beneficial to not only Asheville but all of western North Carolina.

Mayor Bellamy said that when staff comes back that the conversation about the cap for the anchor events that we need to be committed to the three-year period.

Councilman Davis moved to continue public support through three-year agreements for six specific events outlined above, capping the value of in-kind support at an annual amount not to exceed $114,000 for all six events. This motion was seconded by Vice-Mayor Newman and carried unanimously

(3) City Council affirms that partnerships with three sister agencies (Friends of the Nature Center, Downtown Association, and Pack Square Conservancy) warrant formalized community partnership agreements by which those organizations receive facility use and fee waivers for the purpose of providing programming that supports specific city goals or initiatives.

Mayor Bellamy asked that the Urban Trail be a part of the partnership agreement discussion with the Downtown Association.

Vice-Mayor Newman moved to direct staff to craft the partnership agreements with the Friends of the Nature Center, Downtown Association and Pack Square Conservancy to include facility use and fee waivers and to bring those back for Council consideration. This motion was seconded by Councilman Smith and carried unanimously.

(4) City Council endorses the concept of adopting a non-profit event permit fee level to become effective in FY 2010-2011 for any non-profit organization whose event meets certain criteria. The fee level would represent a 50% reduction in existing event permit fees.

a. City Council could consider grandfathering in 27 events for permit fee waivers for one year to allow for additional time to prepare for the new fee level.

Mayor Bellamy felt it would be appropriate to not charge non-profits for items that only the City can provide, e.g., street barricades. Regarding criteria for non-profits, she felt it was not necessary because we want all non-profits to fund raise in order to be sustainable. Mr. Roderick said that he would take a recommendation to the Finance Committee.

Ms. Sharon Farr, Coordinator of the Montford Community Arts Festival, was appreciative of being able to use the City of Asheville's name as a co-sponsor.

The Volunteer Sponsorship Coordinator for the Autism Society of North Carolina, Western North Carolina Chapter, thanked the City for being one of their co-sponsors and Hoped that could continue.

Councilman Russell moved to adopt a non-profit event permit fee level representing 50% reduction in existing event permit fees and to grandfather in 27 events for permit fee waivers for one year with a $20,000 cap for Fiscal Year 2010-11, to be reviewed annually by the Finance Committee. This motion was seconded by Vice-Mayor Newman.

Councilman Smith asked for a friendly amendment that we allow for non-profits to have

fund-raising activities and also that the registered non-profits include 501 c(4)s.

Councilman Smith and Vice-Mayor Newman accepted the friendly amendment to their original motion.

At Mayor Bellamy's suggestion, Councilman Russell moved to amend the amended main motion (1) to adopt a non-profit event permit fee level representing 75% reduction in existing event permit fees; (2) to grandfather in 27 events for permit fee waivers for one year with a $20,000 cap for Fiscal Year 2010-11, to be reviewed annually by the Finance Committee; (3) all for non-profits to have fund-raising activities; and (4) registered non-profits include 501 c(4)'s. This motion was seconded by Councilman Smith and carried on a 4-3 vote, with Vice-Mayor Newman, Councilwoman Manheimer and Councilman Davis voting "no."

The amended main motion carried unanimously.

It was the consensus of Council that any event that meets the criteria is eligible for this fee level beginning July 1, 2010.

B. RESOLUTION NO. 10-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2011 TRANSPORTATION DEMAND MANAGEMENT GRANT PROGRAM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE PROGRAM

Director of Transportation Ken Putnam said that this is the consideration of a resolution authorizing the City Manager to apply for the Fiscal Year (FY) 2010-11 Transportation Demand Management (TDM) grant program and enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for administration costs of the program.

The subject staff report was first presented to City Council on April 27, 2010. Before action was taken, City Council asked staff to provide additional information about past accomplishments of the TDM program. He provided Council with a list of various local programs and/or accomplishments within the TDM strategies including FY 2009-10 goals, performance measures, and FY 2010-11 goals.

TDM programs promote alternative transportation options to the single occupant vehicle. Included among these alternatives are carpooling, vanpooling, telecommuting, transit, bicycle, flexible work hours, compressed work weeks, and parking policies and price structures.

NCDOT's Public Transportation Division is funding TDM programs across the state to support the provisions of the Ambient Air Quality Improvement Act of 1999, Senate Bill 953, to address growing concerns over ground level ozone pollution from motor vehicles and the need to deal with increasing vehicle miles traveled (VMT) and NOx emissions. This bill established the goals of reducing emissions of nitrous oxides (NOx) from motor vehicles by 25% by 2009 and reducing the growth of VMT in the State by 25% by 2009.

There are six TDM strategies that the City of Asheville's TDM program is required to employ in order to accomplish the TDM Program Goals set by NCDOT. They are:

1. Conduct marketing efforts/activities identified in a marketing plan.
2. Coordinate with local transportation and land use planning efforts.
3. Facilitate ridematching services through the ShareTheRideNC website.
4. Promote the Best Workplaces for CommutersSM Program.
5. Collect and calculate data on VMT and NOx reductions through TDM activities.

6. Operate in a manner consistent with the NCDOT goals regarding making our transportation network safer, move people and goods more efficiently, and making our infrastructure last longer.

The City's TDM program began in August 2005 and was administered under the French Broad River Metropolitan Planning Organization (MPO) and the City of Asheville's Transportation and Engineering Department. When the functions of the MPO were relocated to the Land of Sky Regional Planning Council, the TDM program remained as part of the City's Transportation Planning Division.

The NCDOT is currently evaluating the future of the TDM program in Western North Carolina and during FY 2010-11 a visioning study will be prepared. This study will be funded by Federal and State Funds at an 80/20 ratio.

The grant provides funds for up to 50% of the total administrative costs including salaries and fringe benefits (one full-time position), marketing, office expense, etc. The TDM coordinator is in charge of administering the grant which includes but is not limited to the following programs:

- The PASSport (employer bus pass) Program
- The Emergency Ride Home Program
- Strive Not to Drive – annual promotional event
- Share the Ride NC – Statewide ridematching program

In July 2010, the Board of Transportation will vote on whether or not to approve the funds in the maximum amount of $99,979 for the City of Asheville's TDM Grant. The 2010/11 budget for this program is currently in the City of Asheville's budget process.

This TDM program supports the City of Asheville's 2010/11 Strategic Plan by helping to promote emission-reducing options, as well as supporting multi-modal transportation promoting the use of transit through programs such as the PASSport program.

Pros:

- The current 50% match is reimbursed by NCDOT.
- As of April 30, 2010, these statewide programs have reduced the growth of VMT by 24.6% - the goal for Senate Bill 953 was 25%.
- As of April 30, 2010, these programs have reduced NOx by 7.55170944 tons.
- These programs promote alternatives to single vehicle occupancy (carpooling, vanpooling, transit, bicycles, and telecommuting).
- This program funds 50% of the TDM Coordinator position.

Con:

- The City is required to provide a 50% match which equals $49,989.

The total project cost is $99,979; 50% of this total will be paid by NCDOT and 50% by the City. Funds to cover the required 50% City match are included in the Transportation Department's budget request for the FY 2010-11 Annual Operating Budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to apply for the 2011 TDM grant program and enter into an agreement with the NCDOT for administration costs of said program.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis felt the $50,000 match was not a good use of dollars during this difficult budget year.

Mr. Putnam responded to Vice-Mayor Newman when he questioned if the vehicles miles travelled was due more to recession.

Councilman Smith moved for the adoption of Resolution No. 10-120. This motion was seconded by Councilman Bothwell and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 46

C. RESOLUTION NO. 10-121 – RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT REGARDING EXTENSION OF SEWER SERVICE

City Attorney Oast said that Ms. Norma M. Kushigian is the owner of two adjacent parcels proposed for annexation in the area known as the Airport Road Annexation, there was a request to remove Lot 1 from the annexation plan. In exchange the City will not have to install sewer to Lot 2 (currently in the annexation plan). Because Council cannot make promise with respect to their legislative discretion, he recommended Council authorize the agreement whereby if Council decides not to annex Lot 1 then certain consequences would take effect. If during the one-year non-annexation period Council decides to annex Lot 1 then we will be required to install sewer to Lot 2. Beginning after that non-annexation period there is a five-year period during which it is expected the owners will petition for the annexation of Lot 1. If and when that occurs, the City would be required to provide sewer to Lot 2. After the expiration of that agreement (6 years from now), we can annex Lot 1 but any obligation to provide sewer service to Lot 2 is gone.

In response to Councilman Russell, City Attorney Oast said that this agreement has been reviewed by the attorney representing the property owner.

Mr. Rick Jackson, attorney representing property owner Norma M. Kushigian, felt the agreement is in the best interest of the City and the property owner.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 10-121. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 47

C. RESOLUTION NO. 10-122 - RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE YEAR 2010 ANNEXATION AREAS

Urban Planner Blake Esselstyn said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2010 Annexation Areas.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road,

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Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road areas to City Council on March 9, 2010. The City Council adopted the plan on this date.

The staff is now proposing that nine pages, three maps, and the property index of this plan be amended. The changes proposed reflect the removal of one lot on which an industrial facility is located. The Asheville City Council discussed deleting this lot as part of an agreement with the property owner that sewer would not be extended to her property until the property is voluntarily annexed. The changes to the plan necessitated as a result of the removal of one lot and one sewer extension are as follows.

- The first amendments are to Page 21 – Statutory Standards Statement for the Airport Road Area. The revisions are to the total acreage in the area, to the measurements of the aggregate external boundary line of the area, to the contiguous portion of this boundary, to the percent of external boundary that coincides with the City boundary, to the total number of lots and tracts in the area, to the total number of lots and tracts used for industrial purposes in the area, and to the percentage of lots and tracts in the area used for commercial or industrial purposes.

- The second amendments are to Page 22 –Statutory Standards Statement for the Airport Road Area. The revisions are to the total acreage in the Airport Road Area, and to the percentage of area classified as non-urban.

- The third amendment is to Page 38 – Plan for Extension of Services – Sewer Collection. The revision is to the number of linear feet to be constructed in the Airport Road Area with added accompanying language.

- The fourth amendments are to Page 40 – Ad Valorem Property Tax Revenue. The revisions are to the real property valuation and total annual revenue for the Airport Road Area, and the real property valuation and total annual revenue for all of the annexation areas.

- The fifth amendments are to Page 41 – State Utility Tax Revenue. The revisions are to the property acres and total annual revenue in the Airport Road Area, and to the property acres and total annual revenue for all of the annexation areas.

- The sixth amendments are also to Page 41 – Local Option Sales Tax. The revisions are to the total tax levy and total annual revenue for the Airport Road Area, and to the total tax levy and total annual revenue for all of the annexation areas.

- The seventh amendments are to the revenue summary found on Page 43. The total annual revenue accruing to the City of Asheville from these annexations is $348,321 which reflects the removal of the one lot in the Airport Road Area.

- The eighth amendments are to the annually recurring expenses found on Page 44. The changes reflect the reduction in the financial impact payments to be made to the Skyland Fire District due to the deletion of the one lot in the Airport Road Area.

- The ninth amendments are to the capital expenditures summary found on Page 45. The total capital expenditures for the annexation areas were reduced by $184,740 due to the deletion of one sewer line extension. The capital expenditures are estimated to be $ 204,939.

- The tenth amendments are to the financial impact statement on Page 47. The valuation figure and the projected impact for the Airport Road Area are reduced due to the removal of the one lot.

- The final amendments are to the Present and Proposed Boundaries Map, the Generalized Land Use Map, the Sanitary Sewer Map, and to the Property Inventory for the Airport Road Area. The maps and inventory now reflect the deletion of the one lot and one sewer extension in the Airport Road Area.

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

Pro:

- Clarifies details and provides more accurate information in the Annexation Services Plan for 2010.

Con:

- None seen.

The projected revenue for the twelve annexation areas is $348,321. The anticipated annually recurring expenses total $125,296 for five years and $85,969 for all following years. The one time capital expenditures are projected to be $204,939. None of the revenues or expenses are included in the FY 2010-11 Proposed Budget pending possible challenges from property owners in the annexed areas. Once the time period for appeals has passed, but prior to the September 30, 2010 effective date, staff will bring forward a budget amendment to City Council to recognize the revenues and budget for the expenses associated with these areas for the time period between September 30, 2010, and June 30, 2011.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to reflect revisions/corrections as presented.

Mr. Esselstyn asked that the Sanitary Sewer System Map language be added to the resolution as a page that was replaced.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-122. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 48

D. ORDINANCE NO. 3857 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE INGLES AREA

ORDINANCE NO. 3858 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SCHENCK PARKWAY AREA

ORDINANCE NO. 3859 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE FARLEIGH STREET AREA

ORDINANCE NO. 3860 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE DEERFIELD AREA

ORDINANCE NO. 3861 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 67 MOUNTAINBROOK ROAD

ORDINANCE NO. 3862 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 73 AND 75 WATERS ROAD

ORDINANCE NO. 3863 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 26 ROCKING PORCH ROAD

ORDINANCE NO. 3864 - - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 40 KEASLER ROAD AND 23 SUNNYCREST DRIVE

ORDINANCE NO. 3865 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 617 UPPER SONDLEY DRIVE

ORDINANCE NO. 3866 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 1445 TUNNEL ROAD

ORDINANCE NO. 3867 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE WILLOW WINDS LANE AREA

ORDINANCE NO. 3868 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AIRPORT ROAD AREA

Urban Planner Blake Esselstyn said that this is the consideration of the adoption of ordinances to extend the corporate limits of the City of Asheville to include the following twelve annexation areas: Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road.

On February 23, 2010, the City Council adopted Resolutions of Intent beginning the annexation process for the following twelve areas: Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road. The Annexation Services Plan for these areas was approved on March 9, 2010, and a public information meeting was held on April 12, 2010. Public hearings on each of the annexation ordinances were held on May 11, 2010. Adoption of the annexation ordinances is the final step in the annexation process. Amendments to the Annexation Services Plan will be considered prior to discussion on the ordinances. The effective date for these annexations is proposed in these ordinances to be September 30, 2010.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made revisions in the previously introduced metes and bounds description (those contained in the Resolution of Intent) for the Airport Road Area to reflect the recommended deletion of one parcel.

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.

- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.
- Fills in service delivery gaps and split jurisdiction issues on the edge of corporate limits.

Cons:

- Residents of proposed annexation areas may object to such annexation.

The projected revenue for the twelve annexation areas is $348,321. The anticipated annually recurring expenses total $125,296 for five years and $85,969 for all following years. The one time capital expenditures are projected to be $204,939. None of the revenues or expenses are included in the FY 2010-11 Proposed Budget pending possible challenges from property owners in the annexed areas. Once the time period for appeals has passed, but prior to the September 30, 2010, effective date, staff will bring forward a budget amendment to City Council to recognize the revenues and budget for the expenses associated with these areas for the time period between September 30, 2010, and June 30, 2011.

City staff recommends City Council adopt the twelve annexation ordinances for the Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road Areas with the effective dates as established by ordinance.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinances and they would not be read.

When Councilman Russell asked if staff had any indication that an annexation area might be contested, Mr. Esselstyn said that he has received no such indication.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3857. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 121

Vice-Mayor Newman moved for the adoption of Ordinance No. 3858. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 124

Vice-Mayor Newman moved for the adoption of Ordinance No. 3859. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 127

Councilwoman Manheimer moved for the adoption of Ordinance No. 3860. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 130

Councilwoman Manheimer moved for the adoption of Ordinance No. 3861. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 133

Councilwoman Manheimer moved for the adoption of Ordinance No. 3862. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 136

Councilman Bothwell moved for the adoption of Ordinance No. 3863. This motion was seconded by Vice-Mayor Newman and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 139

Councilman Bothwell moved for the adoption of Ordinance No. 3864. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 142

Councilman Bothwell moved for the adoption of Ordinance No. 3865. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 145

Councilman Bothwell moved for the adoption of Ordinance No. 3866. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 148

Councilwoman Manheimer moved for the adoption of Ordinance No. 3867. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 – PAGE 151

Mayor Bellamy said that we do not have anticipated General Fund revenue for the capital expense in the Airport Road annexation and could not support the motion.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3868. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no."

ORDINANCE BOOK NO. 26 - PAGE 154

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-123 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Newman said that Mr. Scott Barnwell has resigned as a member of the Recreation Board, thus leaving an unexpired term until June 30, 2011.

At the Council meeting on May 11, 2010, it was the consensus of Council to interview Todd Dunnuck, Mark Strazzer, Michael Holgate and Will Callaway. Due to a misunderstanding of the date, Mr. Dunnuck did not attend the interview.

After Council spoke highly of the candidates, Todd Dunnuck received 0 votes, Mark Strazzer received 2 votes; Michael Holgate received 0 votes; and Will Callaway received 4 votes.

Councilman Russell passed on voting due to his absence in the interviews. Therefore, Will Callaway was appointed as a member of the Recreation Board to serve the unexpired term of Mr. Barnwell, term to expire June 30, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 33 – PAGE 63

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte was opposed to the no smoking prohibiting, especially in parks.

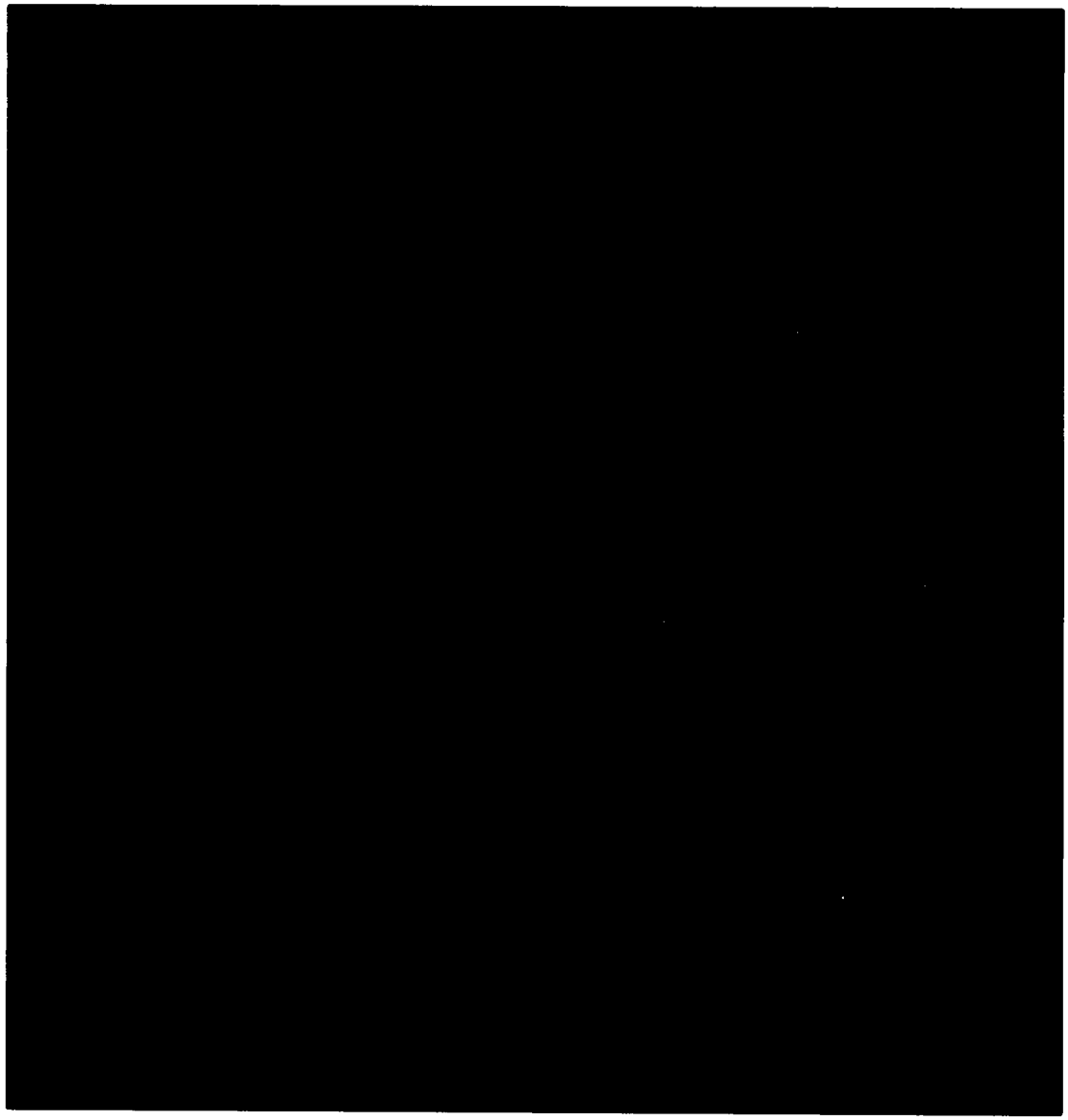
The following claims were received by the City of Asheville during the period of April 23 – May 13, 2010: PSNC (Water), Darrell R. Thomas (Water), Donna Fitzpatrick (Sanitation), Meghan S. Sumner (Building Safety); Ada B. Wilson (Building Safety), Phillip S. Camby (Water), Teresa Smith (Police), City of Asheville (Inspections), Jan Hart (Water) and Charter Communications (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:57 p.m.

Magdalen Burleson
CITY CLERK

MAYOR



BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 87

(JUNE 8, 2010 – FEBRUARY 22, 2011)

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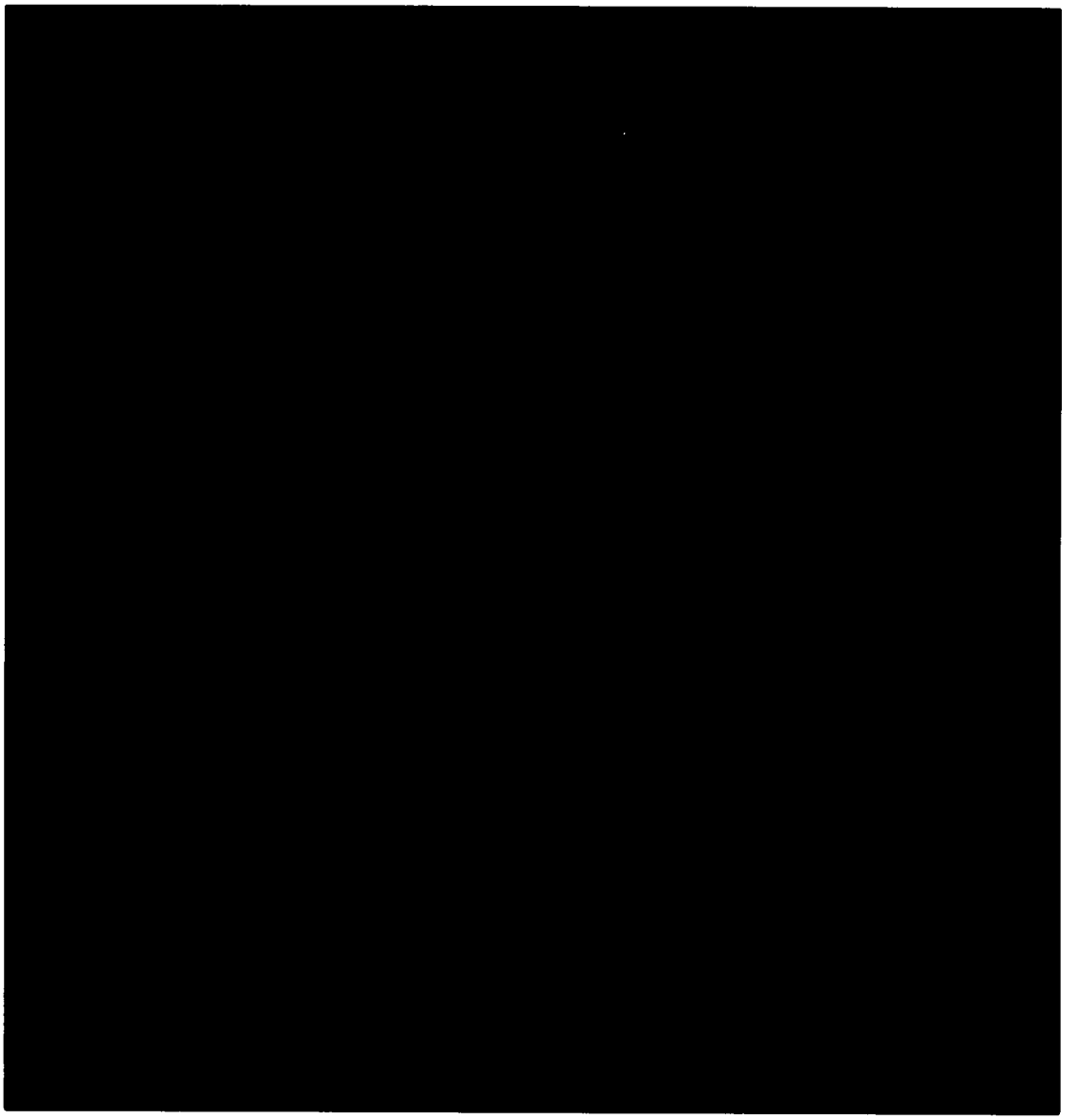

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Tuesday – June 8, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Manheimer gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF SCHOOL SUCCESS PROGRAM

Mayor Bellamy said that in the fall of 2006, the Asheville City Schools refocused their energy to change the image of dropout prevention. The effort embraced the old African proverb; *"It takes a village to raise a child."* As a result, the School Success Network Council was launched to engage our learning community stakeholders.

Their mission is to support Asheville City Schools and promote 21st Century Systems that reduce the dropout rate. Furthermore, the School Success Network Council will offer strategies for engaging students in the learning community in order to increase the number of high school graduates for Asheville City Schools.

The School Success Coordinator for Asheville City Schools was honored to be at the meeting in which the Mayor will recognize some exceptional students who have represented the School System and the School System to the utmost.

She was proud to acknowledge the following participants in the program, by presenting them with a certificate of recognition: Charles "Dre" Payton, Keyona Presha, Jalen Craig, Jarquis Fair, Jamil Hawes, Curtis Johnson, James King, Marcus Whitson, Bryanna Williams, Markes Jackson, Lisa Waters, Cayla Jiles, Joesci McIntosh, Erik Whitesides, Caleah Hallum, Promyss Wately, China Robinson, Na'Shayla Petty, Clementine Turner and Deandra "Dre" Bowden.

B. RECOGNITION OF CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY

Ms. Erica Germer, Coordinator of the City of Asheville Youth Leadership Academy (CAYLA), was proud to announce the accomplishments of the City of Asheville Youth Leadership Academy and thanked Council for their support of this program.

Mayor Bellamy said that all of the CAYLA students successfully completed their summer internships last year, and were given high words of praise from their various supervisors. In addition to City departments, CAYLA students worked with community partners such as the United Way, UNC-Asheville, AB Tech, HomeTrust Bank, MAHEC, Sisters of Mercy, and the YMI Cultural Center. The CAYLA students completed more than 400 volunteer hours with local agencies including RiverLink, Asheville GreenWorks, Kids Against Hunger, Meals on Wheels,

ABCCM, and the Asheville Housing Authority. Since 2007, CAYLA students have accumulated 1,200 hours of community service. All 10 graduating CAYLA seniors will begin college at campuses across North Carolina (and one in South Carolina) this fall. More than $100,000 in academic scholarships were awarded to this year's CAYLA students, including: the Dell Scholars program, Paddison Family Foundation, Optimist Club, Rotary Club, and the Kesha Young Memorial Scholarship (Mission Hospital).

She then recognized the following City of Asheville Youth Leadership Academy Class of 2010 with a certificate of appreciation: Keevon Baten, Dre Bowden, Yelena Dariy, TJ Davidson, Dreama Davis, Darius Drummond, Anika Ellis, Gio Figaro, Andrea Griffin, Nakia Harrell, Roosevelt Harvin, Ceante Hudson, Martel Jackson, Tyler Jeffries, Satorria Jones, Simone Knotts, Sohna Njia, Dre Payton, Brianna Rock, Crystal Sherriff, Anice Smith, Jarrett Vernon, and Ariana Weaver.

II. CONSENT AGENDA:

At the request of Mayor Bellamy, Consent Agenda Item "K" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 25, 2010

B. RESOLUTION NO. 10-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PATTON CONSTRUCTION GROUP, LLC, FOR THE VIEWMONT ACRES WATER SYSTEM EXTENSION PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Patton Construction Group, LLC, in the amount of $294,950.00 for the Viewmont Acres Water System Extension Project.

Grant Funds from the North Carolina Department of Environment and Natural Resources (NCDENR) North Carolina Water Infrastructure Act of 2005 (N.C.G.S. 150G) are available to reimburse the City of Asheville Water Resources for this project and were approved by City Council on July 14, 2009, by Resolution No. 09-147.

The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Viewmont Acres Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction and installation of approximately 2,850 Linear Feet of a new 8-inch waterline, fire hydrants, valves, and other appurtenances as well as the installation of five (5) private residential booster pump stations. In response to the Advertisement For Bids, the WRD received five (5) bids.

Companies responding were:

1. Patton Construction Group, LLC – Asheville, NC
2. T & K Utilities, Inc. – Asheville, NC
3. Spur Construction, LLC – Waynesville, NC
4. Steppe Construction, Inc. – Mill Spring, NC
5. DPI Construction – Arden, NC

A review team, comprised of consulting engineers from McGill Associates and staff from multiple City Departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these bids and selected Patton Construction Group, LLC, as the lowest responsible bidder at a bid of $294,950.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will provide twenty three (23) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed NCDENR grant money.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would lead to forfeiture of the NCDENR grant and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the estimated construction costs of $294,950.00 for this project until reimbursement is received from the State. Funds for these upfront costs are already included in Water Resource's FY 2009-10 Capital Improvement Program budget.

City staff recommends City Council award the Viewmont Acres Water System Extension Project to Patton Construction Group, LLC, as the lowest responsible bidder at a bid of $294,950.00; and authorize the City Manager to execute any and all contracts and change orders up to the budgeted amount to implement the project.

RESOLUTION BOOK NO. 33 – PAGE 65

C. RESOLUTION NO. 10-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. HISTORIC PRESERVATION OFFICE FOR A GRANT TO UPDATE AND EXPAND THE DOWNTOWN ASHEVILLE NATIONAL REGISTER HISTORIC DISTRICT

ORDINANCE NO. 3870 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR A NATIONAL PARK SERVICE GRANT PASSED THROUGH THE STATE HISTORIC PRESERVATION OFFICE FOR THE DOWNTOWN NATIONAL HISTORIC DISTRICT UPDATE PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Historic Preservation Office for a grant to update and expand the downtown Asheville National Register Historic District; and (2) a budget amendment, in the amount of $7,700 to accept a $4,500 federal pass though grant from the National Park Service Historic Preservation Fund via the North Carolina State Historic Preservation and to dedicate $3,200 in local matching funds received from Buncombe County for the update and expansion of the Downtown Asheville National Register Historic District nomination.

The Downtown Master Plan adopted by City Council in May, 2009, included a recommendation that Asheville review the existing National Register District, which was originally completed in 1978 and consider an expansion of the boundaries and period of significance. A study list application was prepared and approved by the Advisory Council on Historic Preservation in October, 2009. Staff has now successfully obtained a grant from the Historic Preservation Fund to complete the study and update the nomination.

This project is to update and expand the Downtown Asheville Historic District National Register nomination, originally listed on the National Register in 1978. Since 1976, there have been approximately 82 building rehabilitations in Downtown Asheville's National Register Historic District and a number of buildings have been demolished. The existing district encompasses

approximately 85 acres with 257 properties. The update will document twelve contributing resources within the existing boundary, which were not originally identified. It will also increase the period of significance to 1961. The proposed boundary increase is estimated to add ten acres with thirty-five structures clustered to the west and southwest of the existing district and will allow more properties to be considered for the rehabilitation tax credit.

This action complies with the City Council 2009-2010 Strategic Operating Plan Fiscal Responsibility Focus Area in that the City and County share in the services provided by the HRC and with the Sustainable Focus Area in that the funding will help support implementation of the Downtown Master Plan.

Pro:

- Funding will be made available to update the Downtown National Register District as identified in the Downtown Master Plan.
- Local matching funds have been provided by Buncombe County and are currently available.

Con:

- None noted.

The local match is already included in the FY 2009-10 Historic Resources division's budget. In Fiscal Year 2012 there will be additional advertising costs incurred prior to approval of the expanded district, which are not included in the grant.

The expansion of the national district could potentially be an economic development incentive as it would increase the number of structures available for the federal and state rehabilitation tax credit, thus spurring redevelopment. However; the expansion of the national district is completely separate from local district or landmark designation and will not result in the creation of any locally designated properties or associated local property tax reduction.

City staff recommends that City Council (1) adopt a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Historic Preservation Office for a grant to update and expand the downtown Asheville National Register Historic District; and (2) approve a budget amendment, in the amount of $7,700, to accept a grant from the Historic Preservation fund, via the NC State Historic Preservation Office and to set aside local matching funds.

RESOLUTION BOOK NO. 33 – PAGE 67
ORDINANCE BOOK NO. 26 – PAGE 160

D. RESOLUTION NO. 10-127 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES, PLLC, CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS, FOR AUDITING SERVICES FOR FISCAL YEAR 2009-10

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes, PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2009-2010.

N.C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Dixon Hughes to conduct the basic audit of the city's accounts for the fiscal year ending June 30, 2010. Staff has previously worked with Dixon Hughes and they have consistently provided a thorough and high quality audit for the City,

Staff also recommends contracting with Dixon-Hughes to provide various auxiliary financial services that are beyond the scope of their basic audit engagement but are necessary for its completion. These services were added as an addendum to the audit contract for last year. These services include preparation of various city financial statements and production of the Comprehensive Annual Financial Report, which are traditionally performed in-house by various accounting staff. The staff is currently involved heavily in converting the City to a new core financial system. In addition the City is operating without a permanent Director of Finance and has one unfilled vacancy in the financial reporting section. As a result staff currently does not have the capacity to perform the auxiliary financial services without additional support from Dixon-Hughes. It is anticipated that next fiscal year the CAFR will be live on the new system and that outside assistance will no longer be needed.

This project complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pro:

- Will help ensure the timely and successful completion of two high priority, critical projects.

Con:

- None noted.

A base fee of $110,000 has been proposed for the basic audit plus $43,450 for auxiliary services and is included in the Finance Department's portion of the Fiscal Year 2010-2011 proposed annual operating budget .The total cost for services for this year are the same as last.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for basic auditing services and auxiliary services in the amount of $153,450 for fiscal year 2009-2010.

RESOLUTION BOOK NO. 33 – PAGE 68

E. RESOLUTION NO. 10-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASHEVILLE FORD, KARS & KOLORS, INC., RUSSELL'S PAINT AND BODY, LLC., ANCHOR-RICHEY EVS INC., AND ENSLEY PAINT & BODY FOR AUTO BODY SHOP REPAIR

Summary: The consideration of a resolution authorizing the City Manager to approve multi-year contracts, with multiple vendors, for the repair of city owned vehicles and equipment by local Auto Body repair shops.

This contract is necessary to repair accident damage to city owned vehicles and equipment operated by City departments, such as: Police, Fire, Public Works, etc. Each individual contract shall not exceed $75,000 in any fiscal year for any one (1) vendor. This contract will expedite the repair of vehicles involved in accidents without having to wait for separate estimates each and every time there is an accident.

This contract is "Unencumbered" in nature and utilized to document the hourly rate labor charge as well as the cost of parts and any markup percentage. This contract will be established for a period of three (3) years with the possibility of two (2) - one (1) year extensions, if the city and appropriate vendor agree to maintain the current price structure.

Pros:

- Improve efficiency in overall process in vehicle accident repair
- Reduce staff labor by utilizing at least 5 blanket contracts in lieu of individual contracts

for each accident repair
- Reduce vehicle downtime by increasing turnaround efficiency in vehicle repair process
- Help ensure multiple vendors are involved in city vehicle repair process

Con:
- None

There is no increase in fiscal demands as vehicle repairs will be paid for out of the current, and future, budgeted Fleet Charge account for the appropriate division.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve multiple contracts for Auto Body Shop repair.

RESOLUTION BOOK NO. 33 – PAGE 69

F. ORDINANCE NO. 3871 - BUDGET AMENDMENT TO COVER THE COST OF CURB INSTALLATION ON DOGWOOD GROVE ROAD PROJECT

Summary: The consideration of a budget ordinance amendment, in the amount of $87,440, to cover the cost of installing concrete curb along Dogwood Grove Road.

The City of Asheville Water Department installed a new six inch water line along Dogwood Grove Road, replacing a combination of old six inch and two inch water lines, having had numerous breaks over the years.

House Bill 702, Session Law 2009-114, adopted June 16, 2009, is an amendment to the Sullivan Act which allows the City of Asheville to use up to 5% water utility revenues for street and sidewalk improvements associated with waterline improvements. City Council approved the transfer of 5% of Fiscal Year (FY) 2009-10 water revenues for this purpose on November 24, 2009. The amount of the FY 2009-10 transfer totaled $1,657,481. The Dogwood Grove Road project will be the first project funded with Sullivan Act proceeds.

The curb at the time of the waterline installation was a mixture of concrete curbing and asphalt curbing in very poor condition with further degradation due to the new water line installation. The installation of approximately 7,000 feet of eight inch curbing is eligible to utilize the 5% utility fund.

The Public Works Department, Streets Division, solicited bids for the construction of 7,000 linear feet of curbing. The lowest responsible competitive bid was $87,440 submitted by Frogs Paving.

This action complies with the City Council Strategic Operating Plan, Fiscal Responsibility sustaining meaningful performance levels for programs and services.

Pros:
- Existing sub standard and poor condition curbing will be replaced by conforming concrete curbing.
- Utilization of the 5% utility revenues allows curb replacement in a timely manner.

Con:
- The 5% utility revenue balance is reduced by $87,440

As noted above, $1,657,481 in Sullivan Act funds were transferred from the Water Fund to the General Capital Projects Funds in FY 2009-10. With adoption of this amendment, the amount of Sullivan Act funds available for other projects is reduced by $87,440 to $1,570,041. The FY 2010-11 Proposed Budget includes a 1% water revenue transfer to the General Capital

Projects Fund, which will provide an additional $341,000 in funding for FY 2010-11. Therefore, the total amount of Sullivan Act funding available in FY 2010-11 will be $1,911,041. Staff is proposing that this $1.9 million be used for improvements along Azalea Road.

City staff recommends City Council adopt the budget amendment to appropriate fund accounts.

ORDINANCE BOOK NO. 26 – PAGE 162

G. RESOLUTION NO. 10-129 - RESOLUTION AUTHORIZING EXECUTION OF EASEMENT TO PROGRESS ENERGY CORPORATION FOR POWER LINES AT LIVINGSTON STREET COMMUNITY CENTER

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to Progress Energy Corporation for electric power lines for the proposed Livingston Street Community Center.

The City plans to construct a new community center on Livingston Street. In order to accommodate this new facility with adequate and updated electrical power, a new service line is required. The line will cross Depot Street overhead, and then run underground to the actual building, as shown on the drawing attached to the resolution.

This proposal has been reviewed by affected City Departments, and no objections have been noted.

The easement will cover both Depot Street (public right-of-way) and the Livingston Street property (public property).

This action complies with the City's strategic operating plan in that it contributes to the development of a new community center and supports sustainable economic development.

Pros:

- Will facilitate provision of power to new center; and
- Lines will be underground on City property

Con:

- Overhead line crossing on Depot Street.

City not required to pay for this work.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 70

H. RESOLUTION NO. 10-130 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE CRIMESTOPPERS INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to sign the Crimestoppers interlocal agreement with Buncombe County.

On November 1, 1983, Crimestoppers of Asheville-Buncombe, Inc., a North Carolina non-profit corporation, was formed to assist law enforcement in catching suspects of crimes by offering cash rewards for tips which lead to arrests. The City of Asheville and Buncombe County

pledged support to the Crimestoppers program including appointing board members to the Crimestoppers' Board of Directors. The City and County have funded the program based on appropriations from each governmental agency's budget every fiscal year since 1983. The Crimestoppers budget is established each year as a part of the County's annual budget, and the City reimburses the County one-half of the budgeted amount.

With the City's recent conversion to a new financial software system which requires contract documentation before payments of this type can be made, City staff contacted the County to obtain a copy of the original 1983 interlocal agreement that established the Crimestoppers program. County staff was unable to locate a copy of the original agreement, so City legal staff recommended that a new agreement be drafted and signed by the City and the County. A copy of that agreement is attached to this staff report.

This action complies with the City Council Strategic Operating Plan to operate the City of Asheville's organization to the highest fiscal responsibility.

Pros:

- Provides the proper documentation to allow for the City's payment of its share of the Crimestoppers program.

Con:

- None.

$40,108 is budgeted in the FY 2009-10 Adopted General Fund Budget and $40,796 is included in the FY 2010-11 Proposed General Fund budget for the City's share of the Crimestoppers program.

City staff recommends Council authorize the Mayor to sign the Crimestoppers interlocal agreement with Buncombe County.

RESOLUTION BOOK NO. 33 – PAGE 72

I. RESOLUTION NO. 10-131 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ACCEPT FUNDING FROM THE FEDERAL TRANSIT ADMINISTRATION SECTION 5309 BUS AND BUS FACILITIES STATE OF GOOD REPAIR PROGRAM GRANT

Summary: The consideration of a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) grant to purchase three 30-foot diesel buses and two 30-foot low floor hybrid diesel-electric buses and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

City Council approved Resolution No. 10-19 on January 26, 2010, authorizing City staff to apply for discretionary Section 5309 Bus and Bus Facilities grant funds in support of the Department of Transportation's Livability Initiative (Livability Bus Program). City staff has not received any notification regarding the status of the City's application; therefore, City staff does not want to miss the current opportunity to apply for the subject grant in order to get five new buses funded.

As previously shared with City Council, the City of Asheville's Transit System fleet consists of a total of 21 buses. Sixteen of these buses were purchased in 1996 and five were purchased in 2006. Since the typical life cycle for the existing buses is about 10 years, 16 buses are overdue for replacement. Five low floor hybrid diesel-electric buses have been ordered with an expected delivery date during November 2010 and five more are going through the procurement process. The subject grant would provide funding for three diesel buses and two

low floor hybrid diesel-electric buses. Assuming the subject grant is approved, only one bus would remain to be replaced.

The Federal Transit Administration (FTA) has announced the availability of discretionary Section 5309 Bus and Bus Facilities grant funds in support of its "State of Good Repair" initiative. The State of Good Repair (SGR) bus initiative will be funded with up to $775 million in unallocated Fiscal Year 2010 discretionary Bus and Bus Facilities Program funds to finance capital projects to replace, rehabilitate, and purchase buses. Funds may not be used for operating expenses or preventive maintenance. The deadline to apply for the subject grant is June 18, 2010.

The total cost to purchase the five buses is $2,400,000. Thanks to Congressman Heath Shuler's office, the City has already received $532,000 to be used to help purchase two hybrid diesel-electric buses. Therefore, the grant application would total $1,868,000 ($2,400,000 - $532,000). If awarded, the grant would fund 80% of the cost, which equals $1,388,000, the City would fund half of the 20% local match, which equals $240,000, and City staff would request the North Carolina Department of Transportation to provide the additional half of the 20% local match. Staff recommends using the Transit's Capital Reserve Fund to provide the local match. This reserve only allows us to fund five buses, instead of the six that need replacement.

This action complies with the current City Council's Strategic Operating Plan by helping to achieve short-term and long-term energy goals and reducing city carbon emissions, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to fully leverage funding for transportation improvements. This action also complies with the capital improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- The subject grant, if awarded, would enable the City to replace most of its aged transit system fleet (15 out of 16 buses) that would produce savings in maintenance costs and fuel costs.
- The subject action would help reduce the City's carbon emissions.
- The Federal Transit Administration (FTA) would fund 80% of the subject project cost.
- The North Carolina Department of Transportation (NCDOT) would fund 10% of the subject project cost.
- The City of Asheville's local match has been identified and would not require any additional allocation of funds.

Con:

- A 10% local match in the amount of $240,000 is required.

The total anticipated cost of the subject project is $2,400,000. The City has already received $532,000 for two hybrid diesel-electric buses through the efforts of Congressman Heath Shuler's office. The grant application would total $1,868,000, with 80% to be paid by Federal funds, 10% by State funds, and 10% by City funds. The City's 10% match, which totals $240,000, is already included in the Transit Capital Reserve Fund.

City staff recommends City Council to adopt a resolution authorizing City staff to apply for the Section 5309 Bus and Bus Facilities State of Good Repair Program Grant to purchase three 30-foot diesel buses and two 30-foot low floor hybrid diesel-electric buses and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

J. **RESOLUTION NO. 10-132 - RESOLUTION AMENDING THE CITY COUNCIL 2010 MEETING SCHEDULE TO CANCEL THE JULY 13, 2010, FORMAL MEETING**

RESOLUTION BOOK NO. 33 – PAGE 74

K. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE 2010 INGLES 4TH OF JULY CELEBRATION**

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE 2010 BELE CHERE FESTIVAL

These items were removed from the Consent Agenda for individual votes.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

K. **RESOLUTION NO. 10-133- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE 2010 INGLES 4TH OF JULY CELEBRATION**

RESOLUTION NO. 10-134 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE 2010 BELE CHERE FESTIVAL

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2010 Ingles 4th of July Celebration and the 2010 Bele Chere Festival.

2010 Ingles 4th of July Celebration

The Benevolent Patriotic Order of the Does have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer at the 2010 Ingles 4th of July Celebration and allow for consumption at this event.

The 2010 Ingles 4th of July Celebration will be held at Pack Square Park on Sunday, July 4, 2010, from 4:00 p.m. to 10:00 p.m. The festival area will be open on Sunday, July 4 from 4:00 p.m. to 10:00 p.m.

The sale of malt beverages will end at 9:30 p.m. However, the possession of open containers of malt beverages or consumption of malt beverages will be allowed during the festival hours of 4:00 p.m. to 10:00 p.m.

2010 Bele Chere Festival

The following organizations: Asheville Ski Club, Benevolent Patriotic Order of the Does, Phi Beta Lambda, A-B Tech, Cataloochee Ski Patrol, Brother Wolf Canine Rescue, Xi Omega Chapter of Beta Sigma Phi, Wild South, St. Johns Episcopal Church, Asheville Area Paralegals, and Engineers Without Borders have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at 2010 Bele Chere Festival and allow for consumption at this event.

The 2010 Bele Chere Festival area will be open on Friday, July 23, 2010, from12:00 p.m. to 10:00 p.m.; Saturday, July 24, 2010 from 10:00 a.m. to 10:00 p.m.; and Sunday, July 25, 2010 from 12:00 p.m. to 6:00 p.m.

The sale of malt beverages and/or unfortified wine will end at 9:45 p.m. in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine will only be allowed during the periods as follows:

Friday, July 23, 2010, from 12:00 p.m. to 10:00 p.m.
Saturday, July 24, 2010, from 10:00 a.m. to 10:00 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 25, 2010.

Pros:

- Allows for fundraising opportunities

Cons:

- Potential for public safety issues

Serving alcohol at the 2010 Ingles 4th of July Celebration and Bele Chere Festival does not contribute to a fiscal impact.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2010 Ingles 4th of July Celebration and the 2010 Bele Chere Festival.

Vice-Mayor Newman moved for the adoption of Resolution Nos. 10-133 and 10-134. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 10-133 - RESOLUTION BOOK NO. 33 – PAGE 75
RESOLUTION NO. 10-134 - RESOLUTION BOOK NO. 33 – PAGE 78

III. PRESENTATIONS & REPORTS:

A. BOARD OF ELECTRICAL EXAMINERS UPDATE

Mr. Harold Garland, Chairman of the Board of Electrical Examiners, said that the Board's membership consists of Fred Pratt, Tommy Wilson, Phil Wilson and Randy Osborne, who recently died on June 2, 2010. Building Safety Director Robert Griffin was honored to note that Mr. Garland has served the City of Asheville for almost 40 out of his 90 years.

Their mission is the examination of applications for journeyman electrical licenses for the City of Asheville.

The ordinance states the Licensed Electrician may employee a journeyman to work under their oversight and perform work meeting the N.C. State Electrical Code. The journeyman may have two helpers who are not required to have the journeyman license.

2009 highlights include (1) journeyman exam given 6 times; (2) 67 applicants (a) 33 passing grades (75 or higher); and (b) 34 not passing; and (3) highest grade 93.

2010 objectives include (1) continue issuing photo id's to all journeymen; (2) continue with Spanish exams when requested in association with A-B Technical Community College; (3) hold special exam dates when necessary; (4) maintain high standards; and (5) continue reciprocity with 7 North Carolina cities meeting our standards.

On behalf of City Council, Mayor Bellamy thanked Mr. Garland and the Board for their commitment to this Board.

B. TREE COMMISSION UPDATE

Mr. Bob Gale, Chairman of the Asheville Tree Commission, said that the purpose and need statement of the Tree Commission includes a number of aspects geared toward promoting a healthy tree population for Asheville. Its introduction offers a philosophical basis for the need for such protection and then offers an impressive list of goals that Council may not be aware of. I think it's appropriate to state them here.

(1) Encourage the preservation and health of existing trees, tree canopies, and other existing vegetation, and to replenish removed vegetation;

(2) Improve and protect the visual quality of the City of Asheville, city forests, and forested view sheds, and minimize potential negative impacts of development such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor;

(3) Provide environmental benefits, such as climate modification, decreased energy consumption, reduced storm water runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;

(4) Provide a transition between dissimilar zoning districts to protect abutting properties from potential negative impacts of neighboring development, particularly between residential-commercial interfaces, and to preserve the character and value of a property and provide a sense of privacy;

(5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of Asheville while allowing flexibility to promote well designed and creative landscape plantings.

(6) Enforce the maintenance of landscaping installed to meet the requirements of these high standards to ensure that the landscaping continues to thrive and enhance the visual quality of the City of Asheville.

The Tree Commission continually works to try to meet these goals through its monthly meetings and through the work of its Citizen Review Committee, Alternative Compliance Subcommittee, and Education Committee.

For 2010-2011, the Tree Commission is pursuing a goal from previous years regarding public education about the existence of, and regulations regarding, the landscape and tree provisions of the Municipal Code. We are planning to make use of the City website for short

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articles geared toward proper tree planting and care. We also believe we have a source of funding to cover the cost of inserts into water bills explaining to homeowners the need for proper pruning to avoid damage to their trees.

Also, from time to time, the Commission has seen a need to improve the landscape and tree provisions and make recommendations to City Council. For 2010-11, the Commission is looking at ways to address the problem of improper pruning in areas outside those currently addressed by the provisions, but which are near to and clearly visible from city streets. This issue of "tree topping" appears to be on the increase and the Commission is exploring solutions in addition to that of public education for this issue.

He thanked the Tree Commission members for their continued voluntary participation and commitment to this work. He also thanked the Public Works and Planning department staffs, who do an incredible job despite a lack of adequate resources. Together, with its other ex officio members from other agencies and the City Council liaisons, the Tree Commission has an amazing diversity of expertise, and he is honored to be able to serve with this group.

On behalf of City Council, Mayor Bellamy thanked Mr. Gale and the entire Tree Commission for their efforts on this very important Commission.

C. 2008-2012 BUNCOMBE COUNTY AGING PLAN UPDATE

Ms. Linda Kendall-Fields, Aging Services Consultant for the Area Agency on Aging at the Land-of-Sky Regional Council, updated Council on the Buncombe County Aging Plan.

She reviewed a chart of projected population growth by age group in Buncombe County from 2005 – 2030.

The federal and state planning context consists of (1) Older American's Act (1965) requires aging planning; (2) North Carolina *Livable and Senior-Friendly Communities* Initiative (2006); (3) NC Senate Bill 448 (2007) - Buncombe County one of 7 identified by NC to watch how we plan for aging demographic shift; and (4) Governor's Executive Order (2010).

The aging plan has a vision for a livable, aging-friendly community that (1) Environments are safe and support self-sufficiency; (2) The health care system maximizes wellness and meets older adult needs; (3) Resources and opportunities support and enhance financial wellbeing; (4) Living environments (built and natural) enhance functioning of older adults; (5) Social engagement enriches lives with people, places and programs; and (6) A collaborative network of services and supports are coordinated.

The ABC's of the Aging Plan are (1) Active Document; (2) Broadening base of buy-in; and (3) Community consequences.

The following is financial information for seniors (1) Response to current economic situation; (2) OnTrack statistics as an example; (3) Specific products: (a) Rack Cards; (b) DVDs – six segments; and (c) Financial Fraud, Scam & Exploitation Summit.

The following are partners for financial information for seniors: OnTrack Financial Education and Counseling; Pisgah Legal Services; Council on Aging of Buncombe County; SHIIP – Senior Health Insurance Information Program; Better Business Bureau; Pisgah Legal Services; Financial Social Work Program; Buncombe County Department of Social Services; Buncombe County Television Channel; Buncombe County Sheriff's Office; Land-of-Sky – Regional Ombudsman; AARP – Regional Office; North Carolina Attorney General's Office; North Carolina Secretary of State's Office; HomeTrust Banks and State Employee's Credit Union; AT&T; Senior Tarheel Legislature Representative; and Heath Shuler and Kay Hagan Representatives.

Community resource connections include (1) Aligning the aging planning process with the Community Resource Connections; (2) Uniform access for older adults and people with disabilities; (3) Utilizes United Way's 2-1-1; (4) Selected agencies to perform core functions; and (5) Quarterly cross-training for stakeholders.

Health and wellness include (1) Resource rich community; (2) Focus on awareness and access; and (3) Highlights (a) Wiki with monthly calendar of events; (b) Live phone access for health information; and (c) Programming and outreach to underserved areas.

Partners in health and wellness include Land-of-Sky Living Healthy Program; Council on Aging: Project EMMA & Nutrition Sites; North Carolina Center for Creative Retirement; UNC-Asheville WASA Program; Mission Hospital; Park Ridge Hospital; MAHEC; Buncombe County Health Center; YMCA/YWCA; and Givens Estates – Life Ministries Outreach.

What's next for 2010-11 includes (1) Continue ongoing work; (2) Broaden committee membership; (3) Launch housing/transportation work group; and (4) Establish liaisons to key planning efforts.

At Mayor Bellamy suggestions, Ms. Kendall-Fields said that she would provide the Mayor's Office with the updated Senior Resource Directory to be placed in City Hall for reference.

Mayor Bellamy thanked Ms. Kendall-Fields for this very informative update.

D. ASHEVILLE MOTOR SPEEDWAY MEMORIAL UPDATE

Councilman Davis said that the Asheville Speedway Memorial Committee has continued to work toward the goal of erecting a Memorial at the current Carrier Park Recreation Park, located on Amboy Road.

In the fall of 2007, the Asheville City Council and Buncombe County Commissioners jointly endorsed and supported efforts by an Asheville Motor Speedway Memorial Committee to raise money through private donation. The Committee's aim was to design and build an appropriate memorial commemorating the history of stockcar racing in the Asheville Buncombe Area. Since this time, he was pleased to report that the Committee has agreed on the historic photos and text that will be displayed to outline the history of stock car racing in Western North Carolina and that the project has officially broken ground. He hoped that the unveiling will be in late August or early September.

He explained the rich history of the Asheville Motor Speedway Memorial Project, being (1) From 1960 – 1999 this site was home to one of the most legendary tracks in the history of stockcar racing; (2) Legendary figures: Junior Johnson, Richard Petty, Jack Ingram, Bob Pressley, etc.; and (3) Not just part of the community, but a community itself. He said the Project should be completed this summer.

Carrier Park Today – (1) In 1999, the track was sold to Riverlink and the land donated to the City of Asheville; (2) Asphalt oval remains, incorporated into the park as a thoroughfare for bicyclists, joggers and walkers; and (3) The park has become the most used city recreational facility, has no admission fee, and offers a wide variety of recreational and educational opportunities.

In the fall of 2007, Asheville City Council and Buncombe County Commissioners supported efforts to raise money through private donations for the Speedway Memorial Park.

He showed (1) the final concept; (2) the front and back of the Memorial Wall; and (3) the revised site plan of the Asheville Speedway Memorial.

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On behalf of City Council, Mayor Bellamy thanked Councilman Davis for his update on the key aspects of the Asheville Speedway Memorial Project and his leadership on this Project.

Mr. Fred English, NASCAR fan, urged Council to name a street or highway for Jack Ingram as he has brought a lot of recognition to Asheville.

E. DROUGHT MANAGEMENT PLAN UPDATE

Water Resources Director Steve Shoaf said that City staff has prepared an update on the status of the existing Drought Management Plan, and utilized Brown and Caldwell Environmental Engineers to incorporate necessary updates to the Plan.

In 2003, the City of Asheville Water Resources Department worked with Brown and Caldwell Consulting Engineers to develop a Drought Management Plan for the water supply reservoirs and two water treatment facilities. Since then, there has been a significant drought in 2007, the startup of the William DeBruhl Water Treatment Plant, and implementation of a Flood Management Plan. Water Resources has reviewed the impacts of these events and is updating the Drought Management Plan to include new, relevant information.

The Drought Management Plan is a planning tool to allow us to remain sustainable and meet the demands of our system. The plan models hydrologic conditions and is used to predict lake level response based on assumptions about the weather, soil, system water demands, past history, and other factors. Both real-time and historical data (1926 to 2009) is incorporated. The plan addresses operational strategies and includes estimates of how often we should expect to announce voluntary water restrictions, mandatory water use restrictions, and water conservation surcharges.

This initiative complies with the City Council's strategic plan to promote sustainability through long-term planning.

Pros:
- Manage our water resources to support a viable community.
- Provide a systematic response to water shortages that allows Asheville to be pro-active.
- Avoid declarations of water shortage when such a declaration may be a "false alarm".

Con:
- The plan balances the potential for drought with the potential for flooding thereby not maximizing the storage potential of our reservoirs.

The costs of the updates to the Drought Management Plan are budgeted and have been allocated. There are no other impacts to the budget. This plan should minimize our exposure to the negative impacts of droughts and reduce the needs for emergency water conservation measures, thus preserving our revenue stream generated from water consumption.

Using a PowerPoint, Mr. Shoaf said that the Asheville Drought Management Plan (1) Began development in 2003; (2) Provides guidance for reservoir operation; (3) Predicts when to declare voluntary or mandatory water conservation measures; and (4) Based on computer modeling that reflects current conditions and historical experience.

The 2004 Drought Plan constraints consisted of (1) North Fork water surface elevation when full = 2601 feet; (a) Target minimum water level 2580 feet to protect raw water quality; and (b) Treatment Plant Intake elevation at 2530 feet; (2) Acceptable frequency of drought restrictions (a) Once every 5 years for voluntary conservation; (b) Once every 5 - 10 years for mandatory measures; (c) Once every 10 years or more for conservation surcharge; and (d) Minimum of 30 days implementation between increments; (3) Incremental demand reductions of 2%, 2%, and 6 % under voluntary, mandatory, and surcharge restrictions; (4) Identify drought triggers based on

historical, current, and predicted conditions (a) Capture all drought events; (b) Must provide drought notice in advance to be effective; (c) Allow for phasing of remedial actions based on severity; (d) Minimize the number of false alarms; and (e) Based on probabilities of impacts of all factors; and (5) Evaluated various scenarios for North Fork Reservoir.

The 2007 North Fork Flood Operation Plan – (1) Based on computer simulations using historical and current conditions; (2) Establishes acceptable lake water levels to minimize flooding impacts downstream; (3) Maximum lake level 2598 feet or 3 feet below full; (4) Developed seasonal lake levels as "rule curve" to follow leading to water releases to adjust lake levels; and (5) Has measurable impact on Drought Management Plan.

The 2010 Drought Plan recommendations include: (1) Incorporate operation of William DeBruhl WTP and Flood Operation Plan; (2) Adjust projected future water demands based on master plan; (3) At average annual demand of less than 21.5 MGD (current): (a) No restrictions needed (based on repeat of 1926-2009 hydrology); (4) At average annual demand of 23.5 MGD (Year 2017): (a) This demand would result in declarations of voluntary conservation about every 20 years (based on repeat of 1926-2009 hydrology) with no mandatory or conservation surcharges; and (b) Longest duration of these events = 8 months; (5) At a demand of 26 MGD: (a) The declaration of voluntary conservation measures exceeds acceptable frequencies and the plan will need modification. Projected demand in Year 2037 = 28 MGD; (6) New drought triggers (a) Trigger 1: 20% chance of reaching 2570 feet in 10 weeks; (b) Trigger 2: 10% chance of reaching 2569 feet in 10 weeks; and (c) Trigger 3: 5% chance of reaching 2568 feet in 8 weeks; (7) The combination of risk, forecast horizon, and elevation minimized the number of trigger events while keeping North Fork at acceptable elevations; and (8) Refill consideration: Lift restrictions when North Fork refills to 2598 feet.

The following is what has changed:

- Include operation of William DeBruhl WTP and Flood Operation Plan
- Drought triggers changed:

	2004 Plan	2010 Plan
Phase I	2572 feet	2570 feet
Phase II	2571 feet	2569 feet
Phase III	2570 feet	2568 feet

- Need for declared conservation events decreased
  - More flexibility
  - Some operating decisions can be based on cost

Because this is an information item, no action is required by the City Council. The Drought Management Plan will be used as operational guidance during water shortages.

F. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES TO FUND A SUMMER INTERN FOR THE ENGINEERING SERVICES DIVISION

ORDINANCE NO. 3872 - BUDGET AMENDMENT TO ACCEPT FUNDS FROM THE N.C. DEPT. OF HEALTH & HUMAN SERVICES TO FUND A SUMMER INTERN FOR THE ENGINEERING SERVICES DIVISION

American Recovery & Reinvestment Project Manager Brenda Mills said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement to accept funds from the North Carolina Department of Health and Human Services (NC DHHS) to fund a

summer intern for the Engineering Services Division, and an associated budget amendment in the amount of $1,500 from NC DHHS's ARRA funds.

The Engineering Services Division has been working with the Human Resources Department to find an intern for the summer that had an interest in the field of engineering. Human Resources staff was successful in this endeavor, in that a current student at Asheville High School that plans to attend college next year in an Engineering discipline would like to work for the City this summer. The funds to pay the student would come from the American Reinvestment and Recovery Act (ARRA) from the NC DHHS, and the City is not required to pay any matching funds.

This action complies with the City Council Strategic Operating Plan in that we actively pursued funding opportunities with State and Federal economic stimulus packages, and that it expands partnerships with educational institutions to achieve common goals, such as workforce development.

Pros:

- The City will be able to add a seasonal employee at no direct cost to the City.
- The student will be able to obtain real life experience in their chosen field of study.
- Expanding relationships with Asheville High and NC DHHS for mutually beneficial agreements.
- Current staff will get much needed help to manage ongoing projects.

Cons:

- The student will use City equipment while employed over the summer, such as computers, tools and vehicles.
- City would be required to carry Workers Compensation on the employee.

There is no fiscal impact, unless injured while on the job.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with NC DHHS to accept ARRA funds to employ summer intern in the Engineering Services Division and adopt the budget amendment to appropriate fund accounts.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 10-135. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 83

Councilwoman Manheimer moved for the adoption of Ordinance No. 3872. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 164

G. QUARTERLY STRATEGIC OPERATING PLAN

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February 2009 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurement through the Fiscal Year 2009-10. In addition, staff provided Council with the Economic Development Key Indicator Report.

He then showed Council a video showing the staff's progress on the key strategic areas for the third quarter.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

Quarterly Financial Report

Mr. Richardson also provided Council with the City's overall financial position for the fiscal year through March 2010.

The executive summary is as follows:

Amendments. The General Fund budget presented in this third quarter report reflects the adopted budget of $92,688,293; plus $1,097,031 in prior year encumbrances that rolled over from FY 2008-09; along with sixteen budget amendments approved by Council since the start of the fiscal year that total $817,937. Four budget revisions involved the appropriation of fund balance: 1) $366,812 was used as the City match for transportation improvement projects that were partially funded with an ARRA grant; 2) $60,000 was used to expand the number of early voting sites; 3) $71,451 was used to cover civil service board expenses that arose from a General Assembly mandate; and 4) $19,842 was used to fund the cost of hiring a project manager for the City Hall building project. The other amendments were funded with various grants and donations.

Adopted Budget	92,688,293
Encumbrances	1,097,031
16 Budget Amendments*	817,937
3/31/2010 Budget	$94,603,261

* Fund balance appropriations since July 1 total $518,105

Revenues. Through March 31, 2010, the City collected $72,536,833 in General Fund revenue, which represents approximately 79.6% of the total General Fund revenue budget. Sales tax collections continue to under perform budget estimates and are down 8.2% compared to the same time last fiscal year. As a result, sales tax revenue is expected to come in under budget in the current year by $1,500,000. The City received its official FY 2009-10 property tax data from Buncombe County in January, which confirmed that property tax revenue should come in at budget. Based on current year-end estimates, staff is projecting that *FY 2009-10 total General Fund revenue will come in under budget by $1,309,000.*

Expenditures. General Fund expenditures through March 31, 2010 total $65,508,110 or 69.2% of the budget. *Based on spending through the first three quarters of the year and historical trends, staff is currently estimating that the overall General Fund budget will end the year with a budget savings of $583,000.*

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Fund Balance. The City ended FY 2008-09 with available fund balance of $16,696,979, which equated to 18.7% of FY 2008-09 expenditures. *Based on current year-end revenue and expenditure estimates for FY 2009-10 staff is projecting that available fund balance will decrease to $13,657,479, which will equate to 14.5% of estimated year-end expenditures.*

When Mayor Bellamy questioned the 14.5% Fund Balance analysis and voiced support for raising that to 15%, Director of Administrative Services Lauren Bradley acknowledged the reduction from 15.1% and stated that staff will work to restore that level of reserve to 15% either through a savings plan or in the next year's budget.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING A PORTION OF FEDERAL ALLEY.

RESOLUTION NO. 10-136- RESOLUTION TO PERMANENTLY CLOSE A PORTION OF FEDERAL ALLEY

RESOLUTION NO. 10-137- RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY BY NORTH CAROLINA NON-WARRANTY DEED ANY AND ALL INTEREST, IF ANY, THE CITY HAS IN THE CLOSED PORTION OF FEDERAL ALLEY ADJACENT TO SWANNANOA CLEANERS

Mayor Bellamy opened the public hearing at 6:26 p.m.

Mr. David Foster, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close a portion (35 sq. feet) of Federal Alley, near 165 Coxe Avenue. This public hearing was advertised on May 14, 21, 28 and June 4, 2010.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners, Swannanoa Laundry Inc., and the City of Asheville have requested the City of Asheville to permanently close a portion of Federal Alley.

The Greenway Commission reviewed the proposed closure at their meeting on May 13, 2010, and supported the closure of a portion of Federal Alley.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of Federal Alley. City staff also recommends that the City relinquish any and all rights it may have, if any, as a fee simple owner to the closed portion of Federal Alley by authorizing the City Manager to convey by North Carolina Non-Warranty Deed and all interest, if any; the City has in the closed portion of Federal Alley adjacent to Swannanoa Cleaners.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolutions and they would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 10-136. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 84

Councilman Russell moved for the adoption of Resolution No. 10-137. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 85

B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 97 UNDERWOOD ROAD TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3873 - ORDINANCE ZONING 97 UNDERWOOD ROAD TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:29 p.m.

Urban Planner Julia Cogburn said that this is the consideration of zoning 97 Underwood Road to Highway Business District. This public hearing was advertised on May 28 and June 4, 2010.

The City of Asheville recently completed the voluntary annexation (effective April 30, 2010) of a 1.96 acre tract located at 97 Underwood Road in Southern Buncombe County. The property is located to the west of the Asheville Regional Airport and is adjacent to I-26. Access to the property is off of Underwood Road. A single building (warehouse) is located on the site which previously housed a rental facility.

The property is currently unzoned and is surrounded by unzoned property. The airport property is zoned Institutional but other properties along Airport Road that are in the City's corporate limits are zoned Highway Business (HB). Staff proposes HB zoning for this parcel.

At a meeting on May 5, 2010, the Asheville Planning and Zoning Commission voted 6-0 to recommend the rezoning to the Asheville City Council. One person owning adjoining property (that is not in the City) spoke after the public hearing and vote had occurred to state that he was concerned as he had heard that a strip club was proposed. He was concerned about potential impacts to a large office building he planned to build on his property. The developers of the project on the property at 97 Underwood Road will be at the Council meeting to report that this is not their plan. [Such an establishment would not be allowed as it is too close to a residence.]

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con

- None noted.

At a meeting on May 5, 2010, the Asheville Planning and Zoning Commission voted 6-0 to recommend the initial zoning to Highway Business to the Asheville City Council. Based on the analysis provided in this report, staff finds this initial zoning to be reasonable.

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Mr. Aaron Dean, partner of the business at 97 Underwood Road, said they are looking at opening a live music venue, starting the first year with local bands.

Mayor Bellamy closed the public hearing at 6:32 p.m.

City Attorney Oast reminded Council that any if any property is rezoned to a specific classification, any use in that classification is allowed. He did note that Ms. Cogburn is correct in that a strip club would not be allowed as it is too close to a residence.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3873. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 166

C. PUBLIC HEARING TO CONSIDER AMENDING THE CODE OF ORDINANCES FOR THE PURPOSE OF CORRECTING CODIFICATION ERRORS AND RESOLVING DISCREPANCIES IN THE USES BETWEEN DIFFERENT SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

ORDINANCE NO. 3874 - ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE PURPOSE OF CORRECTING CODIFICATION ERRORS AND RESOLVING DISCREPANCIES IN THE USES BETWEEN DIFFERENT SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

Mayor Bellamy opened the public hearing at 6:33 p.m.

Technical Services Manager Kim Hamel said that this is consideration of a public hearing to amend the Unified Development Ordinance for the purpose of correcting codification errors and resolving discrepancies in the uses between different sections of the Unified Development Ordinance. This public hearing was advertised on May 28 and June 4, 2010.

The Planning & Development staff has been meeting regularly over the past 3 months to evaluate the UDO for consideration of consolidating permitted land uses into a comprehensive "Table of Uses" to add to the UDO. This evaluation has also identified a number of discrepancies and revealed errors when cross-referencing the list of "Permitted uses" and "Uses by Right Subject to Special Requirements", outlined in Article VIII, General Use Districts, to the uses identified in Article XVI, Uses by Right, Subject to Special Requirements and Conditional Uses.

This report proposes changes to correct these discrepancies and errors as a first step in the process of creating the consolidated table of permitted uses, and will provide a clearer document for the staff and the public to use.

This ordinance supports the Council goal of completing UDO amendments to improve clarity and address community goals.

On Wednesday, May 5, 2010, the Planning and Zoning Commission reviewed the proposed amendments to the UDO as outlined in this report and recommended approval by a unanimous vote (6-0).

Pros:

- Corrects discrepancies and codification errors.
- Provides consistent language and terminology for all uses listed throughout the UDO.

- Provides a "clean and consistent" template and text for creating a comprehensive "Table of Uses" document.

Con:

- None Noted.

The Planning and Development Department staff recommends approval of these wording amendments.

Mayor Bellamy closed the public hearing at 6:35 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 3874. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 168

D. PUBLIC HEARINGS REGARDING THE STORMWATER AND EROSION CONTROL ORDINANCE

ORDINANCE NO. 3875 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (SECTION 7-12-1) PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS FOR SOIL EROSION AND SEDIMENTATION CONTROL AND STORMWATER MANAGEMENT

ORDINANCE NO. 3876 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (SECTION 7-2-5) PERTAINING TO DEFINITIONS OF THE ENVIRONMENTAL PROTECTION STANDARDS

ORDINANCE NO. 3877 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (SECTION 7-18-2) PERTAINING TO ENFORCEMENT OF THE STORMWATER AND SOIL EROSION PROVISIONS

RESOLUTION NO. 10-141 – RESOLUTION APPROVING THE TABLE OF USES FOR POST-CONSTRUCTION AQUATIC BUFFERS AS A GUIDELINE

Mayor Bellamy opened the public hearing at 7:24 p.m. and noted that one public hearing would cover all three ordinance revisions.

Public Works Director Cathy Ball said that this is the consideration of adopting the revised Stormwater and Stormwater and Erosion Control Ordinance, including all related sections of the Unified Development Ordinance that impact the Stormwater and Erosion Control Ordinance. These public hearings were advertised on May 28 and June 4, 2010.

In January 2010, a public hearing was scheduled for the revised Stormwater and Erosion Control Ordinance. (The January 12, 2010 Staff Report and attachments have been included for reference.) Council moved to table the Stormwater and Erosion Control Ordinances pending review by the City Council Planning and Economic Committee (PED).

The history of this action is (1) federal mandate through State required adoption of ordinance to address water quality issues; (2) City Council adopted the current stormwater ordinance on August 21, 2007; (3) adopted buffer requirements are 30' for all disturbed areas; and (4) City Council remanded the ordinance back to the Planning & Zoning Commission and the Watershed Policy Committee (WPC) for evaluation of the buffer, inspection and enforcement.

The WPC, staff, Planning & Zoning Commission and the Planning & Economic Development Committee recommended by consensus 17 changes to the ordinance.

Using charts, she outlined the consensus ordinance improvements.

On February 10 and March 10, 2010, the PED Committee met and discussed the ordinance with the focus on following:

- exemptions from the Post-Construction Stormwater Controls (Section 7-12-2(a)7.b and c found on page 4 of the ordinance); and,
- buffer requirements for during construction and post-construction buffers.

Exemptions from Post-Construction Stormwater Controls

The draft ordinance submitted for the January 12, 2010, public hearing was not clear regarding which development or re-development was exempt from post-construction stormwater measures and what measures these projects were exempt from.

The recent changes reviewed by the PED committee, clarify that the following projects are exempt from water quantity, water quality requirements **but not from buffer requirements or other special requirements.**

1. Development that disturbs less than one acre and will have a proposed impervious surface area of fifty percent or less of the total lot size, provided it is not part of a larger development.
2. Redevelopment that disturbs less than one acre and will have a proposed impervious surface area of fifty percent or less of the total lot size, provided it is not part of a larger development.
3. Development or redevelopment of a single one or two family dwelling that disturbs less than one acre and is not part of larger development.

The following types of development are exempt from all sections of the post-construction section of the ordinance **including exempt from any post-construction buffer** requirements.

1. Redevelopment that results in no net increase in impervious surface and provides equal or great stormwater controls than prior to redevelopment.
2. Activities that are exempt from the permit requirements of Section 404 of the Federal Clean Water Act, as specified in 40 CFR 302 (primarily, ongoing farming and forestry activity.)

Buffers

The draft ordinance submitted for the January 12, 2010, public hearing included a risk-based matrix referred to as "Pete's Matrix" for determination of the buffer width for during and post-construction buffers.

The PED Committee agreed that the matrix may be difficult for property owners to understand and therefore cause confusion and non-compliance with the ordinance. The PED Committee majority recommended a **30 foot post-construction buffer** for all properties that are not exempt from the buffer requirements (Section 7-12-2(f)3.1-3). The committee recommended going with the State law for during construction buffers (Section 7-12-2(e)2.1) for consistence.

The group also discussed two variations for post-construction buffer requirements. If Council votes to select one or both of these alternates, staff would need to add wording to the ordinances and come back to Council to approve the revised ordinances.

1. **Alternate 1**: 30 foot buffer in densely zoned areas and 50 foot buffer in all other less densely zoned areas. If Council recommend this alternate staff would work to define the higher density areas by transit corridors, etc., rather than by zoning districts, as these are likely to change. From a technical perspective, there is an inverse relationship between increased density and decreasing buffers.
2. **Alternate 2**: 30 foot buffers on parcels with slopes less than 15% and 50 foot buffers on properties with an average natural slope of 15% or greater. We have attached a map that depicts these areas in light purple. Some data regarding the number of parcels impacted by this option are below.

30 foot buffer for all properties less than 15% slope and 50 foot buffer for all properties 15% or greater

	30 foot for all parcels		**Additional 50 foot on parcels with slopes 15% or greater**	
	Acres	# of Parcels	Acres	# of Parcels
City Limits	2,471	10,933	765	803
ETJ	1,220	2,266	412	111
Total	3,691	13,199	1,177 (24% increase)	914 (6.5% increase)

Regarding buffers, the majority of the WPC recommended Pete's Matrix for buffers that included items related to a risk based approach (a) cross sectional slope; (b) total disturbed area and cumulative impervious area; and (c) type of adjacent stream (i) perennial – stream with continuous flow throughout the year; and (ii) intermittent – stream that flows for part of the year. This exceeds state minimum.

Using Pete's Matrix, she reviewed the WPC's recommended buffers. The buffer pros are (1) risk-based - considers physical conditions; (2) provides for buffers along all streams; (3) considers trade-off between development and environment; (4) supported by majority of WPC; and (5) allows greenways in the buffer with mitigation. The cons are (1) complication of the matrix; and (2) could not obtain consensus.

The Planning & Zoning Commission recommendation regarding buffers is the State minimum of 30 feet for 1 acre or more disturbance, with the following qualifiers: (1) Sustainable Development Practices (a) require "sustainable building practices" for 1 acre or more; (b) allow civil engineers to select two approved list of Best Management Practices "BMP"; and (c) LEED certified projects qualify as "sustainable building; and (2) Greenway Trails and Continuous Stream Side Access (a) require public greenway easement projects that require 30 foot buffer and are on the Greenway Master Plan; and (b) Allow greenways identified on the Greenways Master Plan by right.

She reviewed the pros and cons of the Planning & Zoning Commission recommendation. The pros are (1) complies with State minimum requirements for land disturbing activity; (2) simple; and (3) allows greenways in the buffer as a right. The cons are (1) loss of 112 miles of aquatic buffers; (2) LEED certification is not water quality based; (3) no authority for taking land under the authorizing legislation; and (4) not acceptable to NC Division of Water Quality.

The PED discussed this issue on February 10 and March 10, 2010, no official vote was taken. The PED review is (1) during construction (a) 30 foot minimum for all land disturbing activity except redevelopment; and (b) redevelopment – State standards; and (2) post-construction (a) 30 feet minimum except as exempted by ordinance.

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Discussion by the PED also talked about two proposed alternates (1) Alternate 1: 30 feet in more densely zoned areas (transit corridors, etc.) and 50 feet in less densely zoned areas; and (2) Alternate 2: 30 feet on parcels with less than 15% slope and 50 feet on parcels with 15% or greater average natural slope. The PED Committee discussed this issue on February 10 and March 10, 2010, but no official vote was taken. The pros on the PED proposal are (1) exceeds State's minimum requirements; (2) simple; (3) allows greenways in the buffer with mitigation; and (4) provides more protection than WPC recommendation except in steep slopes. The cons on the PED proposal are (1) reviewed by PED but no official vote; and (2) one size fits all situations.

Regarding greenways in the buffers, the proposed ordinance allows greenways to be located in an aquatic buffer when there is no practical alternative and mitigation is achieved as described in the Table of Uses.

Other Changes

Some typos were corrected as well as providing consistency in terminology. Section 7-12-2(j)(2) was also modified to allow flexibility in the best management practices used for during construction protection provided that the same level of treatment, discharge and velocity control were maintained.

Other than the items mentioned above, the ordinance was not changed from the January 12, 2010, version.

Pros:

- Approval of the consensus items will improve efficiency and reduce both City and developer cost in the process without sacrificing water quality.
- The Watershed Policy Committee met every two weeks for four hours over a six month period to develop the recommended ordinance. The committee reached consensus on all but three issues.
- The revised ordinance is better organized and easier to follow than the existing ordinance. Staff has developed a "Citizen's Guide to the Stormwater and Erosion Control Ordinance" to assist non-technical customers.
- A standard 30 foot buffer with a possible exception for steep slopes will allow for easier compliance.

Cons:

- The WPC did not reach consensus on the buffers or on the definition of a Watershed Overlay Zone.
- The WPC did not consider and provide a recommendation on allowing impervious greenways in the Aquatic Buffer.
- The Committee struggled with the balance of the amount of buffer required versus the ability to develop land. It was difficult to develop the group beyond a win-loose solution.

A sub-committee of the WPC called the Cost/Benefit Analysis committee evaluated other consensus recommendations. In all cases, the implementation of the consensus items improves efficiency without significant adverse impacts to water quality.

Approval of the consensus items will improve the efficiency of the permitting process. The fiscal impact will result in a more efficient use of City staff as well as the individuals filling the appeals.

Staff recommends that City Council adopt the revised Stormwater and Stormwater and Erosion Control Ordinance, including all related sections of the Unified Development Ordinance. Staff recommends that Council consider increasing the buffer requirements to 50 feet on parcels with a 15% average natural slope or greater.

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More specifically, staff asks that Council adopt staff's recommended changes to the Unified Development Ordinance Section 7-12-2 (Stormwater and Erosion Control Ordinance), parts of Section 7-2-5 (Definitions) and parts of Section 7-18-2 (Enforcement).

In summary, staff's recommendation is (1) Council recognize consensus items as a significant improvement to current ordinance; and (2) adopt 30 foot buffers for all disturbed areas as recommended in the proposed ordinance.

The following individuals voiced their varying opinions on the proposed ordinance:

Mr. Pete Hildebrand, member of the WPC
Ms. Julia Mayfield, Executive Director of the WNC Alliance
Mr. Rod Hudgins, President of Council of Independent Business Owners (provided Council with a statement)
Mr. Paul Szurek, member of the WPC
Mr. Mac Swicegood, Asheville resident (provided Council with a statement)
Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities
Mr. Ned Gardner, Asheville resident
Ms. Barber Melton, Vice-President of Coalition of Asheville Neighborhoods and member of the WPC
Mr. David Herbert, member of the WPC
Mr. Jerry Sternberg, member of the WPC
Mr. Jerry Rice, Buncombe County resident
Mr. Robert Zieber, member of the WPC

At 8:22 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and the resolution and they would not be read.

Councilwoman Manheimer moved to adopt Ordinance No. 3876 (definitions). This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK 26 – PAGE 220

Councilwoman Manheimer moved to adopt Ordinance No. 3877 (penalties). This motion was seconded by Vice-Mayor Newman and carried unanimously.

ORDINANCE BOOK 26 – PAGE 225

Vice-Mayor Newman moved to adopt Ordinance No. 3875 (standards) recommended by City staff for continuous 30-foot buffer in the City of Asheville, with the definition of aquatic buffer being amended to dictate that it is "undisturbed". This motion was seconded by Councilwoman Manheimer.

Councilwoman Manheimer said that this ordinance addresses during construction and post-construction. The State tells us that our stormwater buffer must be 30-feet for parcels 1 acre or greater. This ordinance says the buffer will be 30-feet for during construction and post-construction for all parcels, regardless of size. However, there is an exception section, and some blanket exceptions for some redevelopment. The State defines what redevelopment means and it is included in this ordinance. She felt this ordinance represents a true compromise between those who wanted Council to go with the absolute State minimum and those that wanted Council to put in some requirements that far exceeded the State standards. In addition, staff will have the ability to allow an exception, so we won't have residential parcels in the City that would become unbuildable.

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Throughout discussion, Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: what pollutants are we trying to keep out of the streams; how do buffers keep the sediment out of streams; what happens downstream with the pollutants; why are downstream property owners concerned with pollutants; how did staff come up with the 30-feet buffer and the 15% slope; what is the science of the buffer size; at what level does the steep slope regulations begin and how the stormwater regulations and the steep slopes would interface; are pollutants from stormwater drains piped directly into the streams; how many miles of streams will be affected; how many exceptions have been granted since 2007; and has staff looked at maps comparing the steep slope regulations at 2230 and the lower elevations to see how much land this really will affect.

The motion made by Vice-Mayor Newman (staff recommendation for continuous 30-foot buffer in the City of Asheville, with the definition of aquatic buffer being amended to dictate that it is "undisturbed") and seconded by Councilwoman Manheimer carried on a 5-2 vote, with Councilman Russell and Councilman Smith voting "no."

ORDINANCE BOOK NO. 26 - PAGE 177

Councilwoman Manheimer moved for the adoption of Resolution No. 10-141. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 91

Councilman Bothwell moved to amend Ordinance No. 3875 (standards) for 30-foot buffers up to 15% slope, 40-foot buffer between 15-25% slopes, and 50-foot buffers for more than 25% slopes. This motion was seconded by Councilman Smith and failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Newman, Councilwoman Manheimer, Councilman Davis and Councilman Russell voting "no."

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 10-138- RESOLUTION AUTHORIZING EXECUTION OF A $1.1 MILLION INSTALLMENT PURCHASE FINANCING CONTRACT WITH BB&T FOR THE LIVINGSTON STREET COMMUNITY CENTER PROJECT

When Councilwoman Manheimer asked if she had a conflict of interest because her law firm represents BB&T, City Attorney Oast said that she did not have a conflict of interest.

Mr. John Smith, Interim Finance Director, said that this is the consideration of a resolution authorizing execution of a $1.1 million installment purchase financing contract for the construction of the Livingston Street Community Center.

The City of Asheville Capital Improvement Program (CIP) includes $1.1 million previously appropriated by City Council to finance the construction of a community center on Livingston Street in central Asheville.

The Finance Department sought proposals from five local and regional banks. Three proposals were received, the best of which was submitted by BB&T at a rate of 4.55% for fifteen years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and BB&T to finance the construction of the Livingston Street Community Center and authorizes the City Manager, City Attorney, Interim Finance Director and City Clerk to execute and deliver any and all necessary documents.

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Pros:

- Provides funding of capital expenditures at a very favorable rate of interest.
- Financing capital assets spreads the cost of construction over several years of the useful life of the asset.

Con:

- Financing the asset slightly increases the lifetime cost due to the payment of interest on the amount financed.

The annual debt service payment for this financing will range from $76,000 to $123,000. Funds are already included in the City's proposed debt service budget to cover this cost.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute an installment purchase contract and closing process with BB&T for the construction of the Livingston Street Community Center.

Mr. Smith responded to questions from Councilman Russell regarding the 15-year loan and the annual service.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-138. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 86

B. RESOLUTION NO. 10-139 - RESOLUTION APPROVING THE RECOMMENDATIONS OF THE HOUSING & COMMUNITY DEVELOPMENT COMMITTEE FOR THE 2010 OUTSIDE AGENCY PROGRAM

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution approving the recommendations of the Housing & Community Development (HCD) Committee for the 2010 Outside Agency Program.

The HCD Committee received applications from 10 eligible organizations for Outside Agency funding for 2010. The Committee heard presentations from these applicant organizations on May 26, 2010.

The Committee recommends the following funding under this program for 2010:

Design Center	Coordinating community and design professional work on public infrastructure projects	$ 4,000
Homeward Bound of Asheville-AHOPE	A HOPE Day Center outreach, intake and support for homeless persons on weekends.	$ 20,000
Asheville Buncombe Community Relations Council	Fair Housing	$ 50,000

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Economic Development Coalition	Economic development services	$40,000
Asheville Greenworks	Graffiti removal; tree planting	$ 8,000

The Committee took no action on the remaining five applications. These applicants were invited to return to the next HCD meeting to participate in a discussion about how the City can best support after-school, mentoring and other youth enrichment programs. Regardless, the Committee expects to allocate the $162,400 that were pre-budgeted for the program. Only individual agency funding recommendations decisions are being deferred until the next HCD meeting.

This action complies with the City Council Strategic Operating Plan in (1) Affordable: Supports an initiative to end chromic homelessness in Asheville; (2) Fiscal Responsibility: It provides resources for strategic initiatives and creates meaningful performance measures for programs and services; (3) Job Growth and Community Development: Creates more collaborative and effective working partnerships between the City of Asheville and key organizations to accomplish economic development goals; an (4) Safe: Supports recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Approval of Outside Agency Grants provides operating support to Asheville- based organizations that are providing direct services for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- Budget constraints have curtailed the availability of funds for this year, and organizations will need to find alternate sources of program support;

Outside Agency Grants are funded from the City's general fund. The funding recommendations are within the fiscal limits developed by Council during the budget working sessions. Except for one agency recommendation (ABCRC), all funding recommendations are made at 80% of last year's individual agency funding.

The HCD recommends approval of the 2010 Outside Agency Program budget, and individual grants as presented.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-139. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 89

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-140 - RESOLUTION FOR LOCAL CAMPAIGN FINANCE REFORM OPTIONS

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Councilman Bothwell asked for consideration of the following resolution for local campaign finance reform options: "WHEREAS, the cost of running for local office should be attainable to everyday citizens in any North Carolina community; and WHEREAS, public financing programs that encourage small donations, voter participation, and voluntary spending limits are present at the federal and state level, including in North Carolina statewide judicial and executive branch elections; and WHEREAS, public financing programs increase voter contact with candidates, and allow elections to be "voter-owned"; and WHEREAS, the Town of Chapel Hill successfully implemented a public financing pilot in 2009, with participating candidates winning more votes than any of their non-participating opponents; and WHEREAS, a North Carolina city or town can only be implemented if State law is changed to give local governments the authority to pursue this option; and WHEREAS, the North Carolina House of Representatives passed HOUSE BILL 120, AN ACT TO ESTABLISH A PILOT PROGRAM FOR PUBLIC FINANCING OF MUNICIPAL ELECTION CAMPAIGNS, during the 2009 session. NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Asheville calls upon the North Carolina General Assembly and Governor to enact legislation that gives large towns, like Asheville, the authority to sponsor a public financing program for their elections, using local resources, with technical assistance from the State Board of Elections. AND BE IT FURTHER RESOLVED THAT such legislation should allow for the consideration of said financing by any qualifying municipality, but not mandate the implementation of such a plan."

He explained that this resolution urges the N.C. General Assembly to pass pending legislation that would permit cities to institute voter-owned election plans. This action doesn't commit Asheville to a voter-owned election system, but if the General Assembly passes the law, we would be able to choose such a plan in the future. Last fall Chapel Hill became the first North Carolina city to use such a finance plan and it has been deemed a success.

A representative from WNC for Change spoke in support of the resolution.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-140. This motion was seconded by Vice-Mayor Newman and carried on a 5-2 vote, with Councilman Davis and Councilman Russell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 90

B. BOARDS & COMMISSIONS

Airport Authority

Mr. David Hillier is a seated member on the Authority and is eligible for reappointment. His attendance is 97% and he is interested in being reappointed. Mr. Rhett Grotzinger is not eligible for reappointment. The following candidates applied for a position on the Airport Authority: Nan Chase, Phillip G. Kelley and Bob Roberts.

Vice-Mayor Newman, liaison to the Airport Authority, recommended interviewing Mr. Kelley and Mr. Roberts, along with Mr. Hillier to talk with them about the issues the Airport is working on and issues the City has an interest in.

Mayor Bellamy supported interviewing Mr. Kelley and Mr. Roberts; however, she felt it would be appropriate to have Mr. Hillier meet with Council separately to talk about his vision for the Airport, especially since he is currently the Chairman of the Airport Authority. Therefore, Mayor Bellamy moved to reappoint Mr. Hillier to serve an additional 4-year term, term to expire June 30, 2014, or until his successor is appointed; and to interview Mr. Kelly and Mr. Roberts for

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the vacancy left by Mr. Grotzinger. This motion was seconded by Councilman Davis and carried unanimously.

Civic Center Commission

The following candidates applied for a position on the Civic Center Commission: Dan Breneman, Bill Jones, Jeffory Quick, Jeremy Gillespie, Katrina Bragg, James Richards, Carol Ann McLendon and Linda Brandt. It was the consensus of Council to readvertise for the vacancies on the Civic Center Commission.

At the request of Councilman Russell, Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that his Committee will review Council's policy regarding city residency on our boards.

RESOLUTION NO. 10-142 – RESOLUTION REAPPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Vice-Mayor Newman said that the following candidates applied for a position on the WNC Regional Air Quality Agency: Rachael Bliss, Dennis Miller and Eric Rainey. Mr. Loyd Kirk is the seated member who has served one term with a 95% attendance. He has asked to be reappointed.

Councilwoman Manheimer said that she has been contacted by a group asking City Council to take a position on the very controversial concrete plant issue in northern Buncombe County which public hearing will be held before the WNC Regional Air Quality Agency. They are asking for City Council's position as we make appointments to that board. The Buncombe County Commissioners have taken a position against the project. She is bringing this up at this meeting because the public hearing on this will take place before the next City Council meeting.

After Councilman Davis spoke highly of Mr. Kirk and his involvement on the Agency, he moved to reappoint Loyd Kirk to serve an additional six year term, term to expire July 1, 2016, or until his successor is appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 101

RESOLUTION NO. 10-143 – RESOLUTION APPOINTING A MEMBER TO THE TRANSIT COMMISSION

Vice-Mayor Newman said that the candidates applied for a position on the Transit Commission: Rachael Bliss, Julie Mayfield, Brett McCall, Joan Gryscavage, Kevin Cross, David John Boshart and Pamela K. Fisher.

Councilman Smith moved to appoint Julie Mayfield to the Transit Commission to serve the unexpired term of Ms. Hanna Raskin, term to expire December 31, 2012, or until her successor is appointed. This motion was seconded by Councilwoman Manheimer and carried on a 6-1 vote, with Councilman Russell voting "no" in that he felt Council should interview Ms. Mayfield first.

RESOLUTION BOOK NO. 33 – PAGE 102

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Dr. Albert Anderson spoke about the need for better police protection. At the request of Mayor Bellamy, City Manager Jackson said that he would follow-up with Dr. Anderson, investigate his concerns, and report back to Council and Dr. Anderson with his findings.

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Mr. James Latimore, representing Veterans for Peace, urged Council to place on their agenda (and adopt) a resolution advising North Carolina delegates in the U.S. Congress and Senate and President Obama to vote in support of a timely withdrawal plan for our troops in Afghanistan and Iraq.

Mr. Jerry Rice felt it was in Council's best interest to keep the programming of the WNC Community Media Center (formerly URTV) going and hoped that the audit and findings are made public.

Mr. John Blackwell urged Council to not shut down the WNC Community Media Center and outlined several options to keep their doors open using less money.

Dr. Herbert Johnson urged Council to make the financial records of the WNC Community Media Center transparent.

Ms. Davyne Dial, former WNC Community Media Center Board member, provided Council with a Federal Form 990 of URTV Inc. showing a deficit of $62,239 for 2007. She said there are other alternatives than closing their doors.

Councilwoman Manheimer felt Asheville may be missing funding opportunities and was interested in pursuing re-engaging a lobbyist on a federal and state level. Mayor Bellamy felt this issue should be an agenda item that ultimately will require staff input and suggested Councilwoman Manheimer follow the process for placing items on the Council agenda.

The following claims were received by the City of Asheville during the period of May 14 – June 3, 2010: John Vann (Streets), Sheila Plemmons (Water), Rachel Jernigan (Water), Brian Roberts (Sanitation), Bernadette Wolf (Parks & Recreation), Tanya McDaniel (Transit), Jean Beachboard (Civic Center), Michael Thomas (Water), Harry Woogon (Streets), and Laurel York (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:21 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – June 22, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: William A. Russell Jr. (family emergency)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE SISTER CITY DELEGATION FROM CHIAPAS, MEXICO

Mayor Bellamy said that our relationship with San Cristobal is active and vibrant, filled with cultural, humanitarian and educational projects. Ines Paniagua Solis, as co-chair, has been to Asheville twice and is familiar with the City and its many amenities. She is also working with us on several art/craft project possibilities. The delegates have toured Asheville today visiting Handmade in America, the Folk Art Center, Warren Wilson College, Curbie Recycling and Mountain Bizworks. Tomorrow will be spent in Cullowhee with WCU and it's Cherokee Language Program. A delegation from ASCI and WCI travelled to UNC-Chapel Hill last fall to visit there and try to work out an agreement to exchange students and staff. They will be continuing this discussion that will also include performing arts, and local artisan programs. Friday will be spent at Mars Hill College to reconnect with long-time supporters there of San Cristobal indigenous peoples.

She presented the dignitaries each with a small token gift and a gift to send back to the Mayor, along with a letter of greeting.

She then recognized Asheville Sister Cities International President Andrew Craig who introduced Sarah Delcourt ASCI Chair for San Cristobal. Ms. Delcourt introduced Dely Paniagua - Mayor 's representative and Dir. of Recreation and Culture for the City of San Cristobal; Ines Paniagua Solis - Sister Co-chair for Asheville Committee in San Cristobal - and works with Grameen, Inc. for a Mayan Artisan Program; Dr. Andreas Fabregas Puig, Rector of Universidad Intercultural de Chiapas (UNICH); and Dr. Claudio Sartorello, Director of bi-lingual and Intercultural education at UNICH, She said that the 5th delegate who will not arrive until later is Hiram Marina - Producer of the production Palenque Rojo.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 8, 2010

B. ORDINANCE NO. 3878 - BUDGET AMENDMENT TO RECEIVE REIMBURSEMENT FROM THE N.C. DEPT. OF CRIME AND PUBLIC SAFETY

FOR OVERTIME EXPENDITURES RELATED TO THE FIRE DEPARTMENT'S REGIONAL HAZARDOUS MATERIALS TEAM

Summary: The consideration of a budget amendment, in the amount of $70,000, to receive reimbursement from the North Carolina Department of Crime Control and Public Safety, for overtime expenditures related to the Asheville Fire Department's Regional Hazardous Materials Team.

The Asheville Fire Department has received reimbursement funds from the North Carolina Department of Crime Control and Public Safety. These funds have been received in 2009 and 2010. The Department utilizes General Fund money to pay for overtime for hazardous materials training and emergency responses throughout the Western North Carolina region. The North Carolina Department of Crime Control and Public Safety reimburses the City of Asheville for these expenditures as they relate to regional hazardous materials responses. These funds that have been received will be used to reimburse the overtime expenditures that have come out of the General Fund.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages.

Pro:

- This action allows for reimbursement of overtime expenditures without utilizing city tax funds.

Cons:

- None identified

These funds, which have been obtained through reimbursement payments from the North Carolina Department of Crime Control and Public Safety will be used to offset Fire Department overtime expenses.

City staff recommends City Council approve the budget amendment to receive reimbursement from the North Carolina Department of Crime Control and Public Safety, for overtime expenditures related to the Asheville Fire Department's Regional Hazardous Materials Team.

ORDINANCE BOOK NO. 26 – PAGE 29

C. RESOLUTION NO. 10-144 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO PROGRESS ENERGY CAROLINAS INC. FOR ELECTRIC POWER LINES ON PROPERTY LOCATED OFF OF BREVARD ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to Progress Energy Carolinas, Inc. for electric power lines on property located off of Brevard Road, identified as PIN # 9636-10-3860-00000.

Henderson County owns a large acreage tract of property located off of Brevard Road in Buncombe County and according to Deed Book 2852 Page 775, the City of Asheville has certain reversionary interest in said property. Progress Energy Carolinas, Inc. (PEC) currently owns a power line easement through a narrow portion of this property measuring a total of 0.16 acres. Citing increased demand for electricity by PEC's customers, PEC requests that this easement area be expanded in width from 100 feet to 170 feet, thus increasing the overall easement area to 0.31 acres. This increased area would allow for an upgrade to the electric transmission line. Given the City of Asheville's reversionary interest in the property, PEC requests that the City of Asheville execute the easement alongside Henderson County.

This proposal has been reviewed by the affected City departments, and no objections have been noted. Henderson County has approved and executed the easement.

This action complies with the City's strategic operating plan in that it supports our local economy and capacity for sustainable development.

Pros:

- Improved electrical service for the community
- Minimal impact to the property

Con:

- None

No monetary consideration is being received by the City of Asheville in this transaction.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 103

D. RESOLUTION NO. 10-145 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ACCEPT FUNDS IF AWARDED FOR THE 2010 BYRNE JUSTICE ASSISTANCE GRANT – LOCAL SOLICITATION

ORDINANCE NO. 3879 - BUDGET AMENDMENT TO ACCEPT FUNDS FOR THE 2010 BYRNE JUSTICE ASSISTANCE GRANT – LOCAL SOLICITATION

Summary: The consideration of (1) a resolution authorizing the City to apply for and accept funds if awarded for the 2010 Byrne Justice Assistance Grant – Local Solicitation and (2) the accompanying budget amendment in the amount of $89,881.

The Asheville Police Department (APD) requests permission to apply for and accept funds from the Byrne JAG 2010 – Local Solicitation. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. The Asheville Police Department and Buncombe County Sheriff's Department have been allocated $89,881 with Asheville receiving $64,389 and Buncombe County receiving $25,492. The distribution of funds has been approved by both entities through a signed Memorandum of Understanding.

APD plans to purchase 12 in-car video systems capable of wireless that will interface with our existing equipment (radar, computer, etc.). The resulting video recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens. The digital cameras provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could aid in mitigating potential civil liability for the City of Asheville by capturing in detail the actual events that transpired. The secure evidentiary storage and wireless upload capabilities of the system creates a user friendly system that is extremely secure and versatile.

The Buncombe County Sheriff's Department plans to purchase a robotic mobile surveillance system to enhance officer safety. The initial deployment of a robotic device will minimize the need for human exposure and potentially violent or hazardous incidents.

There will be an expense of $64,389 by the APD for the in-car video system. The Buncombe County Sheriff's Department will expend $25,492 for the purchase of a robotic mobile surveillance system. This accounts for the total allocation of $89,881 for this Grant.

This is a 100% non-matching grant that will enable the APD to increase officer safety, and video evidentiary value through documentation of incidents via in-car camera recordings.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing In-Car video will allow for better documentation of police related incidents.
- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

: There is no fiscal impact at this time for City Council to approve the resolution granting APD's application for and acceptance of funds if this grant is awarded. There will be maintenance and replacement costs for the equipment, which will need to be included in future fiscal year budgets. The average lifespan of the units is appropriate 5-7 years. Replacement cost per unit would be approximately $5,500.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to apply for and accept grant funds if awarded through US Office of Justice Programs; and (2) the associated budget amendment, in the amount of $89,881.

RESOLUTION BOOK NO. 33 – PAGE 104

ORDINANCE BOOK NO. 26 – PAGE 231

E. RESOLUTION NO. 10-146 - RESOLUTION APPOINTING RICHARD HALL AS THE RIVERLINK BOARD OF DIRECTOR'S MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: Mr. Robert Shepherd is no longer on the RiverLink Board of Directors, thus leaving a vacancy for a member of the RiverLink Board of Directors on the River District Design and Review Committee until September 1, 2010. The RiverLink Board of Directors would like to replace Mr. Shepherd with Mr. Richard Hall, as one of the two members of the RiverLink Board of Directors, to serve the unexpired term of Mr. Shepherd, term to begin July 1, 2010, and expire September 1, 2010, and then a full three-year term, term to expire September 1, 2013, or until his successor has been appointed.

RESOLUTION BOOK NO. 33 – PAGE 105

F. RESOLUTION NO. 10-147- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE MEMORANDUM OF AGREEMENT WITH THE NORTH CAROLINA DIVISION OF THE FEDERAL HIGHWAY ADMINISTRATION, THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING PACK SQUARE PARK

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville an amendment to the Memorandum of Agreement regarding the Pack Square Park.

In 2007, a Memorandum of Agreement (MOA) was executed amongst the Federal Highway Administration (FHWA), The North Carolina State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP), as signatories, and the Pack Square Conservancy (PSC), City of Asheville (City), and North Carolina Department of Transportation (NCDOT) as concurring parties.

This MOA was a requirement of the City receiving federal funding on behalf of the PSC for the construction of the Park. The MOA has eleven stipulations that cover various aspects of the Park's design, construction and administration. All of these stipulations have been satisfied except for three related to pavilion design, architectural survey and duration.

The FHWA is in agreement with extending the duration of the MOA for an additional five years. This will enable completion of the plan for installation of a pavilion.

This action complies with the City Council Strategic Operating Plan in that we leveraged internal and external partnerships for pursuing capitol improvements and infrastructure projects.

Pros:

- The City will fulfill its responsibility in the original MOA.
- The City will comply with the Federal requirements associated with receiving the construction funds.

Cons:

- The City will need to assist with coordination to assure the revised MOA is successfully completed. This will involve staff time.

None, unless the MOA isn't adhered to. If this is neglected, then it is possible that the City would have reimburse the entire Federal grant in the amount of $3,899,860.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign the amendment to the Memorandum of Agreement.

RESOLUTION BOOK NO. 33 – PAGE 106

G. RESOLUTION NO. 10-148 - RESOLUTION OF SUPPORT FOR ADOPTION OF THE NORTH CAROLINA MOBILITY FUND

Summary: The State of North Carolina is in need of new funding sources, generating revenues beyond the "Equity Formula" to help address North Carolina's critical transportation needs. The current funding levels at local, State and Federal levels are insufficient to meet the state's transportation needs, especially with respect to projects having regional, statewide and national significance. The State of North Carolina continues to grow at a rate higher than the normal average. The Asheville City Council supports adoption of the "North Carolina Mobility Fund" by the North Carolina General Assembly during its 2010 Legislative Session as a very positive means of providing upwards of $300 Million in additional funds for transportation projects of regional or statewide significance.

RESOLUTION BOOK NO. 33 – PAGE 107

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

ADDITION TO THE AGENDA - PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS

Mayor Bellamy said that she added to the agenda, at the request of Councilman Smith, the issue of the pedestrian walkover bridge at Hillcrest Apartments, due to the recent pedestrian fatality adjacent to Hillcrest Apartments.

Councilman Smith felt this matter is of some urgency. His thoughts go out to Charlton Owens, father, and the entire family of Anthony Ray Gilmore who was the pedestrian that was killed crossing I-240. Mr. Owens has (1) collected 300 signatures on a petition asking that the pedestrian bridge be re-opened, (2) opened a fund to help pay for funeral costs; and (3) asked that the pedestrian bridge, if re-opened, be named in honor of his son. Councilman Smith felt that when the bridge was closed back in 1999, there was a different attitude towards community policing and containment of crime and drugs. He felt it was time to reassess whether the bridge should be re-opened. He felt the City should provide the Hillcrest residents with quality infrastructure that we would provide in any place in Asheville. Whether or not the bridge is re-opened, he felt the sidewalk should be repaired and cleaned, and urged all residents to use safe routes even if it means adding a little more time to your travel. He did thank Councilman Bothwell for his efforts with Asheville on Bikes to clean up the sidewalk on the south side of I-240.

Mayor Bellamy suggested we refer this issue to the Public Safety Committee for a comprehensive discussion about this issue. She said that the Housing Authority has already planned a Hillcrest community meeting on this issue. The West End/Clingman Avenue neighborhood needs to be included in discussions as they are impacted as well. She did note that there are sidewalks all the up Hill Street and there are the stairs that lead to Westgate Shopping Center.

City Manager Jackson felt staff needs further direction and possibly some assistance in facilitating a comprehensive discussion. He asked if Council was directing the Public Safety Committee to hold public forums or for staff to facilitate comprehensive community discussion and then bring the results of that discussion to Council. He felt that a comprehensive discussion would require a professional facilitation and that we consider engaging a private consultation for that purpose.

Councilman Davis felt it was important to realize that the pedestrian bridge was closed for a reason and agreed it was important to have a dialogue with the Housing Authority, the Hillcrest neighborhood, the West End/Clingman Avenue neighborhood, Police Chief Hogan and City staff. He wasn't sure if it was best facilitated in the Public Safety Committee or whether Council should devote a worksession to this issue, without a facilitator. We need to recognize that as tragic as the accident was, there is also the tragedy of lives affected and lost by drugs and crime, which had a lot to do with the original bridge closure.

Councilman Bothwell, while investigating the sidewalk, noted that there is a nice stairway down to Roberts Street from the little sidewalk. He felt that the sidewalk is worth opening up and even the Police bike patrol can use it.

Mayor Bellamy felt that the discussion will include the illegal activities in that area. She asked that we keep in mind that the gates installed and the checking ID's were put there for a reason.

Councilman Smith felt that we now have 12 more years of technology and there may be new solutions to address crime and drugs. We need to make sure that the Housing Authority and

law enforcement have a pivotal role in this comprehensive discussion. He supported referring this to the Public Safety Committee, without a facilitator, for action in 6-8 weeks

Vice-Mayor Newman agreed that the Public Safety Committee should review this matter initially, but felt ultimately the entire Council will want to comment on this. He felt the Committee could review this primarily for the purpose of gathering facts and maybe a recommendation will come out of it. He felt they could hold a meeting and hear from the key groups who have a perspective they want to hear. He knows that the decision to close the pedestrian bridge was closed for real reasons, but a long time has gone by and felt we should re-visit the issue without rushing through it.

Mayor Bellamy said the Public Safety Committee should invite representatives of the Housing Authority, N.C. Dept. of Transportation representatives, representatives of the Hillcrest neighborhood, and representatives of the West End/Clingman Avenue neighborhood. She asked if the Housing Authority Board would prepare minutes of the meeting for Council information. She also asked if the Housing Authority Board would offer their position (as owners of the property) on this matter as well.

Vice-Mayor Newman questioned if we needed an outside facilitator for this meeting since we deal with important issues all the time without outside facilitation.

City Manager Jackson said that if Council is looking for a comprehensive community discussion involving the N.C. Dept. of Transportation, the Housing Authority, community and other interests, then that is where we need facilitation. He felt City staff could engage Housing Authority staff, the N.C. Dept. of Transportation staff and law enforcement officials and do a physical assessment and bring that physical assessment and history to the Public Safety Committee. And, then determine what kind of community input Council might want to have at that point in time. If Council is interested in obtaining community interest first, then that would be a different process.

At Mayor Bellamy suggestion, it was the consensus of Council to (1) ask the Housing Authority to facilitate input from the Hillcrest residents, (2) ask the Chair of the West End/Clingman Avenue Neighborhood Association, with possible assistance from the Coalition of Asheville Neighborhoods, to help facilitate input on this issue; and (3) ask Ms. Pattiy Torno, Chair of the River District Design Review Committee, to hold a meeting with her stakeholders on this issue. Those organizations are asked to provide their minutes and other information on this issue to the Public Safety Committee. City staff will provide the statistical data to the Public Safety Committee.

Mayor Bellamy said that in order for these meetings to occur, she would place this item on the August 24 agenda, at which time the Public Safety Committee will update City Council.

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION UPDATE

This update was delayed.

B. WNC COMMUNITY MEDIA CENTER UPDATE

WNC Community Media Center Vice-Chair Bob Horn updated Council on the WNC Community Media Center and provided them with information about the WNC Community Media Center and their activities. He showed Council videos on the summer youth camp promotion and a promotion for the station. He thanked City Council, citizens and promoters for their support.

In response to Councilman Smith, Mr. Horn explained that they plan to continue with the Media Center at least until this time next year, with funding from the City and County.

C. ASHEVILLE ENERGY INDEPENDENCE INITIATIVE PILOT PROGRAM DESIGN AND DEVELOPMENT

Ms. Maggie Ullman, the City's Energy Coordinator said that Council directed staff in January 2010 to design a pilot PACE program for Council consideration. Staff is providing an update to Council on progress toward a pilot program.

The following is a progress update is on the feasibility analysis (1) median household income; (2) total housing stock; (3) age of housing; (4) availability of qualified vendors; (5) annual residential energy usage; (6) existing energy related financial incentive programs; and (7) available home retrofit financing options. There is adequate market opportunity for a pilot loan program that supports energy efficiency and renewable energy investments.

The following is a progress update on the pilot program design (1) in-house program administration; (2) residential loans; (3) 60-100 homes; (4) prescriptive measures list and a custom measure route; (5) quality control through special building permit; and (6) prequalified contractors. Program design 80% complete pending legislative authority and outstanding regulatory factors.

Outstanding issues are (1) Federal level: Mortgage companies (a) Prohibiting senior liens and limiting transferability with property; and (b) San Francisco and Boulder County have suspended programs until further agreement is reached; and (2) State level: Clear legislative authority - Impacts loan security, capitalization of the fund, and loan repayment methods. Pursue legislation to enable workable model within parameters supported by mortgage companies.

Based on Council's previous direction, staff is pursuing legislative amendment in 2010 Short Legislative Session. Legislative partners include UNC School of Government, City of Asheville, City of Charlotte, City of Raleigh, Town of Chapel Hill and Town of Carrboro.

By September 1, option 1 is with clear legislation, staff would present a final recommendation for a pilot program that takes into consideration parameters supported by mortgage companies. Option 2 is lacking clear legislation. Staff would pursue legislative authority in 2011 Long Session (January 2011). Staff would continue to track progress on the Federal level with mortgage companies.

Vice-Mayor Newman said that there is enthusiasm and support in Asheville for the City to create opportunities for homeowners and business owners to invest in clean energy for their businesses and their homes. He believed that what Asheville is doing is important to many cities across the state. He hoped that we can get a program operational this year, even if it is a pilot program. Regardless of what happens in the Short Session this year, it's clear that next year there will be a much larger legislative discussion about these community-based or even state-based clean energy financing models. The compelling need in the state is to get something going so that everyone else can learn how it's working and then replicate what is working well. He asked our City Manager, City Attorney and others involved to do everything they can to make sure we do come out of this Short Session with the ability to get something up and running. He will be in Raleigh next week and he will try to meet with our delegation and other legislators who are interested in this.

Mayor Bellamy said that she attended an event hosted by the Board of Realtors and discovered that we need to involve realtors in these discussions as they can be a potential partner to help the community understand and sell the products. They can also provide existing homeowners information on greening their homes.

In response to Vice-Mayor Newman, Ms. Ullman said that staff will report back to Council prior to September 1 if, and when, there is clear legislation.

D. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH TRIANGLE J COUNCIL OF GOVERNMENTS ACCEPTING SUB-GRANTEE FUNDS FROM THE DEPT. OF ENERGY CLEAN CITIES GRANT

BUDGET AMENDMENT ACCEPTING FUNDS FROM THE DEPT. OF ENERGY CLEAN CITIES GRANT

Mayor Bellamy announced that these items have been removed from the Agenda per staff's request.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING TO CONVERT THE EXISTING RESIDENTIAL STRUCTURE TO OFFICE USE

ORDINANCE NO. 3880 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING TO CONVERT THE EXISTING RESIDENTIAL STRUCTURE TO OFFICE USE

Mayor Bellamy opened the public hearing at 5:55 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone property located on 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning to convert the existing residential structure to office use. This public hearing was advertised on June 11 and 18, 2010.

The applicant is requesting a Conditional Zoning for one parcel located at the corner of Sand Hill and West Oakview Roads from RM-6 (Residential Multi-Family Low Density District) to O (Office District) in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO).

The site consists of a single parcel located at 902 Sand Hill Road with an area of approximately 1.02 acres (0.98 acres according to Buncombe County Tax records). The lot, located at the southwest corner of Sand Hill and West Oakview Roads, is currently zoned RM-6 and is similarly zoned to the west and adjacent to RS-4 to the south. Areas are zoned RS-4 across West Oakview to the east and CBI across Sand Hill Road to the north. There are single-family homes to the south, the Oak Forest Presbyterian Church across West Oakview to the east and a convenience store across Sand Hill Road to the north.

The lot contains a two-story brick and frame residential structure (2,080 square feet) and a detached frame garage (576 square feet). The applicant is proposing to maintain the existing structures and to convert the interior use from residential to office. Vehicular access to the structure will remain in the current location from West Oakview Road. A small gravel parking area is proposed and provides six spaces (including one accessible and one bike space).

Landscaping and open space are required on this site due to the rezoning and includes a Type A (20') property line buffer along the southwestern and southeastern boundaries adjacent to RM-6 and RS-4, street trees and parking lot landscaping. There is significant mature vegetation on the site that will be used as credits for much of the required landscaping around the perimeters. Fifteen percent of the site is required to be designated as open space and the applicant has provided more than 70%.

Both Sand Hill Road and West Oakview Road are identified as needed linkages for sidewalks and none currently exist, however the applicant has requested a fee-in-lieu under Section 7-11-8(e)(4) of the UDO, based on the cost of the sidewalk installation exceeding 15% of the total project cost. This request is granted by the City Traffic Engineer.

This project was recommended for approval with conditions by the Technical Review Committee (TRC) on May 3, 2010. No members of the public were present to speak on this proposal, however; staff has received notice of opposition from a nearby property owner. His concerns were regarding whether this action would make it easier for further non-residential uses to expand into the single-family residential neighborhoods and discomfort with the office incursion into the residential area.

The Planning & Zoning Commission recommended approval of this proposal at their meeting on June 2, 2010 (5-0 vote). No members of the public were present to speak. Staff has received one opposition who was concerned about non-residential uses in this established neighborhood.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   Aside from the creation of a small, six-space gravel parking area off of the existing driveway and turnaround, there is no proposed development of the land. A 20' Type A vegetated buffer will be installed along the southern property line, adjacent to the RS-zoned single-family house and is expected to mitigate any impact from the parking area. The existing building will remain and be used for the office use, resulting in very little visual change to the site and neighborhood.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposal is not expected to injure the value of adjoining or abutting properties. Since there is virtually no physical change to the site, there should be no impact to abutting properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed office use is compatible with the other non-residential uses at this four-way intersection (church, convenience store and vacant parcel) and should be similarly compatible with the adjacent residential neighborhood. The heavy traffic and lights from the convenience store to the north result in a situation where non-residential use may be more suitable than residential.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The *Asheville City Development Plan 2025* provides strategies and goals that support this conditional zoning request, especially considering the proposal to retain the existing residential structure and convert it to office use, leaving the site largely unchanged. Although the *Plan* does recommend protecting and preserving residential neighborhoods and uses, the City recognizes that on high-traffic, non-residential intersections such as this one, allowing for a non-residential use may be appropriate.

   The *Plan* directly supports adaptive reuse of structures, stating that "it is important to find new, compatible uses for buildings if we are to preserve the architectural character of the community. In addition, if these buildings stand vacant and dilapidated, they promote neighborhood decline". While the use will be office, the house will remain and the site will not appear vastly different.

   Allowing for the proposed office use supports small business development, which directly aligns with City Council's goal of *Job Growth & Community Development.* Additionally, adaptive reuse of existing buildings is the most sustainable construction (according to the *2025 Plan,* p.74*),* supporting Council's *Green & Sustainable* goal.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project site is located at an intersection with a major road (Sand Hill Road) and less than a mile from US 19/23 and I-40. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for continued service to the site.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal retains the existing residential structure with minimal physical changes to the site, maintaining the residential character of the area while allowing for a new use.

- Significant mature landscaping will be retained on-site and additional landscaping will provide a buffer for the residential use to the south.

Con:

- The rezoning to Office use may be perceived as allowing non-residential encroachment into the residential neighborhood.

Based on the above findings, staff recommends approval of the conditional zoning as requested by the applicant.

Mr. Gerald Green, representing the applicant, explained how they will maintain the character of the house and site. He said they will convert the house into an accounting office, where most of the 6 employees will work remotely. He said that the only visible change will be in the parking area which will have a sidewalk up to the house with a ramp. He explained why they are requesting a fee in lieu of for the sidewalk, primarily due to the trees that would have to be removed to build the sidewalk.

Mayor Bellamy closed the public hearing at 6:01 p.m.

In response to Councilwoman Manheimer about the increased traffic in that area, Director of Transportation Ken Putnam said that he would check with the N.C. Dept. of Transportation about their plans for a traffic signal or a round-about at the intersection of Sand Hill Road and West Oakview Road. Mayor Bellamy asked that Mr. Putnam express Council's support for a traffic control device at that location.

Ms. Bernstein responded to Mayor Bellamy regarding the property being on a septic tank.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3880, to conditionally zone property located on 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Office District/Conditional Zoning to convert the existing residential structure to office use, to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) All activities associated with the office use, including deliveries and refuse collection, shall be conducted between the hours of 7:00 am and 10:00 pm; and (7) Signage should be limited to a residential scale, may not be internally illuminated and should not exceed six feet in height and 15-square feet per sign face. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION LOCATED AT 60 COURT PLAZA FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE CONSTRUCTION OF A 33,542 SQUARE FOOT ADDITION TO THE EXISTING COURTHOUSE BUILDING AND ASSOCIATED ROADWAY RECONFIGURATION WITH A REQUEST FOR A LANDSCAPE MODIFICATION

ORDINANCE NO. 3881 - ORDINANCE TO CONDITIONALLY ZONE THE BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION LOCATED AT 60 COURT PLAZA FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE CONSTRUCTION OF A 33,542 SQUARE FOOT ADDITION TO THE EXISTING COURTHOUSE BUILDING AND ASSOCIATED ROADWAY RECONFIGURATION WITH A REQUEST FOR A LANDSCAPE MODIFICATION

Mayor Bellamy opened the public hearing at 6:07 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the Buncombe County Courthouse life safety addition located at 60 Court Plaza from Central Business District to Central Business District/Conditional Zoning for the construction of a 33,542 square foot addition to the existing courthouse building and associated roadway reconfiguration with a request for a landscape modification. This public hearing was advertised on June 11 and 18, 2010.

This is a request for review of a proposed Conditional Zoning in the Central Business District (CBD) to accommodate the construction of a life safety addition to the Buncombe County Courthouse.

The project area consists of 2 parcels with an approximate area of 1.06 acres. The site is located at 60 Court Plaza, at the southwest and southeast corners of College and Davidson Streets in the CBD and is the current location of the Buncombe County Courthouse and a small surface parking lot owned and operated by the County.

The proposal includes the construction of a 9-story tower addition onto the back (east) side of the Courthouse building and includes a consolidated entry / exit lobby, provides upgraded access to the upper stories of the Courthouse via four elevators and two separate stairways and includes two accessible bathrooms on each level through the 8th floor. The addition comprises 37,712 square feet overall with a 5,646 square foot footprint. The addition will be 139'2" in height (the Courthouse is 197' in height).

Currently all entry into the County Courthouse is through a small door and narrow hallway off of College Street. With this proposal, the main point of entry remains along College Street but will be enlarged to provide an entry vestibule (offering refuge during inclement weather), upgraded areas for security guards and a separate security office, entry points with two metal detectors and an handicapped accessible gate and an adjacent exit area. This consolidated ground level entry/exit lobby enhances security options for the Courthouse in a way to make for more efficient check-in and allows guards to monitor all coming and going from the building.

The existing plaza along College Street will be significantly enhanced and enlarged with benches, increased landscaping, pedestrian pathways, brick pavers and monumental steps leading up to the entry lobby. These improvements will aid in providing clear visual direction to pedestrians as to where to access the Courthouse as well as offering public gathering spaces. Sidewalks directly along College Street will remain less than the required 10' in width to preserve existing mature street trees but other larger, accessible pedestrian pathways are integrated throughout the plaza.

The applicant is requesting a modification to required landscaping requirements for street trees along Davidson due to existing utility and right-of-way constraints.

This project proposes the permanent closure of a portion of Davidson Street to private vehicles. Plans show the street as privately maintained and accessible only to police and associated personal via a security gate at the southern intersection with Marjorie Street and a smaller, diverted "exit-only" at College Street. While the life safety addition expands into the existing Davidson roadway, the resulting private street will remain wide enough for emergency fire access to the jail building. This action requires a separate review process, approved by City Council. This proposed closure has given City staff an opportunity to begin assessing the potential benefit of seeking out another connection in the vicinity, such as extending the Valley Street right-of-way for a future connection back into South Charlotte Street.

The applicant has provided a tentative construction plan and timeline, indicating 18-months to complete construction of the Life Safety Addition. Intent to submit a Phase II has been expressed, which would include a new structure fronting along College Street, spanning across the Davidson opening. The Phase II project would likely significantly alter the appearance of the entry and plaza and will require review by the Downtown Commission, TRC, P&Z and City Council.

The design for this project was reviewed and unanimously approved by the Downtown Commission on March 12, 2010. Additionally, The Buncombe County Courthouse (1927-1928) is listed on the National Register of Historic Places and the proposal follows the guidelines set forth by the Secretary of the Interior's Standards for new exterior additions to historic buildings (Chapter 14). The Commission granted a modification to increase setback from College Street to align with the façade of the existing Courthouse building and to provide more area for the enhanced public plaza. The Commission review also included demolition of the Courthouse Annex building, located at 189 College Street, with the applicant proposing to use that lot for staging and lay-down of materials during the construction process. The Commission did not support the demolition of this structure, asking for an alternative site to be used and/or for the building to remain standing until the future Phase was imminent. *The demolition of 189 College Street is not shown in the current plans submitted by the applicant.*

The Technical Review Committee evaluated this request on May 3, 2010, and it was approved with conditions. No opposition has been received as of the writing of this report. The Planning & Zoning Commission unanimously recommended approval of this proposal at their regular meeting on June 2, 2010. There was no public comment.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements and can be regarded to actually improve the public health and safety by providing improved access to and from the courthouse building. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate**

vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The proposed development of the land is compatible with the topographic features on the site. There is a slight grade change (13') from north to south which is mitigated by the installation of a retaining wall along the Davidson ground-level frontage (similar to the existing conditions) and accommodated at College Street through the plaza design and monumental steps leading pedestrians to the entry point.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The development is not expected to injure the value of adjoining or abutting properties. The use enhances and improves the existing government and public safety functions along this block (all adjoining and abutting parcels are owned by the County).

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed development is compatible with the Buncombe County Courthouse in design and character. The proposal follows the guidelines set forth by the Secretary of the Interior's Standards for new exterior additions to historic buildings (Chapter 14) and the addition is not visible from Pack Square Park. The addition is appropriate to the area, which has evolved as a governmental "campus" location for City and County uses.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The *Asheville City Development Plan 2025* makes specific references to the importance of historic preservation and its role in smart growth (p. 80). The proposed life safety addition makes it feasible for the County to continue operating in the National Register Courthouse building, make use of inaccessible upper stories and keep these governmental functions in their historic, downtown location.

   Both the *Downtown Asheville Center City Plan* and the *Downtown Master Plan* stress that having a mix of uses – which includes civic (governmental) – is and asset and vital for the strength of downtown. Specifically, the City and County services are essential to bringing people downtown, providing employment and reinforcing downtown's status as the center of the region. The *Center City Plan* states that it is important to consolidate governmental uses to the existing "campus" location (p. 60-61).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposal is located near major road facilities and along multiple City bus routes in the walkable Central Business District. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday, no traffic impact statement is warranted.

The proposed permanent closure of Davidson Street between College Street and Marjorie Avenue poses no significant impact for motor vehicle access. Both College Street and Marjorie Street will be accessible from Valley Street. The proposed gate for Davidson Street north of Marjorie Street is set back such that typical queuing for its operation will not interfere with Marjorie Street traffic flow.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides needed safety upgrades to the Buncombe County Courthouse building, prolonging the usability of this iconic historic structure.
- The permanent road closure improves security around the jail and courthouse areas.

Cons:

- Although more of a consideration than a concern, the future phase as shown on the master plan will dramatically alter the appearance of the current proposal (both structure and plaza) as seen from College Street.
- A permanent road closure slightly diminishes public vehicular access to this area of downtown, although this could easily be offset by modifications to other area road connections that could be considered in the future.

Staff recommends approval of the conditional zoning request as submitted by the applicant, including the modification to eliminate street trees along the Davidson frontage.

Assistant Buncombe County Manager Jon Creighton explained that this life safety addition will allow them to modernize the Courthouse. It will also allow them to use all the floors, which presently anything above the 10th floor is not in use. In the long-term the addition will give them a public entrance off College Street.

Mayor Bellamy closed the public hearing at 6:12 p.m.

City Attorney Oast said that the closure of Davidson Street will be coming back to City Council. He said that Council's vote on this conditional zoning should not affect Council's vote on the road closure, which is subject to separate consideration.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3881, to conditionally zone the Buncombe County Courthouse life safety addition located at 60 Court Plaza from Central Business District to Central Business District/Conditional Zoning for the construction of a 33,542 square foot addition to the existing courthouse building and associated roadway reconfiguration with the approval for the landscape modification, to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Smith and carried unanimously.

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3882 - ORDINANCE ADOPTING FISCAL YEAR 2010-11 ANNUAL OPERATING BUDGET

Director of Administrative Services Lauren Bradley said that this report presents the Fiscal Year 2010/2011 Annual Operating Budget for adoption by City Council.

The Fiscal Year 2010/2011 Annual Operating Budget was formally presented to City Council on May 11, 2010. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 14, 2010, and May 21, 2010. City Council conducted a public hearing on the budget on May 25, 2010.

Budget Adoption

The net proposed FY 2010/2011 operating budget totals $136,095,766 and includes a General Fund appropriation of $91,635,962. There have been no changes to the Proposed Budget since it was presented to City Council on May 11th. The Proposed General Fund Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value, which represents no change from the current year tax rate. The Proposed General Fund budget also includes no appropriation from the City's fund balance. All essential City services are continued in the Proposed Budget.

Budget Ordinance Additions

Since the proposed budget was presented to City Council, based on recent developments, staff has identified two areas that warrant additional detail and clarification:

(1) 5% Sullivan Act Projects: As Council is aware, in FY 2009-10, the City received authorization from the State General Assembly to begin transferring up to 5% of Water Fund revenues to the general capital improvement program to fund water-related infrastructure projects. The City transferred the full 5% in FY 2009-10, which provided $1,657,481 in funding. At the June 8, 2010, meeting, Council approved the appropriation of $87,440 from this $1.66 million to cover the cost of installing concrete curb along Dogwood Grove Road. Therefore, the amount of Sullivan Act funds available to be carried over to FY 2010-11 total $1,570,041. Based on Council direction, an additional 1% of Water Fund revenue, totaling $341,000, will be transferred in FY 2010-11, which will bring the amount of Sullivan Act funds available in FY 2010-11 to $1,911,041. The budget ordinance includes authorization to make the following appropriations from this $1.9 million: 1) $1,710,000 for various infrastructure upgrades along Azalea Road, and 2) $110,000 for stormwater improvements along Ridge Avenue. The table below summarizes Sullivan Act funding and projects to date.

Revenue:	
FY 2009-10 Water Fund Transfer	$1,657,481
FY 2010-11 Water Fund Transfer	$341,000
Total Revenue	$1,998,481
Projects:	
Dogwood Grove (approved June 8)	$87,440
Azalea Road	$1,710,000
Ridge Avenue	$110,000

Total Projects	$1,907,440
Balance	$91,041

(2) Non-profit permit fee for special events: At its meeting on May, 25, 2010, the Asheville City Council affirmed that providing support to community events and programming is beneficial to the city of Asheville and serves a public purpose through economic and community development. As such, Council adopted a non-profit fee level, representing 75% reduction in any permit fees associated with producing an event on public property, which will take effect in FY 2010-2011. This fee will be available to any 501(c) organization recognized by the IRS. Staff has amended the Fees & Charges manual to reflect this addition.

(3) Capital Improvement Plan Street and Sidewalk Improvement Fund: Since the May City Council budget worksession, staff has been showing an allocation of fee-in-lieu of funds in the annual sidewalk program budget. However, the original proposed budget document did not reflect this appropriation. Staff has corrected the budget ordinance to include $143,000 from fee-in-lieu of funds in the annual sidewalk program budget. These funds will be applied consistent with the Council-adopted Pedestrian Thoroughfare Plan.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan in the following ways: (1) Operate the City of Asheville's organization to the highest fiscal responsibility; (2) Ensure financial accountability by matching resources with strategic initiatives and creating meaningful performance measures; and (3) Sustain a healthy fund balance in accordance with recommended State standards.

Pros:
- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year
- Proposed General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued

Con:
- None

As noted above, the Proposed FY 2010/2011 General Fund budget is balanced with no fund balance appropriation. Based on year-end projections for the current fiscal year and the planned expenses for FY 2010/2011, staff is estimating that at the end of FY 2010/2011 fund balance in the General Fund will equal 14.5% of expenses.

Staff requests that Council review the FY 2010/2011 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Mayor Bellamy said that after speaking with City Manager Jackson and Ms. Bradley she asked them to report back to Council any remaining balances in our capital projects. That will come back to Council with staff's quarterly report in September. She hoped that Council would support her request to add any of those cost savings towards sidewalks because they are important to our community. She also noted that staff will report to Council in late July about our sidewalk maintenance policy.

Director of Transportation Ken Putnam responded to Councilman Bothwell by explaining how the amount per linear feet for sidewalks varies from $20 to $100. Councilman Bothwell noted that $1.6 Million will build approximately 4 miles of sidewalks.

Mayor Bellamy said it was appropriate for citizens to petition their government for priorities within their community. With that said, and since Tunnel Road is a state road, she

asked Council, after the motion for approval of the budget, to ask the N.C. Dept. of Transportation (NC DOT) to install sidewalks in east Asheville on Tunnel Road. The request is coming to Council as a need identified by our community, which is no different than asking for Metropolitan Planning Organization dollars for sidewalks on Hendersonville Road. City government can't meet everyone's needs at the same time; however, as the demands for City services grow, ways of paying for those services are diminished. She felt it's time for a conversation about a bond referendum if we can't get other funding sources to pay for the large ticket items. We must think about who we want to be as a City as we are the largest city in Western North Carolina with a nighttime population of 76,000 and a daytime population of 150,000. Council doesn't want to raise property taxes, but people want increased services - we are at a crossroads. We must continue our conversation with the County Commissioners and look within ourselves to see what we need to do to meet the growing demand of our citizens. She felt we must plan for Asheville's future. There have been some items in this budget she has not agreed with, but it's about the budget as a whole. She thanked Council for identifying early that property taxes would not be raised during this economic climate and thanked the management team for creating a budget that still meets the needs of the community. She will support the budget with the mind that she wants to see increased funding for sidewalks and look for creative ways to do that. At the same time she would like to see increased funding for affordable housing, but we have to talk about where we want to go as a community. We must work with our partners to see how we grow and meet the needs of our citizenry who want to be a cleaner, greener, affordable, safe, sustainable, fiscally responsible city. We need to do it in a transparent way that doesn't break the backs of the people who live in our community.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3882, with the three modifications outlined above by Ms. Bradley. This motion was seconded by Vice-Mayor Newman.

Regarding sidewalks, Vice-Mayor Newman urged people who want sidewalks to continue to speak up and make the case for it being a priority for City Council. However, there are other places we need to work together on to get funds for sidewalks. The City has a role to play with their General Fund, but sidewalks are transportation and a lot of transportation funding in North Carolina happens through the state. Plus, the City has used Community Development Block Grant funds for sidewalk funding. He encouraged representatives to attend the Metropolitan Planning Organization (MPO) meetings to speak up for pedestrian safety, noting that the City has tried to re-program some of the priorities of the MPO to be more supportive of sidewalks.

Councilwoman Manheimer said that when you look at the size of our budget (after cutting $5 Million) there is not much left for capital improvements. We have taken approximately $1.6 Million (maximum 5% from our Water Utility Fund) to allocate toward capital improvement projects that meet the criteria for those funds. To get an idea of what one road project costs the City is the Azalea Road project which is approximately $1.6 Million. She agreed with Mayor Bellamy that bonds make more sense to fund some of these projects comprehensively. She agreed that we do need sidewalks, but it needs to be put in perspective in dealing with an economic crisis.

Councilman Bothwell noted that the addition to the water rate pulls in money from Buncombe County residents on the City's water system to help pay for sidewalks.

Councilman Smith felt Council has decisions to make – lower City services or find different ways to find new revenue streams. We are seeing some lower community services since we had to cut $5 Million from this budget. He too supported Mayor Bellamy's thoughts for a bond referendum for capital improvements.

In response to Vice-Mayor Newman, City Attorney Oast said that City Council has held the required public hearing and the statutes set out a particular process. In view of that process, it would be his opinion that any public comment at this time would be out of order.

The motion made by Councilwoman Manheimer and seconded by Vice-Mayor Newman carried unanimously.

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Mayor Bellamy said that because of the outcry from residents for sidewalks on a portion of Tunnel Road in east Asheville, she asked if Council would be willing to show their support for the request by adopting a motion asking staff to prepare a resolution (to be brought back to Council for action) directing the Mayor to sign a letter asking the NC DOT to fund that request for sidewalks.

Councilwoman Manheimer moved to ask staff to prepare a resolution (to be brought back to Council for action) directing the Mayor to sign a letter asking the NC DOT to fund that request for sidewalks. This motion was seconded by Councilman Bothwell.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Newman was concerned that Council is being asked to take a position on a specific sidewalk project without it being on the formal agenda. He did support sidewalks on Tunnel Road, but he also supports them on Patton Avenue, Sweeten Creek Road, and other state roads that are high priorities in our Pedestrian Plan. He felt we need to think through what is the best way to be most effective in terms of our relationship with the NC DOT.

In response to Vice-Mayor Newman, Mayor Bellamy said that she has previously asked City Manager Jackson to prepare information on sidewalks, including our priority sidewalk projects, updates on our current sidewalk projects, etc. for Council discussion at the August 10 meeting. Since City Council is slated to hold a community meeting in East Asheville at the end of August she felt it would be appropriate for Council to hear the information first in order to provide feedback.

Councilman Smith supported sidewalks all over the City, but was concerned that this request is outside the process of getting items on Council's agenda for a vote.

Mayor Bellamy felt that since Ms. Bradley's e-mail to City Council regarding budget modifications included sidewalks, she felt it was appropriate to bring the subject up at this meeting. During the budget discussion earlier she noted that she would be asking for Council's support for NC DOT to install sidewalks on Tunnel Road since Tunnel Road is a state road. She felt this was not out of the norm in that Council routinely asks staff to follow-up with actions – noting this is only asking staff to craft a resolution for Council consideration at a later meeting. She questioned how we can direct staff to at least craft a resolution if Council doesn't vote on it.

Councilman Davis said that he and Vice-Mayor Newman are the City's MPO representatives and they meet with our Director of Transportation and our Public Works Director on a routine basis prior to their MPO meetings. He felt a good topic at that meeting might be to review the City's priorities.

Mayor Bellamy agreed that asking the MPO to consider this project is good; however, because this is specific to Asheville she felt Council should take a position on this issue. Instead of a motion, she asked for the majority of Council to support asking City staff to prepare a resolution to come back at Council's July 27 meeting. She saw no problem with the City of Asheville, who represents citizens, in asking the NC DOT to construct sidewalks in east Asheville.

Public Works Director Cathy Ball and Director of Transportation Ken Putnam responded to Councilwoman Manheimer when she questioned if we would be harming other sidewalk projects if we ask the NC DOT to fund this one.

The motion made by Councilwoman Manheimer and seconded by Councilman Bothwell, to ask staff to prepare a resolution (to be brought back to Council for action) directing the Mayor to sign a letter asking the NC DOT to fund that request for sidewalks, failed on a 3-3 vote, with Mayor Bellamy, Councilman Bothwell and Councilwoman Manheimer voting "yes" and Vice-Mayor Newman, Councilman Davis and Councilman Smith voting "no."

Regarding process, Mayor Bellamy said that the pedestrian walkway bridge at Hillcrest Apartments was not on the printed agenda; however, because there was request from the community to get that addressed, it was added to the agenda. However, as she understands it from Council, and to be clear of the process going forward, Council will discuss only what is on the printed agenda.

Councilman Smith felt that if Council is bringing something for a vote and they may need more information on it before casting their vote, it may be more helpful to have that information in advance. He did, however, appreciate Mayor Bellamy bringing up the Hillcrest pedestrian bridge at this meeting due to the urgency. Otherwise he would not have requested it.

Mayor Bellamy stressed that the motion was to ask staff craft a resolution only and that the resolution would be brought back to Council for a vote. The issue with the Hillcrest pedestrian bridge was directing staff to proceed with a specific process, so she was not sure if the issue Council is concerned about is process related or a larger issue.

Because Mayor Bellamy felt this issue is important, she would request two other members of Council to support bringing a resolution forward on an agenda, which resolution she would craft herself.

At this time, Mayor Bellamy announced a short break.

B. RESOLUTION NO. 10-149 - RESOLUTION AMENDING THE DOWNTOWN DEVELOPMENT AGREEMENT TO EXTEND IT FROM JULY 1, 2010, TO DECEMBER 31, 2010, INCLUDING AN EXTENSION OF THE OPTION TO PURCHASE 51 BILTMORE AVENUE FROM JULY 1, 2010, TO DECEMBER 31, 2010, AND AN EXTENSION OF THE OPTION TO PURCHAS THE HOT DOG KING PROPERTY FROM JULY 1, 2010, TO OCTOBER 31, 2010

Public Works Director Cathy Ball said that this is the consideration of a resolution amending the Downtown Development Agreement to extend it from July 1, 2010, to December 31, 2010, including an extension of the option to purchase 51 Biltmore Avenue from July 1, 2010, to December 31, 2010, and an extension of the option to purchase the Hot Dog King property from July 1, 2010, to October 31, 2010.

In October 2008, City Council approved a Downtown Development Agreement with McKibbon Hotel Group, Public Interest Projects and the City of Asheville for the purpose of constructing a parking garage. The design of the parking garage is complete. The architect is in the process of applying for all applicable permits.

As designed, the project consists of the following:

- four hundred ten (410) parking spaces;
- public restrooms;
- four (4) parking spaces for electric vehicles;
- ten (10) bike lockers; and,

- public art component.

In June 2009 and again in November 2009, City Council extended the Downtown Development Agreement (DDA) to June 30, 2010. The current DDA does not allow for an additional extension. Staff is requesting an amendment to the agreement to include another six months. The prior extensions were necessary because McKibbon Hotel Group has not been able to obtain funding due to current economic conditions. In recent months, McKibbon Hotel Group (MHG) is closer to obtaining financing for their portion of the project.

MHG wants to eliminate 28 rooms of the proposed hotel (the top floor). She provided a revised rendering of the project. As a result of this change, MHG would need 28 less parking spaces freeing spaces for public parking.

The Hot Dog King (HDK) property owners have agreed to decrease the cost of the option to purchase the property. The City has been paying $10,000 per month for the option to be applied to the purchase price. The HDK has agreed to $10,000 for 120 days but will not extend the option beyond that time.

This project is in alignment with the Strategic Plan by promoting sustainable, high-density, in-fill growth that makes efficient use of resources and by making environmentally efficient capital improvements. In addition, this action complies with the Parking Action Plan adopted by City Council.

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

The cost to extend the option for the property at 51 Biltmore Avenue for an additional six months is $5,000 and $10,000 for the option for the HDK for 120 days from July 1, 2010. The budget for these expenses is in the Parking Services Capital Project Fund.

Staff recommends City Council adopt a resolution amending the Downtown Development Agreement to extend it from July 1, 2010, to December 31, 2010, including an extension of the

option to purchase 51 Biltmore Avenue from July 1, 2010, to December 31, 2010, and an extension of the option to purchase the Hot Dog King property from July 1, 2010, to October 31, 2010.

Mr. Wes Townsend, representing McKibbon Hotel Group, said that the hotel business is improving. He explained they now have a signed term sheet from a lender and down to essentially one major item that needs to be resolved – the loan to cost ratio. With this extension, their goal is to complete the legal work necessary to close on the transaction, complete the financing commitment and revise the plan slightly as outlined by Ms. Ball.

Mr. Pat Whalen, representing Public Interest Projects, was excited to still be a part of this project and was pleased that it will bring parking to that part of the downtown that the City's study shows we have a parking shortfall. He hoped Council would support the extension.

In response to Councilman Bothwell, Ms. Ball said that there are several different components of the project. The City spent $400,000 on the design portion, but there have been other components such as the option to purchase the HDK property, as well as having an owner's representative that has provided oversight on the design of the parking garage.

In response to Councilman Bothwell, Ms. Ball said that the parking deck will have 411 parking spaces which includes parking for the hotel. In the Downtown Development Agreement we have specified that there would be 35 dedicated parking spaces and an additional 115 spaces as needed, but those spaces would also be available for the public when there was no need for them from the hotel. Because of the change in the number of rooms, it would be around 87 parking spaces that may be needed, but would not be dedicated to the hotel.

In response to Councilman Bothwell, Ms. Ball said that we currently have 100 surface spaces, but the City's concern is if Public Interest Projects (owner of that lot) decides to do a different project we would lose those 100 parking spaces.

Ms. Ball responded to Councilman Davis when he asked what our options would be when the option with the HDK property runs out on November 1.

Councilman Smith said that as we look to the future with our Downtown Master Plan which calls for a shuttle services that moves people around downtown and our Transit Master Plan, he hoped to see a move towards a more 21st Century way to get people into downtown and move them around once they get there. He wondered if there was a way to dedicate some of this revenue from the parking garage towards the future of Transit Master Plan or the Downtown Master Plan.

Ms. Ball said that all indications point to us getting a better pricing if we move forward on the parking garage now. She felt we need to look at a combination of parking and shuttle services together and if Council wants to move forward with serious consideration of a shuttle service, then she felt we need to do a feasibility analysis. She provided Council preliminary numbers on a shuttle service.

Councilman Bothwell explained why he could not support the extension in that this project will take all of the parking fund monies for 10 years. He also noted that we are already having to deal with financing issues from the Grove Arcade Public Market Foundation and the Pack Square Conservancy.

Councilwoman Manheimer said that having made a decision that we need more parking downtown, this is the best option for us.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-149. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Bothwell voting "no".

RESOLUTION BOOK NO. 33 – PAGE 108

VI. NEW BUSINESS:

A. MOTION TO DISCONTINUE PRODUCTION OF THE ASHEVILLE FILM FESTIVAL AND PRIVATIZE THE OPERATIONS BY ALLOWING THE EVENT TO BE PRODUCED ON THE OPEN MARKET AT NO COST TO THE CITY AND WITHOUT THE CITY PROVIDING ANY RESOURCES FOR THE PRODUCTION OF THE EVENT

City Manager Jackson said that the budget City Council adopted did not recommend staffing and continuing to produce the Asheville Film Festival. Even though we regret discontinuing the Festival, we are here to provide core services. Staff recommends City Council discontinue the operation of the Asheville Film Festival and direction on how we dispose of the festival service mark and logo.

Assistant Director of Parks, Recreation and Cultural Arts Debbie Ivester said that the Asheville Film Festival (AFF) began in 2003 to showcase western North Carolina as a strong film location and as a film festival destination for filmmakers and visitors while celebrating the development of emerging and established artists in the filmmaking industry. At that time, Asheville was home to Blue Ridge Motion Pictures Studios and had built a strong film and arts community, including the Asheville Film Commission, the managing group of AFF under the direction of the Asheville Parks, Recreation, and Cultural Art Department. Since then, the AFF has not met its responsibility as an enterprise fund by operating at a deficit.

The City's intent is to optimize production of festivals including Bele Chere, 4th of July and AFF as an enterprise fund by providing resources to support the events while securing revenue to offset the cost of event production. Recent economic conditions and budget constraints have reduced revenue particularly in corporate sponsorship resulting in budget reductions to support the events.

Even in good economic times AFF has experienced the greatest reduction in resources since potential sponsors increasingly do not find AFF a good match for their investment. Sponsorships have consistently decreased each year, resulting in an ever increasing shortfall in revenue and greater reduction in operating budget.

She provided a seven-year financial table which reports the actual AFF budget demonstrating a pattern of revenue reduction, along with reduction in expense as a means to minimize the City's subsidy while attempting not to negatively impact the quality of the event. The FY 2010 event shows a sharp decrease in actual revenue since sponsorships fell off sharply due to the added factor of the poor economy. The expenses were also significantly decreased that affected the quality of the event.

As a result of the AFF seven-year City subsidy pattern, and the need to manage corresponding expenses that impact the quality of the event, staff recommends City Council to make a policy decision regarding the future of the AFF.

Policy Questions

Staff is seeking Council's policy direction on choosing one of the following options:

1) City continues to produce AFF in house by city staff and continue to subsidize the operational budget loss of the event.

2) City discontinues production of AFF and privatize the operations by allowing the event to be produce on the open market at no cost to the City and without the City providing any resources for the production of the event.

   If Council chooses to discontinue producing the event, Council could assign or lease the AFF U.S. Service Mark and Logo to another party. Council could also sell the Mark and Logo to another organization or individual by:
   1) private negotiation and sale (if mark valued less than $30,000)
   2) advertisement for sealed bids
   3) negotiated offer, advertisement and upset bid
   4) public auction; or
   5) exchange

In 2003 the City purchased the rights to the AFF U.S. Service Mark and Logo for $5,000 from Tommy and Kathy Hildreth.

Pros:

- If Council chooses to discontinue producing the AFF in house and allow it to go on the open market for production:
  - AFF may expand beyond the City's capacity to produce the event and gain a greater community benefit.
  - The City will no longer subsidize AFF operations resulting in a budget benefit.
  - Festival staff will have the ability to dedicate their time and resources to other City produced festivals and special events.

Cons:

- If Council chooses to discontinue producing the AFF in house and allow it to go on the open market for production:
  a. There is no guarantee that someone from the community will produce the event.
  b. The City will have no operational control of the event.

- If Council chooses to continue to produce the AFF in house:
  a. Establish an annual operating budget at approximately $130,000 to support a quality event at a level valued by the community.
  b. The City will continue to subsidize the AFF.
  c. There will be no AFF in 2010 and it would resume in 2011.

If Council chooses to discontinue producing the AFF in house and allow it to go on the open market for production, it is projected there will be no fiscal impact to the City.

If Council chooses to continue to produce the AFF in house, Council will need to amend the Festival Fund budget to add approximately $130,000 to support AFF operations, and be prepared to subsidize the event on average at 70% each year.

Staff recommends discontinuing City production of the AFF and seeks City Council policy decision regarding the disposition of the AFF U.S. Service Mark and Logo.

Mr. Tom Anton said that he is creating the Asheville International Film Festival which will start in September of 2011. It will be a 10-day event primarily held downtown. They are not interested in obtaining the logo or the website, or any funding from the City. This will be a private event.

Rev. Christopher Chiaronmonte thanked City Council for their support of the Film Festival in the past.

Mr. Andre Gower, representing Cinema South, hoped we could find an alternative avenue to show just what Asheville has to offer as a premiere destination. Cinema South was created to develop and operate the best film festival in the southeast and with its unique ability to combine local relationships with decades of film industry experience, it allows him to achieve the essential components for a successful film festival. He felt that with the access to knowledge and resources, his team is able to put together a program of events and screenings that make its mark in the popular festival world and create the new exposure needed for the lucrative production value of WNC and the state.

Councilwoman Manheimer moved to discontinue production of AFF and privatize the operations by allowing the event to be produce on the open market at no cost to the City and without the City providing any resources for the production of the event. This motion was seconded by Vice-Mayor Newman and carried unanimously.

In response to Vice-Mayor Newman, City Attorney Oast said that Council can leave it up to staff to determine the best way to dispose of the non-real property from the options outlined above. He also noted that once staff determines the best option it may come back to Council for final approval.

Councilman Davis felt we need to be careful in the disposition of the logo in that we have spent quite a bit of money over the years into developing a festival. If the trademark is assigned to another party, we need to make sure that person makes it the festival we hope it would be. It is a service mark worth protecting.

Vice-Mayor Newman said that if we allow staff to take this to the next step, it should be with the understanding that if there is interest amongst one or more parties to continue build a successful film festival (and we hope that will happen) that the City taxpayers get as much value for our investments and work put into it to date.

At Mayor Bellamy's suggestion, it was the consensus of Council to instruct City staff to propose a plan of action and bring it back to Council so Council feels comfortable with that direction.

Councilwoman Manheimer moved to direct staff to determine the best way to dispose of the non-real property. This motion was seconded by Vice-Mayor Newman and carried unanimously.

Mayor Bellamy thanked Ms. Sandra Travis for her work with the Film Festival and especially her work on the Memorial Day event.

B. MOTION TO RESTRUCTURE THE GROVE ARCADE PUBLIC MARKET FOUNDATION'S CERTIFICATES OF PARTICIPATION PAYMENT

Assistant City Manager Jeff Richardson said that this is the consideration of restructuring the Grove Arcade Public Market Foundation's Certificates of Participation payment.

At its May 18th meeting, staff provided the Planning and Economic Development (PED) Committee information relating to the Grove Arcade Public Market Foundation's (GAPMF) yearly COPs payment to the City of Asheville. Given a number of financial challenges facing the Foundation (such as capital improvements and a tough economy), the Foundation may require additional assistance from the City of Asheville to continue to operate effectively.

The City of Asheville acquired the title to the Grove Arcade building in 1997 under the National Monuments Act and signed a 198 year lease with the GAPMF. This restored building includes shops, restaurants, offices, 42 luxury apartments, and provides 78 full-time and 111 part-time jobs, making it Western North Carolina's largest commercial building. Since the 1997 agreement, there have been challenges in the GAPMF business plan, but in general the Foundation has performed well.

The GAPMF approached the City of Asheville in the summer of 2009 with concerns of fulfilling their yearly debt obligation. With the exception of the 2007 payment being deferred, the Foundation has made all payments in full since the inception of the loan. The GAPMF made a presentation to the City's PED Committee on June 15, 2009, outlining on-going debt load and capital maintenance concerns at the Grove Arcade. The PED Committee directed City staff to explore options of restructuring the COPs payment to relieve their debt load concerns. As follow-up, City staff updated the PED Committee on May 18, 2010, and presented COPs payment restructuring options to include crediting Asheville City property and sales tax revenue generated from the property as a direct credit toward the yearly debt service payment.

However, due to other pending capital maintenance needs, to include roof replacement and terra cotta restoration, the tax credit may not lower the payment to a level that the building's cash flow will be able to meet over the next 3-5 year period. Therefore, the PED Committee recommended that additional analysis continue and additional options be presented to the City Council.

The GAPMF aligns with City Council's focus area of Affordable, specifically by supporting diversified job growth and small business development.

Pros:

- The GAPMF continues to support the rehabilitation of pocket areas in the central business district to enhance dense urban development and principles of highest and best use land management.
- Due to the ongoing success of this project, the City has successfully brought the largest dilapidated building in the central business district back to full restored use, with direct tax revenues to the City and to Asheville City Schools, totaling over $70,000 per year.

Cons:

- Debt load restructuring may be perceived by some citizenry as government subsidized loan restructuring because they may not fully understand the public/private partnership.
- State Statutes do not require any consideration for local City funding for the Asheville City Schools district, and therefore school tax revenue credit is not a direct offset to the City's budget.

The debt service payment that the City is required to make on the COPs is included in the FY 2010-11 Proposed Budget. However, the Proposed Budget does not include any direct payment from GAPMF to the City to help offset the City's debt service expense. GAPMF has recommended consideration of a "contribution credit" toward the payment that they owe the City based on the property, sales, and Asheville City Schools tax revenue generated by the Grove Arcade building. In addition, GAPMF has reviewed its current cash flow, taking into account the need for dedicated funding to repair the roof of the building, and has determined that it can make a direct annual payment to the City of $50,000 over the next five year period. Further, it's contemplated that within the next five years, Progress Energy will divest from participation of the second through fifth floors and has committed final debt load payment to the City at that time.

City staff recommends that the City Council consider COPs payment restructuring options as presented by the GAPMF.

Mr. Scott Hughes, Treasurer for the GAPMF, provided Council with a brief history of the project which began on December 2, 1985, when the Mayor of Asheville established an ad hoc Committee for Preservation of the Grove Arcade and charged it with investing the feasibility of restoring the Grove Arcade to its original construction and its original use. From that initial vision a plan was set into motion to restore the Arcade to its former and now current grandeur. Over the years this has been the purpose and goal of the GAPMF. He then showed Council before and after pictures of the Grove Arcade. The Foundation secured Progress Energy as a partner for the project. The Foundation has a 99 year lease from the City for the entire structure. The Foundation controls the first floor commercial space while the upper floors (2-5) are subleased and operated by Progress Energy. Common costs of operations are allocated between the Foundation and its partner. Since renovation, the following items are what this asset has done for the City: (1) paid $1.3 Million dollars toward the COPS debt; (2) generated over $130,000 per year in ad valorem taxes; (3) become the cornerstone for economic development in the western business district of downtown; and (4) turned a $1 investment on behalf of the City into an asset forth over $25 Million. Intangibles include (1) creating 74 new fulltime jobs and 110 part-time jobs; (2) draws visitors to the building who are fascinated with its ornate architecture and curious about the design, original purpose and history of the building; (3) consists of primarily Asheville grown businesses; (4) provides free of charge to the public one of the only public restrooms in downtown Asheville which is open 7 days a week, when stores are open; maintenance is over $20,000 annually; (5) is a local gathering spot; (6) has inexpensive meeting spaces; and (7) has the Portico Market which supports local farmers and craftspeople with an appropriate space to sell directly to the public. Some flaws in the original business model include (1) risk associated with targeted tenant population; (2) time necessary to reach full occupancy; (3) cost overruns resulted in additional bridge loan from Progress Energy of $1.85 million on top of the COPS loan; (4) annual building maintenance costs were originally projected at $180,000 annually – currently they exceed $300,000 per year; and (5) original plan had 5 employees – currently we employ 1.5 employee. Post renovation points consist of (1) the cost of the entire project exceeded $31 Million – our first tenants occupied the first floor in 2002; (2) once full occupancy was achieved, rents have remained fairly constant at about $900,000; (3) over 25% of their annual budget goes to shared maintenance cost each year, another 10% of their annual budget goes to market the facility, and adding to that is personnel costs, utilities, annual audits, janitorial, etc. and there is no way to accumulate funds for major capital repairs. Their immediate capital needs consist of (1) as a result of numerous leaks, the Arcade is in desperate need of a ne roof at a cost of almost $1.2 Million; (2) additional funds are needed to restore and protect the terra cotta exterior at a cost of $450,000; (3) our share of these costs is approximately $500,000. These repairs need to be done immediately. The Arcade simply does not produce enough resources to cover major repairs, COPS payments and repayment of the Bridge Loan to Progress Energy. Three years ago we proposed the following options (1) re-amortize the debt over a longer period of time that more closely fits the cash flow the asset generates; (2) have the parties agree to some forgiveness of the debt between the Foundation and Progress Energy and the City that allows the same result; or (3) find a means to divest the asset to a developer that would allow for the satisfaction of the existing debts of the Foundation and our partner Progress Energy, including the COPs loan. In June 2009, they went before the PED committee to seek guidance on how to fund the debt and maintain the asset. The proposal tonight they believe is a result of collaboration between our board, City staff and Progress Energy. In summary, the proposal would allow GAPMF to contribute to the debt service $50,000 in cash each year plus the tax being paid to the City and the City schools, while also addressing the continuing maintenance needs of the Arcade. Progress Energy has assured City staff that should they divest themselves of the asset, repayment of the COPs loan will be the first proceeds disbursed. We believe this proposal gives us the opportunity to keep the Arcade in a good state of repair while making a more reasonable schedule of debt retirement based on current economic conditions.

Councilman Davis, Chairman of the PED Committee, thanked the Foundation for being stewards of this amazing treasure. The Foundation has actually be paying for what the City should have been paying for themselves.

Mr. Richardson and Mr. Hughes responded to various questions/comments from Vice-Mayor Newman and Councilwoman Manheimer regarding the loan repayment terms.

In response to Councilwoman Manheimer, Mr. Hughes said that the City's contribution was $200,000 for sidewalks.

Councilman Bothwell felt these repayment terms shift the tax burden to the rest of City taxpayers, because if we credit the GAPMF with the taxes they paid, we have to make it up in our budget. The City is actually paying for the loan. If we apply it to the balance, it's reducing the price Progress Energy has to pay if they buy it out.

Mr. Hughes said that of the $31 Million, the first floor portion was about $12 Million and the remainder has been put into the project by Progress Energy. In looking at the original amortization of this loan, the payoff in 2017 is very close to what the payoff would be if all payments were being paid.

Mayor Bellamy applauded this public-private partnership because the Foundation is taking care of a building that the City of Asheville committed to support for 198 years.

Councilman Davis moved to restructure the GAPMF's Certificates of Participation payment to allow GAPMF to contribute to the debt service $50,000 in cash each year plus the tax being paid to the City and the City schools, as detailed by Mr. Richardson. This motion was seconded by Councilman Smith and carried unanimously. Note: Councilman Bothwell did not vote on the motion before Council and that, by operation of law, the vote was recorded as being in the affirmative.

C. RESOLUTION NO. 10-150- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Vice-Mayor Newman said that the terms of Mr. Rhett Grotzinger and Mr. David Hillier, as members on the Airport Authority, expire on June 30, 2010.

At the City Council meeting on June 8, 2010, City Council reappointed Mr. Hillier to serve an additional four-year term, term to expire June 30, 2014, or until his successor has been appointed.

Also at the Council meeting on June 8, it was the consensus of Council to interview Mr. Phillip Kelley and Mr. Bob Roberts.

Vice-Mayor Newman, liaison to the Airport Authority, said that both candidates interviewed had excellent credentials and noted that there are additional opportunities for appointment to the Authority through the Buncombe County Commissioners and the Airport Authority itself.

Mayor Bellamy felt that the Authority needs more aviation background representation.

After Council spoke highly of the candidates, Phillip Kelley received 1 vote and Bob Roberts received 5 votes. Therefore, Bob Roberts was appointed as a member to the Asheville Regional Airport Authority to serve a four-year term, term to begin July 1, 2010, and expire June 30, 2014, or until his successor has been appointed.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Steve Holland, coordinator of the video production for Central United Methodist Church, but speaking on his on behalf, he supported public access television on Channel 20. He believed the Media Center provides resources to assist groups and individuals in producing local shows. He detailed the two major issues regarding public access (1) the current contractor who manages the channel; and (3) the issue of funding. In summary because the City's agreement with Buncombe County has expired, he asked Council to appoint a joint task force consisting of one member of City Council, a Buncombe County Commissioner, a City staff person, a County staff person and perhaps up to three members of the public to chart a course for public access. He outlined the responsibilities the task force could be charged with. Mayor Bellamy felt it was appropriate for Council direct staff to draft a response to Mr. Holland and those he is representing on the interlocal agreement with Buncombe County. City Attorney Oast said that he would review the extended interlocal agreement with Buncombe County and report back to Council. Mayor Bellamy asked City Clerk Burleson to place this in a tickler file for further discussion as to where we are as a Council, if clarification is needed.

Rev. Christopher Chiaronmonte urged Council to be more compassionate to the homeless who sleep in public parks.

Mr. Fred English spoke in opposition of toll roads.

Councilman Bothwell said that we have an under-used parking lot at McCormick Field and felt that if we had a shuttle service to that lot we could cover a lot of our parking needs in the City immediately. We might even get a private contractor to operate the shuttle. When Councilman Smith asked if Councilman Bothwell was asking for support to put this on an agenda to direct staff formally, he replied that would be fine. When Vice-Mayor Newman felt the Transit Commission should review this first, Councilman Bothwell agreed and Councilman Smith (liaison to the Transit Commission) said that he would get this on a Transit Commission agenda.

Councilman Smith was pleased to note that Asheville High and TC Roberson were named among two of the top high schools in the United States. Out of the 27,000 high schools in the United States both of these schools are in the top 1600 as ranked by Newsweek Magazine.

Mayor Bellamy invited the public to attend the Ingles 4th of July celebration and thanked Ingles for this public/private partnership.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:01 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – July 27, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF STRIVE NOT TO DRIVE AWARD WINNERS

Mayor Bellamy was pleased to recognize the following award winners: (1) Leadership Award – Tom Knaust - REI. Tom has begun designing an all store commuter map that shows where folks live in order for it to be easier to carpool. He also teaches bicycle commuter classes at REI. He lives in North Asheville and walks and bikes for most of his daily routines. He currently commutes 30+ round trip miles to work; (2) Golden Spoke Youth Award – Juliana Accles – 2nd Grader. Juliana is finished 2nd grade at Claxton Elementary School this year. She has walked 1.5 round trip miles to school every day since Kindergarten, even in rain and sub-freezing temperatures; (3) Golden Spoke Award – Sarah Keister – Mission Hospital's Child Development Center. After carefully contemplating ("threatening" as co-workers and supervisors saw it) to walk to work in so many of the snows we had this winter because she didn't have All Wheel Drive, she figured it was time to put her shoes where her mouth was! So in March 2010, Sarah started walking five round trip miles to and from work. She teaches 2-3 year olds at Mission Hospital's Child Development Center four days a week. She gets up extra early for a 10 hour shift just to walk 45 minutes to get there. To Sarah this means exercise, time to meditate, spends less money on gas, eating out, or errands, and consequently a lower carbon footprint. A former through-hiker of the 2,174 mile Appalachian Trail, Sarah is no stranger to long distances. In fact, she would much rather spend one hour round trip per day "afoot" in Asheville than in a car; (4) Golden Spoke Award – David Mathews – 4th Grader. David has been riding his bicycle with his dad since he was 2 years old. He rides five round trip miles up Edwin Place and Kimberly Avenue and behind Ira B. Jones to get to Asheville Catholic School from his home off Charlotte Street. He earned this privilege by demonstrating to his Dad that he knows all the rules of bicycling on the road – riding with the flow of traffic, using appropriate hand signals, and obeying all stop signs and traffic lights. He rides with a helmet and a helmet-mounted mirror, a highly reflective jacket and a reflective triangle on his back, and front and rear "blinkie" lights. After seeing David ride regularly to school, the Principal authorized the purchase and installation of a bike racks, and now, at least two other students periodically ride to school; (5) Golden Spoke Award – Jonathan Felson – Grove Park Inn. Jonathan has consistently chosen to ride his bicycle, or walk, everywhere he goes. He chose to purchase his house in West Asheville based on its proximity to his educational endeavors at UNC-Asheville, his 10+ commute miles to work at the Grove Park Inn, and many social options within West Asheville and downtown...all of which are a close bike-ride away! He inspires others to live an eco-life, not by preaching, but by leading a good example! (6) Golden Wheel Award – Georgia Burt – YWCA. Georgia lives in East

Asheville and attends AB-Tech daily for classes and still makes it to the YWCA 2-3 times a week to work. She does all of this on the City Buses. She is a great role model for folks that think they can't move around the city without a vehicle; and (7) 2nd Annual PASSport Award - The winner of the challenge for the 2nd year in a row is The Grove Park Inn Resort & Spa with an increase of ridership during Strive Not to Drive week of 1.3%.

B. PROCLAMATION ACKNOWLEDGING THE 20TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

Mayor Bellamy read the proclamation acknowledging the 20th Anniversary of the Americans with Disabilities Act.

C. PROCLAMATION PROCLAIMING TUESDAY, JULY 27, 2010, AS "NATIONAL KOREAN WAR VETERANS ARMISTICE DAY"

Mayor Bellamy read the proclamation proclaiming Tuesday, July 27, 2010, as "National Korean War Veterans Armistice Day" in the City of Asheville. She presented the proclamation to Mr. Bill Lack who accepted the proclamation on behalf of all the Korean War Veterans.

D. PROCLAMATION PROCLAIMING TUESDAY, AUGUST 3, 2010, AS "NATIONAL NIGHT OUT"

Mayor Bellamy read the proclamation proclaiming Tuesday, August 3, 2010, as "National Night Out" in the City of Asheville. She presented the proclamation to Master Police Officer Allen Dunlap, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

Additions and changes to the Consent Agenda:

- Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or an individual vote.
- Consent Agenda Item "F" was removed from the Consent Agenda for discussion and/or an individual vote.
- Removal of Consent Agenda Item "G" per City staff's request.
- Consent Agenda Item "J" was removed from the Consent Agenda for discussion and/or an individual vote.
- Addition of Consent Agenda "K" to the Consent Agenda to support the City of Asheville hosting a regional afterschool summit on November 4, 2010, as well as offer facility space and any in-kind staff support required for coordinating a successful summit.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 22, 2010

B. RESOLUTION NO. 10-151 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SUTTON-KENNERLY & ASSOCIATES INC. FOR THE DESIGN AND DEVELOPMENT OF PLANS, DRAWINGS, DETAILS AND SPECIFICATIONS FOR THE REHABILITATION AND WATERPROOFING OF THE EXTERIOR OF THE ASHEVILLE CITY HALL BUILDING SO AS TO MITIGATE WATER INFILTRATION

ORDINANCE NO. 3883 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR THE SUTTON-KENNERLY CONTRACT AND FOR PROTOTYPE REPAIRS AND TESTING TO BE PERFORMED BY ANOTHER CONTRACTOR

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into a contract with Sutton-Kennerly & Associates, Inc. for the design and development of plans, drawings, details, and specifications for the rehabilitation and waterproofing of the exterior of the Asheville City Hall Building so as to mitigate water infiltration; and (2) a budget amendment from Fund Balance in the amount of $450,000 to provide funding for the Sutton-Kennerly contract and for prototype repairs and testing to be performed by another contractor.

The Asheville City Building is recognized throughout the country as an Art Deco masterpiece. Douglas D. Ellington, an architect who came to Asheville in the mid-1920s, designed the eight-story building, which was completed in 1928. Ellington stated that the design was "an evolution of the desire that the contours of the building should reflect the mountain background."

Over the last several years, the City of Asheville has implemented smaller repair and refurbishment projects to address water infiltration issues present on the upper floors of the building. However, when signs of major water infiltration became apparent, Asheville City Council approved Resolution Number 09-79 on April 28, 2009 authorizing a contract with Sutton-Kennerly & Associates to conduct an exterior inspection for water infiltration on Asheville City Building. The scope of this investigation was to evaluate the condition of the existing exterior of the building in an effort to determine the source of water leakage into the building, assess the existing condition of cladding materials on the building, and to develop recommendations for any repairs needed.

During the course of the investigation, scaffolding was erected on the north and south elevations of the building, and existing brick was removed from approximately 12 locations to evaluate conditions behind the brick veneer. In addition, several of the terra cotta sections were removed from the tops of the parapet walls at the corners of the building, as was one section of marble coping from the top of the parapet wall on the south side of the building. Council was provided the results of the investigation on March 9, 2010. Council authorized staff to develop a Request for Qualifications for the engineering and repairs to City Hall. Staff consisting from the Public Works Department, Purchasing, Sustainability Office, and Building Safety reviewed the submittal and recommend Sutton-Kennerly & Associates be awarded the contract.

The contract specifies that Sutton-Kennerly and Associates shall, in compliance with the North Carolina State Building Code, develop a comprehensive set of construction drawings, plans and specifications containing sufficient elevations and details so as to address the recommendations set forth in the 2009 Engineer Report conducted by Sutton-Kennerly & Associates, Inc., to mitigate water infiltration. The drawings shall be prepared in sufficient detail to define the construction as follows:

a. Sutton-Kennerly and Associates shall prepare the design and drawings of the rehabilitation which shall clearly define all structural components, member sizes, dimensions, reinforcing sizes, lengths and schedules, waterproofing details, and any other details as needed to define the work to be completed.

b. General notes indicating material specification requirements, special construction procedures, construction notes, and design loads.

c. Details and sections, as required, to clearly define the construction requirements

Due to the complexity and historic nature of this project, a prototype for some of the repairs will be completed during the design process. The cost of the contractor to perform the testing and prototype repairs is beyond the scope of the services to be furnished by Sutton-Kennerly and Associates. The cost of the contractor for the prototype repairs is a City responsibility but Sutton-Kennerly and Associates shall provide all required engineering services

for the prototype repairs. Sutton-Kennerly and Associates estimates the total contractor cost for the prototype repairs and testing shall not to exceed $100,000. The prototype repairs and associated testing will take approximately 45 days. Sutton-Kennerly and Associates shall assist the contractor with the testing for the prototype repairs. The areas where the prototype repairs are to be completed will be tested for leakage before completing the prototype repairs and retested after the prototype repairs have been completed. The purpose of the prototype repairs is to ensure the effectiveness of the repairs to be included in this work and to establish a standard for the work. The prototype repairs can also be reviewed by the City and other governing agencies before the design package is let for bids.

The estimated schedule of design and construction continues over several fiscal years. Sutton-Kennerly and Associates shall to the extent weather conditions allow, diligently pursue the project to completion no later than November 15, 2013. The types of repairs that will be required on the City Hall are of sensitive nature and cannot be completed during freezing weather. There will be periods when the project will be shut down to accommodate inclement weather. This will allow the project work to be phased. Additionally this will also allow time for the reproduction of any sections of the existing terra cotta that are beyond repair. The lead time for reproductions such as these is 8 to 12 months. Based upon properly performed research, the project work can be completed in three phase with two inclement weather shut downs between the three phases.

This project supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- The City Building is an architectural treasure and the crown jewel of Asheville. Restoration of the building is essential to the city's historic and cultural fabric.
- Approving the resolution authorizing the contract for construction and bid documents begins the project.
- Performing a small section of repairs and testing prior to complete restoration provides confirmation that the work mitigates the water infiltration and that the repairs meet the historic nature and preservation for the building.

Cons:

- Administering a project of this size and following through on implementation will require significant staff time.
- Funding for the project is not currently in the budget and could impact the city's finances in future years.
- A delay will further deteriorate the building and could threaten its structural integrity.

The costs for a professional design firm to develop the bid and construction documents and special inspections conducted by the engineers are $395,000. An additional $100,000 is also needed for the prototype repairs and testing firm; for a total cost of $495,000. The funds for this portion of the project are not in the current Capital Improvement Program and will therefore need to be appropriated from Fund Balance. During a subsequent Council meeting when Council takes formal action to award the contract for the actual construction, a budget amendment will be presented for the full cost of the entire project with funding to be provided by debt proceeds. Once debt financing is in place, the city will reimburse Fund Balance for the $450,000 in costs associated with design and prototype repairs and testing.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Sutton-Kennerly & Associates Inc. and the future contract with the construction firm selected by Sutton-Kennerly & Associates for the prototype repairs and testing; and adopt the associated budget amendment.

ORDINANCE BOOK NO. 26 - PAGE 253

C. RESOLUTION NO. 10-152 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH RIVERTOP CONTRACTING INC. TO PROVIDE MAINTENANCE SERVICES FOR PACK SQUARE PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Rivertop Contracting, Inc. to provide maintenance services for Pack Square Park.

In preparation for the City to accept maintenance operations of Pack Square Park, staff evaluated the City's ability to deliver the expected high maintenance standards with in-house resources. It was determined the most efficient and effective means to meet the maintenance standard is to contract the maintenance service.

The City conducted a competitive bid process for Pack Square Park maintenance divided into three areas, Roger McGuire Green, Reuter Terrace and Pack Square. The City will assume responsibility for park maintenance in phases for trees, shrubs, ground cover, plants, and lawn maintenance after substantial completion of the one year warranty and maintenance period. Pack Square was transferred to the City on June 15, 2010, Roger McGuire Green will transfer on July 30, 2010, and Reuter Terrace will transfer on May 31, 2011.

Staff expected the bids to come in at approximately $120,000. The lowest responsive and responsible bidder came in at $71,354.88 or $48,645 lower than expected. Blue Ridge Landscaping was the lowest responsive and responsible bid but has withdrawn its bid. Rivertop Contracting, Inc., located at PO Box 1294, Black Mountain, North Carolina is the next lowest responsive and responsible bidder at a cost of $71,354.88 and is proposed to be selected to perform maintenance in Pack Square Park. Staff recommends adding an additional $18,645 beyond the base amount of the contract as a contingency for emergency and unforeseen activities such as sod and plant material replacement, fountain and irrigation repair, and excessive snow removal. If not needed, the contingency will revert back into the Pack Square Park maintenance budget. The contract will not exceed $90,000.

This action complies with the City's Strategic Operating Plan in that it supports making smart investments that accomplishes lasting and tangible returns by investing in quality maintenance of Pack Square Park. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros:

- Investment to maintain and care for Park Square Park, a City-owned asset.
- Provide quality service for ongoing, core park maintenance services.
- Fulfill commitment for maintenance of park system.

Con:

- None

The $90,000 to support the Pack Square Park maintenance contract is budgeted in the FY 2010-2011 Parks, Recreation and Cultural Arts Department operating budget as part of the Pack Square Park budget. In addition to funding the park maintenance contract, the $300,000 Pack Square Park budget is designed to support utilities, security and supply costs associated with operating park. The City and Buncombe County will evenly split the operating costs associated with the Park. The Pack Square Conservancy will contribute to capital improvements in the park as needed.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Rivertop Contracting, Inc. not to exceed $90,000 to provide maintenance services at Pack Square Park.

RESOLUTION BOOK NO. 33 – PAGE 117

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE WACKENHUT CORPORATION TO PROVIDE CONTRACTED SECURITY SERVICES FOR THE CITY OF ASHEVILLE PARK SYSTEM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 10-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ONTARIO INVESTMENTS INC. FOR GOLF CARTS AND MAINTENANCE EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease agreement with Ontario Investments, Inc. for golf carts and maintenance equipment at the Asheville Municipal Golf Course.

In 2009, the City of Asheville entered into a one-year lease agreement with an option to renew for one additional year with Ontario Investments at a cost of $123,158 for golf carts and maintenance equipment at the Asheville Municipal Golf Course. The City wishes to exercise the one-year lease renewal option at a cost of $92,369 resulting in an annual savings of $31,789.

This action complies with the City's Strategic Operating Plan in that it supports making smart investments that accomplishes lasting and tangible returns by investing in quality equipment and maintenance at the Asheville Municipal Golf Course. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros:

- Investment to maintain and care for the Asheville Municipal Golf Course, a City-owned asset.
- Provide quality service for ongoing, core facility maintenance services.
- Fulfill commitment for maintenance of the golf course.

Con:

- None

The one-year lease in 2009 cost $123,158. The one-year lease renewal is at a cost of $92,369 resulting in an annual savings of $31,789 in FY 2010-2011. The $92,369 to support the lease agreement is budgeted in the FY 2010-2011 operating budget in the Parks, Recreation and Cultural Arts Department in the Golf Course Fund for the leased golf carts and maintenance equipment.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a lease agreement with Ontario Investments Inc. for golf course carts and maintenance equipment at the Asheville Municipal Golf Course not to exceed $92,369.

RESOLUTION BOOK NO. 33 – PAGE 118

F. RESOLUTION SCHEDULING A CITY COUNCIL COMMUNITY MEETING ON TUESDAY, AUGUST 31, 2010, AT 6:30 P.M. IN EAST ASHEVILLE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC, FOR THE LEASE OF TIRES TO THE ASHEVILLE TRANSIT SYSTEM

This item was removed from consideration at the request of City staff.

H. RESOLUTION NO. 10-155 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT AN INTERACTIVE RECYCLING STATION ALONG WITH COMMUNITY EDUCATION AT THE CIVIC CENTER

ORDINANCE NO. 3884 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT AN INTERACTIVE RECYCLING STATION ALONG WITH COMMUNITY EDUCATION AT THE CIVIC CENTER

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant awards from the North Carolina Division of Pollution Prevention and Environmental Assistance to construct an interactive recycling station along with community education at the Civic Center and (2) a budget amendment, in the amount of $12,000, accepting the funds.

The City of Asheville Office of Sustainability has been awarded a Community Waste Reduction and Recycling Grant to develop and implement a more comprehensive recycling and community outreach program at the Civic Center featuring an interactive recycling bin. Staff will collaborate with area universities and college partners including Asheville Buncombe Technical Community College (AB Tech) and University of North Carolina Asheville to design and construct an interactive recycling station that will educate the public on the benefits of recycling. The City of Asheville anticipates that by employing a more engaging approach to recycling, the public will want to recycle their plastic beverage bottles purchased from the Civic Center food and beverage vendors that are now banned from landfills in North Carolina. Staff anticipates a 30% waste stream reduction equaling 13 tons.

This action complies with City Council's Strategic Operating Plan in the following ways: (1) Expands partnerships with UNC-Asheville, A-B Tech, Mars Hill College and other institutions to achieve common goals including sustainable economic development; (2) Expands community education programs including climate awareness, recycling and sustainability; and (3) Reduces city solid waste.

Pros:

- Reduce landfill waste by 30% or 13 tons through diverting bottles to recycling
- Strengthen partnerships with area universities and colleges
- Increases community education program on recycling, climate awareness and sustainability.

Con:

- None

The two thousand dollars match funds are budgeted in the Office of Sustainability and Sanitation Division

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter an agreement with the North Carolina Department of Environment and Natural Resources Division of Pollution Prevention and Environmental Assistance; and (2) adopt the budget amendment in the amount of $12,000.

RESOLUTION BOOK NO. 33 – PAGE 120
ORDINANCE BOOK NO. 26 – PAGE 255

I. RESOLUTION NO. 10-156 - RESOLUTION AUTHORIZING THE CONVEYANCE OF INTEREST IN RIGHT-OF-WAY ENCROACHMENTS ON PANOLA STREET

City Attorney Oast provided Council with the slightly revised staff report: Summary: The consideration of a resolution authorizing the transfer by non-warranty deed of the City's interest in certain property to resolve in minor encroachment issue.

The house at 62 Panola Street, in Montford, was constructed in the 1920's. A recent survey has revealed that two of the porches on the house encroach slightly on the City's claimed right-of-way for Panola Street. One of the encroachments is 3.7 square feet, and the other is 3.8 square feet. Both of these porches have existed for many years; one has been recently repaired. The repair and construction to both porches was performed under permit issued by the City, and was approved by the City's Historic Resources office.

Although no record or plat establishes the City's claimed right-of-way in the area, the owner wishes to clear up any title issues regarding these encroachments, and has proposed the City execute a non-warranty deed for the two areas in question. The proposed conveyance is subject to the condition that, if the City were ever to widen Panola Street such that the two small encroachment areas would be needed to accommodate a street, the owner's interest in those encroachment areas would revert to the City without further consideration.

In view of the City's uncertain interest in these areas, and the potential for reversion to the City if the areas are actually needed for street purposes, the manner of conveyance could take several forms. As proposed, this transaction resembles an encroachment agreement from the City's standpoint, but using the non-warranty deed helps with the owner's title issues.

The consistency with plans is that the construction/repair of porches received approval from Historic Resources office.

Pros:

- Resolves an encroachment issue; and
- Minimal intrusion

Con:

- None noted.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 121

J. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN RIVERFEST SAVE THE FRENCH BROAD EVENT ON AUGUST 14, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL ON AUGUST 27-29, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 5, 2010 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE AMERICAN INSTITUTE OF ARCHITECTS ASHEVILLE STREET PARTY ON SEPTEMBER 17, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL ON SEPTEMBER 18, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE CITIZEN-TIMES HALF MARATHON & 5K RACE ON SEPTEMBER 18, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE OKTOBERFEST ON OCTOBER 9, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY CUP ON SEPTEMBER 5, 2010

RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLIPS OF FAITH BEER & FILM TOUR ON SEPTEMBER 10, 2010

These items were removed from the Consent Agenda for discussion and/or individual votes.

K. MOTION SUPPORTING THE CITY OF ASHEVILLE HOSTING A REGIONAL AFTERSCHOOL SUMMIT ON NOVEMBER 4, 2010, AS WELL AS OFFER FACILITY SPACE AND ANY IN-KIND STAFF SUPPORT REQUIRED FOR COORDINATING A SUCCESSFUL SUMMIT

Summary: The purpose of this memorandum is to propose that the City Council support the City of Asheville hosting a regional afterschool summit this fall, as well as offer facility space and any in-kind staff support required for coordinating a successful summit.

Jamie Knowles, Director of the NC Center for Afterschool Programs presented to the NC Metro Mayors Coalition in February and received encouraging responses from the attendees. The NC Center for Afterschool Programs will be holding regional afterschool summits hosted by mayors across the state this fall. As a result of the City of Asheville's leadership and support for serving disadvantaged youth, I have been asked to serve as Chair and Host of a summit in Asheville on November 4. Similar summits will be held in Salisbury, Durham, Goldsboro, and Wilmington. Event organizers anticipate up to 250 attendees.

In addition to formally supporting this event as an elected body, I would respectfully recommend that the City of Asheville could offer in-kind facility space and staff support for coordination of the event. The expected attendance of the event would require a large meeting room space, in addition to smaller areas for breakout session workshops. The level of support would be at the discretion of the City Manager.

City Manager Jackson said that we have confirmed the use of the Civic Center Banquet Hall for this event on November 4.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE WACKENHUT CORPORATION TO PROVIDE CONTRACTED SECURITY SERVICES FOR THE CITY OF ASHEVILLE PARK SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Wackenhut Corporation to provide contracted security services for the City of Asheville park system.

The City of Asheville has historically provided security in its 54 parks via one Park Warden to patrol all parks at 40 hours per week, one Park Ranger at Pritchard Park at 40 hours per week, and Asheville Police Department regular patrol schedule at all other times. The security plan left significant gaps in coverage due to the large number of parks located in a large geographic area, and did not provide sufficient round the clock patrol. The lack of park patrol resulted in a high incident of vandalism and graffiti in parks.

In preparation for the City to accept security and maintenance operations of Pack Square Park, and recognizing the limited resources to provide security in the entire park system, staff conducted a cost comparison to provide a sufficient level of park patrol in all parks with in-house resources verses contracted services. It was determined to re-engineer in-house park security resources and to contract security services to provide round the clock park security.

The re-engineered operations to provide full-time park security coverage include 1) Assign the two in-house park patrol employees to patrol downtown parks with an emphasis on Pritchard Park and Pack Square Park during most day-time hours, 2) Contract for security services to patrol all parks during night-time hours, and 3) Asheville Police Department supplement security operations. The cost of in-house park patrol employees and the contracted security service is shared between the Pack Square Park budget and the Park Maintenance budget in the Parks, Recreation & Cultural Arts Department.

To activate the contracted park security, the City conducted a competitive bid process for park security for the entire park system. The Wackenhut Corporation located at 9-H Drive, Arden, North Carolina, was the lowest responsive and responsible bidder at a cost not to exceed $76,445.32, and is proposed to be selected to perform contracted park security services within the City's park system.

This action complies with the City's Strategic Operating Plan in that it supports making Asheville one of the safest and most secure communities when compared to similar cities; and making smart investments that accomplishes lasting and tangible returns by investing in security services for the City's park system. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and security for the City's park system.

Pros:

- Enhances making the City park system safe for park visitors.
- Re-engineer resources for ongoing, core park security services within same budget as previous year.
- Fulfill commitment for security of park system.

Con:

- None

The $76,445.32 to support the contract is budgeted in the FY 2010-2011 operating budget in Parks, Recreation & Cultural Arts Department, and shared by the Pack Square Park and Park Maintenance budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract to provide park security with the Wackenhut Corporation not to exceed $76,445.32.

Councilman Bothwell questioned if we should hand off safety and security to a private company since one of the City's core services is police protection. After a search on-line, he found that this particular corporation internationally has a pretty bad track record, but that does not reflect necessarily on the local company. He also felt that we are side-stepping our commitment of living wages as these people will clearly be paid less than the police. He questioned what the comparison is of contracting with this company vs. hiring two more employees. Finally, he was curious about what kind of police powers we are handing off to this company.

After Parks & Recreation Director Roderick Simmons responded to the basic concerns, it was the suggestion of City Manager Jackson, and the consensus of Council, to postpone action on this item until August 10 when more information related to living wages, role and details on law enforcement activity, references for Wackenhut and options to bring in-house would be made available to Council.

F. RESOLUTION NO. 10-154 - RESOLUTION SCHEDULING A CITY COUNCIL COMMUNITY MEETING ON TUESDAY, AUGUST 31, 2010, AT 6:30 P.M. AT ASBURY HALL IN THE GROCE UNITED METHODIST CHURCH LOCATED AT 954 TUNNEL ROAD, ASHEVILLE, N.C.

A brief discussion was held about the proposed meeting place of Haw Creek Elementary School gymnasium on August 31. It was noted that the gymnasium was not air conditioned and if fans were used, it would possibly create sound problems. City Manager Jackson said that staff has looked at other public facility alternatives for holding a capacity of 200 and were not successful in identifying a location in the east Asheville area.

When Mayor Bellamy said that City Council was offered meeting space in Asbury Hall in Groce Methodist Church, City Attorney Oast said that to the extent there is any concern about Council meeting in a church or other place of worship, he felt it was not an issue if Council met in the social or fellowship hall.

When Mayor Bellamy asked for public comment, she received none.

Vice-Mayor Newman moved to schedule the August 31 City Council meeting at 6:30 p.m. at Asbury Hall in the Grove United Methodist Church located at 954 Tunnel Road. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 119

J. **RESOLUTION NO. 10-157 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ROCKIN RIVERFEST SAVE THE FRENCH BROAD EVENT ON AUGUST 14, 2010**

RESOLUTION NO. 10-158 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL ON AUGUST 27-29, 2010

RESOLUTION NO. 10-159 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 5, 2010
2010

RESOLUTION NO. 10-160 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE AMERICAN INSTITUTE OF ARCHITECTS ASHEVILLE STREET PARTY ON SEPTEMBER 17, 2010

RESOLUTION NO. 10-161 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL ON SEPTEMBER 18, 2010

RESOLUTION NO. 10-162 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE CITIZEN-TIMES HALF MARATHON & 5K RACE ON SEPTEMBER 18, 2010

RESOLUTION NO. 10-163 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE OKTOBERFEST ON OCTOBER 9, 2010

RESOLUTION NO. 10-164 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY CUP ON SEPTEMBER 5, 2010

RESOLUTION NO. 10-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLIPS OF FAITH BEER & FILM TOUR ON SEPTEMBER 10, 2010

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the (1) Rockin Riverfest Save the French Broad event on August 14, 2010; (2) Goombay Festival on August 27 - 29, 2010; (3) Lexington Avenue Arts & Fun Festival on September 5, 2010 (4) American Institute of Architects Asheville Street Party on September 17, 2010 (5) Brewgrass Festival on September 18, 2010, (6)

Asheville Citizen-Times Half Marathon & 5K Race on September 18, 2010; (7) Oktoberfest on October 9, 2010; (8) Beer City Cup on September 5, 2010, (9) Clips of Faith Beer & Film Tour on September 10, 2010.

- Riverlink has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Rockin Riverfest Save the French Broad event and allow for consumption at this event.

  The Rockin Riverfest Save the French Broad event will be held on Saturday, August 14, 2010, from 12:00 p.m. to 6:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on the site map and will be free and open to the public.

- YMI Cultural Center has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Goombay Festival and allow for consumption at this event.

  The Goombay Festival will be held on Friday, August 27, 2010, from 12:00 p.m. to 11:00 p.m., Saturday, August 28, 2010, from 11:00 a.m. to 11:00 p.m. and Sunday, August 29, 2010, from 10:00 a.m. to 6:00 p.m. within the boundaries of Eagle Street, South Market Street & Wilson Alley, as per the event area limits referenced on the site map and will be free and open to the public. The Goombay Festival will also be held on Friday, August 27, 2010 from 12:00 p.m. to 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, the City-County Parking Lot and within a designated area of Spruce Street between the intersections of College Street & Court Plaza, as per the area limits referenced on the site map and will be free and open to the public.

- Arts 2 People has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

  The Lexington Avenue Arts & Fun Festival will be held on Sunday, September 5, 2010, from 11:00 a.m. to 9:00 p.m. within the boundaries of Lexington Avenue between the intersections of College Street and the I-240 overpass, Walnut Street between Lexington Avenue and Carolina Lane as per the area limits referenced on the site map and will be free and open to the public.

- American Institute of Architects (AIA) has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the AIA Asheville Street Party and allow for consumption at this event.

  The AIA Asheville Street Party will be held on Friday, September 17, 2010, from 6:00 p.m. to 8:00 p.m. within the boundaries of a partial sidewalk closure at 8 College Street as per the area limits referenced on the site map. This is a private event and is not open to the public.

- Big Brothers Big Sisters of WNC has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Brewgrass Festival and allow for consumption at this event.

  The Brewgrass Festival will be held on Saturday, September 18, 2010, from 12:00 p.m. to 7:00 p.m. within the boundaries of Martin Luther King Jr. Park as per the area limits referenced on the site map. This is a ticketed, gated event that is open to the public.

- Lend-a-Hand Foundation has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the

Asheville Citizen-Times Half Marathon & 5K event and allow for consumption at this event.

The Asheville Citizen-Times Half Marathon & 5K will be held on Saturday, September 18, 2010, from 5:30 a.m. to 1:00 p.m. within the boundaries of Otis Street as per the area limits referenced on the site map and is free and open to the public.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Oktoberfest and allow for consumption at this event.

  Oktoberfest will be held on Saturday, October 9, 2010, from 12:00 p.m. to 6:00 p.m. within the boundaries of Wall Street between Otis Street and Battery Park Avenue as per the area limits referenced on the site map. This is a ticketed event that is open to the public.

- The Western North Carolina Soccer Foundation has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Cup and allow for consumption at this event.

  The Beer City Cup will be held on Sunday, September 5, 2010, from 12:00 p.m. to 7:00 p.m. within the boundaries of Memorial Stadium as per the area limits referenced on the site map and is free and open to the public.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Clips of Faith Beer and Film Tour and allow for consumption at this event.

  The Clips of Faith Beer and Film Tour will be held on Friday, September 10, 2010, from 6:00 p.m. to 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, the City-County Parking Lot and within a designated area of Spruce Street between the intersections of College Street & Court Plaza, as per the area limits referenced on the site map and will be free and open to the public.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Riverlink, the YMI Cultural Center, Arts 2 People, the American Institute of Architects, Big Brothers Big Sisters of WNC, the Lend-a-Hand Foundation, the Western North Carolina Soccer Foundation and the Asheville Downtown Association

Con:

- Potential for public safety issues

For the Goombay Festival, the fiscal impact will be overtime pay for Asheville Police officers per City co-sponsorship agreement. There is no fiscal impact to the Rockin Riverfest Save the French Broad, Lexington Avenue Arts & Fun Festival, AIA Asheville Street Party, Brewgrass Festival, Asheville Citizen-Times Half Marathon & 5K, and Oktoberfest, Beer City Cup, and Clips of Faith Beer & Film Tour events.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages

and/or unfortified wine at the Goombay Festival, Rockin Riverfest Save the French Broad event, Lexington Avenue Arts & Fun Festival, AIA Asheville Street Party, Brewgrass Festival, Asheville Citizen-Times Half Marathon & 5K, Oktoberfest, Beer City Cup, and Clips of Faith Beer & Film Tour events.

Councilman Russell moved for the adoption of Resolution Nos. 10-157, 10-158, 10-159, 10-160, 10-161, 10-162, 10-163, 10-164 and 10-165. This motion was seconded by Vice-Mayor Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 10-157 - RESOLUTION BOOK NO. 33 – PAGE 123
RESOLUTION NO. 10-158 - RESOLUTION BOOK NO. 33 – PAGE 126
RESOLUTION NO. 10-159 - RESOLUTION BOOK NO. 33 – PAGE 130
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RESOLUTION NO. 10-164- RESOLUTION BOOK NO. 33 – PAGE 145
RESOLUTION NO. 10-165 - RESOLUTION BOOK NO. 33 – PAGE 148

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION UPDATE

Ms. Diane Duermit, Chair of the Asheville-Buncombe Historic Resources Commission, updated Council on the mission of the Commission and their goals for the coming year.

She said that the mission of the Historic Resources Commission (HRC) is to preserve and protect the cultural and architectural resources of Asheville & Buncombe County. The HRC is responsible for the evaluation of historically significant neighborhoods and individual sites for both national and local historic designation. The HRC also adopts or modifies preservation design guidelines as necessary for local districts and evaluates new construction and alterations to existing structures and landscapes for congruence with the adopted guidelines. Additionally, the HRC serves as an educational resource providing technical assistance and general information on the process and benefits of historic preservation to area residents and property owners.

The Commission is a (CLG) as part of the Certified Local Government Program which is a preservation partnership between local, state and national governments focused on promoting historic preservation at the grass roots level. The program is jointly administered by the National Park Service (NPS) and the State Historic Preservation Offices (SHPOs) in each state. As a CLG, the local government must enforce appropriate legislation, establish and maintain a qualified review commission, maintain a system for the survey and inventory of historic properties, and provide for adequate public participation in the local historic preservation program, including recommendations to the National Register of Historic Places.

HRC staff prepared a report on the size of other Preservation Commissions across the state and has worked with the HRC Liaison and City Manager to reduce the size of the Commission from 14 down to 12 members. The Legal Department is working on the ordinance changes.

Asheville currently has four locally designated historic districts: Albemarle Park, Biltmore Village, Montford and St. Dunstan's. The HRC also has purview over a total of 46 local historic landmarks. Asheville also has 12 recognized National Register Districts, but only three of these are locally designated, thus there is no HRC purview over these areas.

The primary activities of the Commission for Fiscal Year 2010 revolve around design review of applications for Certificates of Appropriateness for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated local landmarks. The staff may approve minor works, while major works require review and approval by the HRC.

Certificates of Appropriateness issued

Minor works reviewed	149
Major works reviewed	27

Local Landmark applications reviewed

Bon Marche building (Haywood Park Hotel) - This designation has been tabled at the applicant's request.

Local Landmarks designated

Spinning Wheel - August, 2009

Local Landmarks lost

The Richmond Hill Inn was destroyed by fire in March 2009. The designation for this property is scheduled to be removed in August 2010.

National Register nominations reviewed

Biltmore High School
Blake House

The Commission and staff were also involved in a number of other projects during the year in fulfillment of their mission to preserve and protect the cultural resources of Asheville and Buncombe County, which are outlined below.

- **Montford Guidelines Update** – The HRC adopted the new design Guidelines for the Montford Historic District in April, 2010. The new document, developed with significant community input is more concise and user friendly and also provides more flexibility for the incorporation of "green technology" in historic homes. There is also greater emphasis on the inherent sustainability of Historic Preservation. The HRC hopes to use the Montford guidelines as a model for the other districts. The Guidelines are currently available on the City's website and will soon be available in a hard copy format as well.

- **Downtown National Register District Grant** – The HRC was awarded a matching federal pass-through grant from the NC SHPO for the update and expansion of the Downtown Asheville National register nomination. The project budget is $7,700 with $4,500 from grant funds and $3,200 from funding provided by Buncombe County.

- **Architectural Survey** - HRC staff continues to administer the architectural survey contract and coordinate with the NCDOT, the COA Engineering Services, and the NC SHPO on the survey update as required per the Memorandum of Agreement (MOA) between the Pack Square Conservancy (PSC) the City, the ACHP and the SHPO to verify work done and to meet all requirements of the MOA. The survey will include all structures that are more than 50 years old and will include a full database documenting all of the structures with a brief description and photographs. The survey is slated for completion in June 2011. Once the survey is completed, the HRC would like to pursue funding to have the survey published in a book form similar to Cabins & Castles, which was re-published in 2008.

- **Downtown Master Plan Implementation** - The HRC has contributed to the development of the implementation matrix for the Downtown Master Plan and is involved with the Historic Preservation sub-committee working on implementation strategies.

- **National Preservation Month Preservation Forum** – The HRC sponsored a Forum in May, 2010, as part of many activities occurring locally to acknowledge National Preservation Month. The Forum, held at the YMI was co-sponsored by the Downtown Commission and was attended by 35-40. Speakers included Ted Alexander from Preservation North Carolina, who discussed non-regulatory preservation options. Other topics included state and federal tax credit programs, National Register nomination criteria and local design review.

  Fiscal Year 2011 goals include:

- Proceed with RFP and contracting to secure firm to complete update and expansion of Downtown Asheville National Register District.
- Amend HRC Bylaws to address attendance issues and institute consent agenda to improve customer service experience at HRC meetings.
- Formulate work plan for new education sub-committee and landmark sub-committee.
- Hold annual community meeting within each of the historic districts.
- Begin working with Albemarle Park and St. Dunstan's communities to update design guidelines.
- Plan annual retreat for fall 2010.
- Work with Downtown Master Plan Implementation Committee on community storytelling event and Web-portal design.
- Work with other community preservation groups on May 2011 Preservation Month event.

Ms. Duermit responded to Vice-Mayor Newman when he questioned the proposal to reduce the membership from 14 to 12. She said they arrived at 12 members after looking at other commissions across the state, including looking at the amount of territory they cover. In addition, Councilwoman Manheimer she said that the Committee has a large work plan and they need enough members to spread the work around. She felt the membership size might again need to be reviewed in the next couple of years.

On behalf of City Council, Mayor Bellamy thanked Ms. Duermit and the entire Commission for their efforts on the Commission.

IV. PUBLIC HEARINGS: None.

V. UNFINISHED BUSINESS:

A. MOTION APPOINTING MEMBERS TO THE BLUE RIBBON HEALTHCARE TASK FORCE

Assistant City Manager/Interim HR Director Jeff Richardson said that the Asheville City Council, in conjunction with the passing of the FY 10-11 Annual Budget, instructed city staff to identify qualified candidates for appointment to a Blue Ribbon Healthcare Task Force, aimed at reviewing the City's Health Insurance Fund, and providing recommendations back to the Asheville City Council on improving the Fund's performance.

Due to the continued challenge of providing affordable healthcare to city employees, City Council approved staff to identify citizens in the Asheville community with commensurate education and professional experience who would consider serving as members of a Blue Ribbon Health Care Task Force for the next six month period.

This task force's work may include, but is not limited to, best practices comparison of similar cities to determine the normal range of health insurance-related benefits afforded to employees, cost-for-service comparisons, employer-employee cost-share analysis, external

contracts to include costs and scope of services provided, review of the Asheville Project Disease Management Program, as well as other areas of interest.

Once appointments are made, the group's work and final recommendations need to coincide with the onset of the FY 11-12 budget process (January –February, 2011). Once final recommendations are made, this task force's work is complete and is dissolved at that time.

City staff recommends consideration of the following candidates: (1) Vicki Banks - Ms. Banks is the Director of Benefits and Compensation at the Biltmore Estate where she has primary responsibility for the administration of Biltmore's employee benefits programs; (2) Bill Biddle - Mr. Biddle holds an MPA in Healthcare Management and has held various positions through his career in healthcare management. Mr. Biddle is active in Asheville in many community service areas; (3) Jim Christian - Mr. Christian served as a hospital CEO for 25 years and is retired as Medical Center Director for the VA Hospital in Asheville. He currently works at MAHEC as the Director of Regional Services and Continuing Education; (4) Bruce Elliston - Dr. Elliston is a retired physician who has practiced medicine in the Asheville area for over 35 years. Dr. Elliston remains active at a national level and has made several trips within the last year to Washington, D.C. to advise various government officials on national health care matters.

When Councilman Russell asked if we invited the Director of Human Resources from the Metropolitan Sewerage District to be a part of this Task Force, Mr. Richardson he had not in that he solicited members of the community who had experience in similar level funds. He did invite a representative from Grove Park Inn, but they declined.

In response to Councilman Russell, Mr. Richardson said that he would be happy to invite a representative from Buncombe County government (or another similar sized government) to be a part of this Task Force in order to balance the government vs. private sector.

In response to Mayor Bellamy, Mr. Richardson said that the domestic partnership issue is part of our 2010 business and work plan. Staff will come back to Council in conjunction with the budget process with the goal implementation date of July of 2011.

Councilman Russell, who was asked to be liaison to this Task Force, suggested an interim update to Council from the Chair of the Task Force, or himself, in approximately three months. At that time, Council can re-direct the focus of the Task Force, if necessary. At Councilman Russell's suggestion, Mr. Richardson said that detailed minutes of the Task Force meetings will be kept with support from staff in the Human Resources Department.

Vice-Mayor Newman said that while we will be looking at best practices compared to other similar cities, he also felt we should not limit the scope of comparison to just the public sector, but to look within our own community at our large set of employers.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Russell moved to appoint Vicki Banks, Bill Biddle, Jim Christian, Bruce Elliston and a representative from Buncombe County government (from Mr. Richardson's invitation) to the Blue Ribbon Healthcare Task Force with an update to City Council on October 26, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

B. RESOLUTION NO. 10-166 - RESOLUTION APPROVING THE RECOMMENDATIONS OF THE HOUSING & COMMUNITY DEVELOPMENT COMMITTEE FOR THE 2010 OUTSIDE AGENCY PROGRAM

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution approving the recommendations of the Housing & Community Development (HCD) Committee for the 2010 Outside Agency Program.

The HCD Committee received applications from 10 eligible organizations for Outside Agency funding for 2011. The Committee heard presentations from these applicant organizations on May 26, 2010. The Committee made recommendations, approved by Council, for funding for five of those organizations on June 9, 2010. The HCD invited the remaining five organizations to its meeting of June 26, 2010, to learn more about the programs in the community that support after-school and other education enrichment and child support services.

The conversation was wide-ranging, and provided insight into the array of existing services, funding mechanisms and emerging priorities. Besides the organizations applying for funding, representatives of the Asheville City Schools Foundation also participated in the discussion.

The Committee recommends the following funding under this program for 2011:

Child Abuse Prevention Services, Inc.	General operating support targeted to parenting education and outreach	$ 5,000
Children First /Communities in Schools	Project MARCH: after-school safe-haven program at three housing complexes in the City	$ 17,800
One Youth at a Time	Provides mentoring, job training and placement assistance to at-risk students	$ 5,600
YWCA of Asheville and WNC	Support Our Students (SOS) is an afterschool and day-long summer camp for at-risk students	$ 8,000
Housing Authority-Youthful HAND	After-school program for children residing at Lee Walker Heights housing development will purchase research based materials to implement the literacy component of the program	$ 4,000

This action complies with the City Council Strategic Operating Plan in (1) Fiscal Responsibility: It provides resources for strategic initiatives and creates meaningful performance measures for programs and services; and (2) Safe: Supports recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Approval of Outside Agency Grants provides operating support to Asheville- based organizations that are providing direct services for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- Budget constraints have curtailed the availability of funds for this year, and organizations will need to find alternate sources of program support;

Outside Agency Grants are funded from the City's general fund. The funding recommendations are within the fiscal limits developed by Council during the budget working sessions. All of the funding recommendations above are made at 80% of last year's individual agency funding.

The HCD recommends approval of the 2011 Outside Agency Program grants as presented.

Vice-Mayor Newman, Chair of the HCD Committee, noted that these recommendations are consistent with the other recommendations previously approved in that they are made at 80% of last year's individual agency fund.

Mayor Bellamy noted that working through the United Way and the RICH Task Force, Asheville was approved for ten local agencies who service children to have outside evaluation tools to see how they can operate under best practices.

In response to Councilman Smith, Mayor Bellamy said that the United Way has an after school initiative that is focusing on after school services that are being provided in the community to make sure they are operating efficiently, eliminating redundancy and maximizing services. The RICH Task Force has adopted that initiative as well and the HCD Committee will be hearing more about this in the future.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-166. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 151

VI. NEW BUSINESS:

A. ECONOMIC DEVELOPMENT INCENTIVE GRANT REQUEST FOR THE MONTFORD COMMONS PROJECT

Planning & Development Director Judy Daniel said that local developer Frontier Syndicate is seeking an Economic Incentive Grant (ECI) to support Phase I of the Montford Commons Urban Village project. The Montford Commons project was approved and rezoned in September 2007, and amended in June 2009. That rezoning to Urban Village represents a substantial bonus for the developer through its added density and flexibility.

When the economy changed, they proposed a public/private partnership (requiring a cash contribution from the City) that would enable them to proceed with the first phase of their project; as private lending sources had become difficult to obtain. To assist with the analysis and evaluation of a potential public/private partnership, the City (at the developer's expense) contracted an independent advisor, Real Estate Research Consultants (RERC) to evaluate the qualifications of the developer, conduct a market supportability assessment of the project, and perform financial gap analysis. A presentation from the developer and an initial staff assessment of the RERC report were heard at the April, 2010 meeting of the Planning and Economic Development (PED) Committee. After some discussion, but no specific action, the PED Committee suggested that the proposal should also be heard by the Finance Committee.

On June 8, 2010, the Finance Committee heard the petition and a revised staff recommendation that did not recommend support for the request. The developers, however, then requested another type of support from the Finance Committee than had been requested at the PED meeting. They requested an ECI in the form of tax relief similar to (although for a longer timeframe) the agreement with the Biltmore Town Center development. Since the staff did not have any supporting materials for the revised request, the Finance Committee directed the

representatives of Frontier Syndicate to submit required materials to the staff in time to consider the request and prepare a recommendation for the Council for the July 27 Council meeting.

Following the direction of the Finance Committee, a letter was mailed to the developers on June 16 outlining the information needed to perform the required analysis and the timeline necessary to allow time for the review before the deadline for reports. It included the materials and presentations submitted by the Biltmore Town Center development, as examples of the type of information, evidence of extraordinary public benefit, and presentation the Council would expect. The report was submitted to the staff on Sunday afternoon, July 18, and the following staff analysis represents the analysis possible within that timeframe.

Developer Proposal: The July 18 submittal requested the Council to approve the following at its July 27 meeting to assist this project:

- An Economic Incentive Grant equal to the amount of anticipated property tax revenue generated by Phase I of the development for its first ten years after completion.
- Relief of permitting fees of $350 per dwelling unit ($87,500)
- Relief of water tap fees up to $103,012

They state that the ten year term of the relief is based on their need for a $3 million gap in financing for infrastructure and the requirements of the HUD financing for which they have been approved. The stated rationale for City support is that traditional lending institutions are not currently lending for such projects, despite their merit. The tax and fee relief is needed to cover a $3 million gap between an approved HUD loan and the resources of the developers. Further, they state that the proposal should cause little or no burden on existing city and county budgets as the assistance will be based on the revenues generated from the project when completed. They state that if the support is not provided, the City and County will lose the opportunity to take advantage of HUD's commitment and additional "workforce" housing being created.

The staff analysis includes an evaluation of the request submitted on July 18 and also includes analysis provided in the original RERC evaluation that is still pertinent.

RERC Report Elements - While the type of financial support requested has changed, certain key elements of the RERC evaluation remain pertinent for the Council to consider in making their determination. These include:

- Experience of Developers - The individual equity owners active in the Montford Commons project possess the necessary individual skill sets and qualifications for project planning and development; however, the ownership group as a whole has not completed a project of similar scope and scale and therefore cannot provide project references applicable to the group. Similarly, the ownership group does not have experience or references related to completion of projects in which public investments have been made to fill a financial gap; although individual owners possess some experience in this area.

- Private Equity Investment – According to the RERC report a current equity contribution of 13% of Phase I construction costs, lower than the 20% contribution generally expected from developers requesting public incentives. According to the July 18 assistance request, the equity investment is at 20%. Insufficient information was submitted for the staff to understand why the equity investment is now substantially greater than what was stated in the RERC report.

- Market Support for Project – The request relates only to Phase I of Montford Commons, which is to include 250 rental units and a parking structure with 300 spaces. The RERC evaluation concludes that the rental units in Phase I could be viable within the market at this time, although no need is found for the parking facility. Phases II and III contain

commercial space (and rationale for the parking facility) for which they do not see current demand.

- Public Support for Structured Parking – This request for tax and fee abatement will support the construction of the rental units and the parking facility. The RERC report, as noted above, concluded that public support for structured parking in Phase I is not substantiated for Phase I.

  RERC also concluded that including this structured parking deck in Phase I of the project is a key contributor to the financial gap. RERC concludes that surface parking could accommodate Phase I and substantially reduce the project's hard costs and debt service.

- Reasons for Financial Gap - The consultants suggest that key factors driving the Montford Commons financial gap are land costs and (as noted above) the structured parking facility. Frontier assembled land at the height of the real estate market, inflating their development costs.

  Also, their land acquisition costs included the purchase of a "ravine" for approximately $1.0 million that it planned to package with adjoining property and develop as part of the overall project. The adjoining property, however, is currently owned by a third party that is unwilling to sell. Without the adjoining property, the ravine by itself has low development potential and thus is unlikely to generate project income for Montford Commons.

Current ECI Economic Assistance Request Analysis – A basic tenant of public support for a development project is that it should only be considered if the project fulfills or exceeds policy goals established by the City. In this instance the basic policy question is whether the Montford Commons project has sufficient merits to justify consideration of fiscal support by providing significant public purpose benefits that warrant public investment when compared to other competing projects or projects that may be proposed in the future.

The Montford Commons project (as previously approved through the Planning & Zoning process) is consistent with the basic goals of the City's 2025 Plan, Smart Growth Policies, Strategic Operating Plan and other official plans of the City. Specifically, it encourages infill redevelopment; proposes an efficient use of land through promotion of density; provides a walkable community within the development and into the adjacent neighborhood and to downtown; and is located on an existing bus line which supports and encourages alternative transportation options and preserves the capacity of area roadways. These factors led to the rezoning approval to the Urban Village zone, with substantial density increase.

Since other development projects approved in recent years have met the basic goals of the 2025 Plan, smart growth policies, and other plans without receiving public assistance for their related infrastructure costs, the more complex policy question of whether it provides substantially more public benefits.

In summary, the primary benefits to the City of Montford Commons Phase I are that it will eventually enhance the tax base of the city and county (producing an estimated $150,000 and $180,000 annual property tax revenues for the City and County respectively after the 10 year abatement), will provide some additional multi-family housing on the edge of the CBD that is, by the terms of a HUD loan, is to be offered at rates affordable to the "workforce housing" market; and that it will address certain public infrastructure needs that are currently high priorities in this area of the City.

Major concerns are that Phase I does not provide any affordable housing component, markets to but is not confined to the "workforce housing" market, will not create but a few permanent jobs, does not guarantee a percentage of construction jobs for Asheville area contractors, is not in one of the City's two primary targeted redevelopment zones (underutilized

areas of the CBD and the River District), includes public support for a parking structure that is not needed for the housing project to proceed, tax benefits (and water fees) will be deferred for ten years (a precedent); and sets precedents for public support without adopted guidelines for subsequent requests for public support for "workforce" housing.

Affordability of Housing – A primary policy question for this request relates to whether public assistance should be given to a project that does not provide any defined "affordable" housing, although it will provide "workforce" housing. The city has a definition, policies, and incentives in place for "affordable" housing, but not for "workforce" housing.

The request states that the HUD loan, for which it has been approved, will require limits on rents ensuring that it will remain affordable at the "workforce" housing level. The Community Development staff is not, however, sure that this is a correct statement of HUD's participation. HUD does not control or require any rent affordability restriction, although there is a question about whether HUD may reduce a loan amount if the proposed rents after construction are higher than originally proposed. According to their research, the loan underwriting is based on anticipated cashflow so the proposed rents are taken into consideration at the time of application. Staff is looking into whether a report of higher than stated rents would make a project subject to audit and loss of loan funds.

Further, the developers posit that a Housing + Transportation Index should be used, rather than just the cost of housing. Such measures are being used more often, and relate the cost of housing to proximity to job centers. Using this measure, the housing being provided would be closer to the level defined as affordable; but the City has not used this measure before or developed a standard ratio to determine how much additional affordability is gained. Using this measure, before standards for measurement are researched and adopted, could lead to confusion.

Further, they state that affordability at the "workforce" level will be guaranteed because HUD's mission is to ensure that the apartments will be affordable at that workforce level. That is true to the extent that HUD monitors projects given this type of loan. They also state that although there are not to be any units specifically designated for civil service employees, the entire project is to be oriented to supporting that salary range. That is true, but with no standards for salary verification or limitation of at least some units to certain populations, such units could just as easily be rented by anyone looking for a nice new place near downtown for a weekend place. That is a problem faced in many cities with a lot of tourism and weekend visitors. New, relatively affordable housing, without rental restrictions, if often acquired (as are a substantial number of downtown condos) by those looking for affordable second homes.

Jobs Creation – As stated, very few permanent jobs would be created with Phase I; although construction jobs would be created. The intended general contractor is based in Charlotte. The request states that "to the greatest extent possible the project will use Asheville area contractors by employing a system identical to that used for Mountain Housing Opportunity's Glen Rock project". No percentage guarantee is offered. With substantial public support requested, some form of guarantee of local contractor use should be included.

Greenway/Ravine Status – The developer was asked to consider giving the City an easement on the ravine property for its eventual use in extending a greenway from Montford to the River District. The assistance request states that this is not possible at this time due to encumbrances on that property. With substantial public support requested, some advantages to the city beyond additional taxes ten years after the completion of the project should be offered.

Private Equity Investment – As stated previously, there is insufficient information provided to understand why there is a difference between the RERC report estimating that Frontier had a 13% equity investment and the statement in the developer's July 18 request indicating that they have a 20% equity investment.

LEED Certification – The developer was requested to provide information regarding the sustainability elements in the project, especially potential for LEED certification. The assistance request notes that LEED certification would not be fiscally viable as it would push costs up too much. They state that they will be using Energy Star appliances and some other sustainable elements in their construction, and they would already receive some relief for those choices.

Tax Relief Request – The developer states why they believe the tax relief request will not burden the City or County, since the relief will not start until completion of the project. Yet the City and County will have to start providing additional levels of service to these areas after the completion of the apartments and parking structure.

Permitting Fee and Water Tap Fee Relief Request – The City has never given relief of permitting or tap fees except for projects that meet the definition for "Affordable" housing. No standard for relief of "Workforce" housing has been established.

The project meets Council goals related to adding housing near downtown, but the staff does not believe that it exceeds those goals sufficiently to warrant public investment in the project in the form of extended tax and fee relief; without setting a precedent that would be an incentive for a number of similar projects to request similar support. As noted previously the project reflects the following:

Pros:

- If monitored by HUD, will provide long term workforce housing level rents;
- Area contractors to be used "to the greatest extent possible";
- Use of Energy Star appliances, and certain "green" building practices;
- Increased tax revenues ten years after completion; and
- Some currently needed public infrastructure improvements provided including upgrades to traffic signals (at the intersections of Cherry Street and Haywood Street with Montford Avenue) and improved pavement conditions on three streets within the project.

Cons:

- Does not offer any defined affordable housing, when other approved market rate developments have included up to 20% affordable housing units. Staff suggests that to meet a test of public investment, a project should include 25% to 50% affordable housing. The lower amount could relate to an offer of long term rent control assuring affordability for workforce level housing;
- Since workforce housing level rents are open to anyone willing to pay those rents, these units will offer the opportunity for affordable weekend/vacation housing for the "second home" market;
- Does not create permanent jobs in Phase I, and no guarantee of a certain percentage of contracting jobs for Asheville area contractors is given;
- Proposes a parking structure for Phase One that is not warranted for the rental units in proposed, only to subsequent phases with more commercial uses. Further, this is not in an area noted as a high priority in the 2008 Parking Master Plan, and the structure adds substantially to the fiscal burden of the project – and thus the length of time for tax abatement requested;
- Is not located in a targeted redevelopment area. Underutilized areas of the CBD or in the River District are the areas most targeted at this time for redevelopment support;
- Documents submitted do not provide sufficient information to determine the amount of private equity contribution from the developer, which should be no less than 20% before any public participation should be considered;
- No easement for future greenway construction is offered despite substantial public contribution;
- No LEED certification will be achieved due to need to keep costs down;

- The estimated added tax revenue (annually approximately $150,000 in City property tax revenue, and $185,000 in County tax revenue) would be deferred for 10 years, yet the need for added services would begin when project is completed; yet the tax relief for Biltmore Park began with the construction of the project. Since that project has just this month been completed, less than three years of a completed project valued at full value by the County will be given tax relief; and
- Permit and Water Tap fee waivers have never been offered to projects other than those meeting the definition of "affordable" housing, so this would set a new precedent without guidelines established for determining when and why and to what amount they should be offered. The City's affordable housing rebates on permit fees are limited to 50%; and the waivers on water taps are limited to 50% for units defined as "affordable", not the entire project. The infill and affordable infrastructure rebate is again 50% based on a percentage of "affordable" units. There are no 100% waivers given; and the affordable housing rebate for permit fees and therefore;
- Insufficient benefits are given to differentiate project from other projects that have been approved without public assistance or that may be proposed in the future.

Therefore, with the limited public purpose benefits noted, and the substantial concerns noted, the staff does not see this proposal as a transformational project in Phase I and therefore, the staff does not recommend public participation for this Phase. Especially in comparison to projects like the Biltmore Town Center which are easily definable as transformational, Montford Commons does not "raise the bar" on change for this area of the City. (And the Biltmore Town Center was only given a five year tax abatement) It is a good project, it is a project that should be built; and the reluctance of private sector lenders to participate in the project is unfortunate. But the staff does not believe that the request offers enough change, in a place that is not designated as vital for change by the Council, to warrant the loss of tax revenue for ten years given the amount of services the project will require after it is built; and to risk setting a precedent for similar requests for similar projects that are good, but not great.

The staff believes that with certain changes, the amount of public participation and the level of public purpose could be raised and/or the project costs lowered. These might include inclusion of a certain percentage of defined affordable housing, a guarantee of a certain percentage of work for local area contractors, and/or the elimination of the parking structure. Should the project go forward, there will be more elements that warrant public participation in subsequent phases. These include:

- Creating a substantial number of permanent jobs – subsequent Phases include substantially more commercial space.

- Future public parking - Public structured parking will be necessary to the development and the general public in subsequent Phases.

- Future greenway construction - Construction of a greenway segment when it becomes a higher priority of the Greenway Master Plan and more potential for connectivity after implementation of the Wilma Dykeman Plan along the river.

For the requested level of support, the staff does not see the level of public benefit that would be expected; but staff does see the potential for precedents without carefully evaluated and adopted guidelines for future requests. With more time to establish guidelines for support of "workforce" housing, support for elements of this project could be worked out; but the developers have asked for your decision at the July 27 meeting, due to certain deadlines they face.

As discussed above, under the proposal from Frontier Syndicate, the City would forego approximately $87,000 in permit fee revenue in FY 2010-11 and $103,000 in water fund tap fee revenue in FY 2011-12. Also, at the completion of Phase I, which is estimated to be FY 2013-14, the City would begin paying Frontier Syndicate an annual amount equal to the City property tax

revenue generated by the development. This payment would continue to 2023 for an estimated accumulated total of $1.5 Million and a net present value of $1.1 Million.

After reviewing the request from Frontier Syndicate, the staff concludes that we do not believe that the added housing and infrastructure improvements are sufficient to warrant the city's loss of tax revenue for ten years. This conclusion derives strongly from not seeing how this request could be differentiated from other development proposals that have been approved without public support. The staff believes that the 2007 rezoning to Urban Village (with its added density and flexibility) already represents the appropriate level of public support, given the level of contribution to furthering city goals and policies.

This request is made under the enabling authority for N.C. Gen. Stat. sec. 158-7 which has traditionally been used for commercial industrial development. This would be the first use of it for a residential project.

Mr. Lou Bissette, attorney representing Frontier Syndicate, LLC, said that Phase I is comprised of 254 workforce housing apartments and a 300 space parking garage. The total cost is estimated to be in excess of $30 Million. The project will be constructed on an approximately 20 acre tract of land located in Montford. Infrastructure improvements in and around the project are estimated to cost approximately $3 Million. The developer is requesting an economic incentive grant equal to the amount of the property tax revenue generated by the Phase I project during its first 10 years of operation. The 10-year period would commence only after a Certificate of Occupancy is issued for the project. It is estimated that the annual property tax revenue for Phase I will be $150,000 for the City and will yield a present value over that 10-year period of approximately $1,237,000. In addition, the developer is requesting $190,000 in reduced permitting and tap fees. The project has received preliminary approval for a HUD sponsored loan guarantee under the 221-D-4 program. This project meets many City Council goals including the creation of workforce housing near the Central Business District, which is adjacent to public transportation and promotes the goals of walkability and sustainability. We believe that this project meets the affordability standards of the Housing Plus Transportation Index which factors in a homes proximity to the urban center. This property has been unproductive and underutilized for many years. The location is probably one of the few tracts close to the Central Business District which can be used for workforce housing, due to the low cost of this land. The developers have a great deal of blood, sweat, tears and money in this site. It's made up of over 50 individual lots which were acquired over a 5-year period. The developers have never received any salaries, developer's fees or other forms of compensation and there is no profit built into the current projections for the project. It is his understanding that there has been very little, if any, neighborhood opposition to this project and he presented Council with a letter from the Montford Neighborhood Association in support of their request. This project simply cannot be done without this requested economic incentive grant. In today's world there is little private investment or credit available for projects of this type. For this reason, we believe the City should seek out opportunities for public/private partnerships in the provision of infrastructure. That is a quote out of the City's 2025 Plan. City staff has expressed some concern about the developer's equity investment in this project. The developers believe that they can obtain the additional equity and meet all of the terms of the HUD sponsored loan guarantee. However, if they can't, then the City's economic incentive grant will never be made. City staff has also expressed some concern about the precedent which might be set by granting such an incentive. However, a similar incentive was granted to the developers of Biltmore Town Center – developers with deeper pockets than those of his clients. In addition, that project was located more than 10 miles from downtown Asheville and does not appear to him to contain much affordable housing. It appears to him also that Montford Commons will provide much needed support to our downtown workforce community. It will provide much needed rental housing, will support our tourism industry, and increase downtown commerce. In addition the infrastructure improvements will benefit the general public and especially the urban core by reducing the need for vehicles and increasing the use of pedestrian and public transportation. The development of this grossly under-utilized property will, through future phases, greatly increase the City's tax base. It will

significantly enhance both revenue and livability in the downtown area, increase ridership on the region's mass transit and provide for more efficient utilization of numerous downtown resources. He would be more concerned about the precedent of the Biltmore Town Center grant than the precedent created by economic incentives for Montford Commons. This request, if granted, will not cost the City taxpayers one dime. If you turn this grant down, what will the City gain? If you approve it you will get a well-designed project that meets many of the Council's goals and will seek further development in this under-utilized area of our City. In addition, at the end of the 10 years, the City will get a perpetual ad valorem tax income stream. The great thing about this request is that if the developer doesn't deliver a completed project as advertised, they will get nothing from the City. Although the City's economic development incentive policy was initially designed primarily to promote industrial development, we believe it clearly permits, at the discretion of City Council and in accordance with N.C. Gen. Stat. sec. 158-7, other incentives outside of this policy on a case by case basis. We believe that this policy, as well as the grant request, would be permitted under state law. Finally, we all need to look at our current economy and the new normal. Very frankly there will be very few, if any, opportunities in the near term to meet your affordable housing and other goals. Unfortunately the days of industrial development in our community may be over. Our continued viability now depends on tourism and retail establishments in the downtown. The workforce for tourism and retail entities must be housed in affordable projects with access to the workplace. Montford Commons meets those goals. He respectfully requested that Council seize the day and make this very fine project happen for the good of our community.

Councilman Russell, Chair of the Finance Committee, said that the request came to them in a totally different form; and therefore, no recommendation can be made.

Councilman Davis, Chair of the Planning & Economic Development Committee, said that this request is different from what came to them to review; and therefore, no recommendation can be made.

Vice-Mayor Newman felt that this is a good project, however, he challenged the statement that this project will not cost the City taxpayers anything because once it is complete, it will require police protection, solid waste services, etc. The idea of putting this much pretty affordable rental housing this close to downtown is a unique opportunity. At this time the request for public support is beyond what he can support. He asked if there are any opportunities for a compromise on this in terms of what level of public support the development team is requesting. And, at least for this phase of the development, there does not appear to be the demand for this much parking. He questioned if there is a possible way to reduce the infrastructure costs on this to make that less expensive and bring down the level of the financial gap on this project.

Mr. Vince Smarjesse, representing Frontier Syndicate, said that the parking was analyzed in December last year for a four-story apartment building and a four-story parking deck to go with it. Some of the extra parking was (1) thinking about phases 2 and 3; and (3) thinking that at the amazing cost of $8,000 per space for structured parking we thought it was a good proposal for the City. Since that report was delivered in December, the top deck of the parking deck was completely removed. We now have parking slots commensurate with the Unified Development Ordinance – one slot per bedroom, plus whatever is needed for the commercial space, plus a small contingency. Again, the parking has been reduced from 4 decks to 3 decks.

In response to Vice-Mayor Newman, Ms. Daniel felt that the RERC report stated that the required parking could be handled through surface parking, and hopefully that would be interim until further phases are built out.

In response to Mayor Bellamy and after Community Development Director Jeff Staudinger explained the City's definition of affordable housing, Mr. Smarjesse said that some of their units fit that definition and some don't, depending on the square footage. The product may not fit exactly in the box of affordable, but its close, especially being this close to downtown.

Mayor Bellamy sees this as a win/win for our community, but maybe not for 10 years. She hoped we can find a way to structure something for the community. She wondered if we might be able to use some Housing Trust Fund dollars for the portion of the project that is affordable. She understands staff's concerns and suggested sending this back to get a possible win/win project, as it is workforce housing near downtown, on a transit route, and provides an opportunity for a second and third phase with neighborhood support.

In response to Councilman Bothwell, Mr. Smarjesse said that he did not have readily available the information of the cost of parking garage spaces vs. surface parking spaces. However, he did say that the parking garage space is $8,000 a slot. He explained that they planned a parking garage that was appealing to the eye and tucked into and behind the building. They listened to the community when they designed it.

Councilman Bothwell figured that the parking garage would be approximately $2.4 Million. He felt that if this model works and attracts people who want to walk to work and use transit, it could be that we need far fewer parking spaces than a similar project five miles out. Also, when you have a surface lot you have potential to use the space for something else later. A surface lot is more flexible than a parking deck. He also expressed disappointment with no LEED certification.

In response to Councilman Smith regarding the lack of LEED certification, Mr. Smarjesse said that they rely heavily on their builders and architects to counsel them on what they can include or not with greenbuilding vs. workforce-type rents. They take greenbuilding seriously, but it is an expense the project cannot afford given the current conditions.

In response to Vice-Mayor Newman, Mr. Staudinger said that HUD will require LEED certification for all new residential construction that is supported with HOME funds.

Vice-Mayor Newman felt the strongest points the developers make are the Housing & Transportation Index and the project's proximity to downtown. He would consider supporting the proposal, but not for 10 years. He felt the facts on the Biltmore Town Center project are very different, but it was a 5-year tax deferment. He would be open to consider something more of that nature. Personally he felt that greenbuilding is very important and urged the developers to take a harder look at maybe some basic certification.

Councilwoman Manheimer said that we don't have a set of criteria for public/private partnerships in the context of economic development and that's not fair to the applicant because they don't know the rules. She agreed with Vice-Mayor Newman that we need to see a proposal that at least helps the citizens and the City meet some of their shared goals. That might be a product that includes affordable housing, some green building and some sorely needed infrastructure needs that this project will assist with. She wondered if it would be possible for the developer to re-tool this project again and come back to Council.

Mr. Bissette said that even though the developers have been working on this project for five years and have spent a lot of money, they are willing to go back and work with Ms. Daniel again and see if there is a chance of re-tooling the project.

In response to Councilman Russell, Mr. Bissette said that they have received encouraging words from some of the Buncombe County Commissioners but they will delay their appearance before them.

Councilman Russell explained why this is not similar to the Biltmore Town Center project in that that was a large commercial aspect with a voluntary annexation. He felt we do need to come up with a policy in these new economic times of if this is the type of public/private partnership we are going to get into. He felt there is clear policy about this type of incentive in

conjunction with annexation. He hoped we can work together but due to the large amount of money it doesn't make sense in its current format.

Councilman Davis agreed with Councilman Russell in that there is a tremendous difference between the Biltmore Town Center project and this project. With the Biltmore Town Center project we got permanent jobs, mixed use development, retail and residential on a large scale. However, this does answer affordable housing (somewhat) and it's on a transit route. He struggled with the 10-year tax deferment.

Ms. Daniel asked for guidance on their request for 100% relief on the permit and tap fees, which we have never done before. We have done 50% in the past on affordable housing.

Mayor Bellamy felt it should be the same standard that we would give anyone else on workforce housing.

Vice-Mayor Newman felt we should always do 100% rebate on affordable housing in that he feels it's odd to give people loans but yet still charge them a fee to get a permit. He felt that is a broader policy discussion.

Mr. George Gabler, representative of Frontier Syndicate, explained that the changes along the way have been an attempt to respond to real concerns raised at each meeting. He requested City Council table this request in order to give them time to meet with City staff to see if they can address Council's concerns.

Vice-Mayor Newman moved to continue this discussion until August 24, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

B. REVIEW OF ON-STREET PARKING BY HANDICAPPED VEHICLES IN DOWNTOWN

City Attorney Oast said that this is a review of applicable law, policy and practices as to the parking of motor vehicles displaying handicapped placards or license tags in metered on-street parking spaces in downtown.

Earlier this year, in response to requests from several downtown businesses and organizations, staff was directed to review the State law, the City's ordinances, and the City's practices regarding the parking of vehicles displaying handicapped placards or license tags (herein "handicapped vehicles") on downtown streets in the spaces where parking meters are installed (herein "metered parking" or "metered space"). This staff report does not address parking in designated handicapped parking spaces, but rather the use of regular metered on-street parking spaces by handicapped vehicles.

Currently, the City of Asheville does not require the activation of parking meters by handicapped vehicles. This is not an ordinance, but is rather a practice, based on an interpretation of State law. The request to review this interpretation and practice grew out of observations that some of the owners of those handicapped vehicles, who are also downtown residents, were parking the vehicles on the street, in metered spaces, for days or weeks at a time because they could do so without limitation as to time and without paying. The contention is that this use takes up spaces that could be used by the customers of downtown businesses, who only need to park for a few minutes to transact their business.

The law regarding handicapped parking may be summarized as follows:

(1) Pursuant to N.C.G.S. 160A-301, cities may regulate parking on public streets within the city, including limiting the time that parking is permitted in any particular location. This same law also provides that cities may install parking meters at marked on-street

parking spaces. Typically, cities limit the time for which an on-street parking space may be used by an ordinance establishing a maximum time and/or by metering the space and requiring activation of the meter.

(2) N.C.G.S. 20-37.6 provides in essence that where cities limit the amount of time that an on-street parking space may be used, a handicapped vehicle may park in that space without limitation as to time. This exemption applies whether or not a space is metered. Thus, if a city limits the amount of time for which a space may be used (by establishing maximum time limits, or requiring activation of a meter, or both), that limit would not apply to handicapped vehicles. This exemption applies to any legal on-street parking space, not just spaces reserved for handicapped parking. Significantly, there is no language in the statute providing for activation of a meter by a handicapped vehicle, or providing that meter activation is not required.

(3) The Asheville City Code, Sections 19-161 through 19-170 and Appendix E, provides in essence that all of downtown is a metered parking zone, and that parking is allowed at metered spaces for up to the maximum amount of time allowed by the meter. Transportation Director Ken Putnam and Parking Services Director Harry Brown advised that the maximum amount of time allowed by most meters is two hours; some allow as much as three hours, and some as little as 15 or 30 minutes.

The absence of language in G.S. 20-37.6 regarding activation of meters has resulted in differing interpretations of the law. An informal survey of North Carolina cities indicates that most do not require activation of parking meters by handicapped vehicles. However, the City of Charlotte has long required meter activation by handicapped vehicles. More recently, the City of Raleigh has adopted the same practice, and adopted an ordinance to that effect.

The public purpose justifications for authorizing cities to regulate on-street parking include relieving traffic congestion, and ensuring turnover in on-street space utilization. This is consistent with the interests of the citizens and organizations who have recently brought this issue up in Asheville.

An informal survey conducted by parking services staff indicates that, out of approximately 743 metered spaces in downtown Asheville, 10 to 12 percent of them are occupied by handicapped vehicles at any given time. This does not include designated handicapped parking spaces. It is not known how long a particular vehicle remained in a particular space.

Another issue with downtown parking availability is that many metered spaces are frequently occupied by non-handicapped vehicles for periods of time that exceed the maximum amount of time allowed by the meter. The operators of these vehicles, many of whom work in downtown, activate or "feed" the meters at regular intervals to avoid having the time on the meter expire. The effect of this practice is the same as it is for handicapped vehicles that remain in on-street spaces for long periods of time: the space is being used for short term vehicle storage, and is not available for individuals who only need a few minutes to transact their business. This likewise defeats the public purpose, set out above, of relieving traffic congestion and ensuring turnover in on-street space utilization.

Several different options are available for increasing the availability of on-street parking spaces and limiting improper use of them:

1. Clarify the maximum amount of time for which parking is allowed in any space, and that "meter feeding" by non-handicapped vehicles is not allowed as a means to extend this time.

2. Clarify that the requirement to activate parking meters applies to handicapped vehicles and clarify that there is no limit as to the amount of time that such a vehicle may park in a particular space.

Implementing these changes may require some additional training or equipment so that parking enforcement staff can know when vehicles have exceeded the maximum amount of time for a particular space.

Council may also wish to explore some options for accommodating the parking of handicapped vehicles:

1. Permit vehicle storage on the top levels of designated parking decks, or other City lots, at reduced cost.

2. Designate more on-street spaces for parking of handicapped vehicles.

3. Investigate methods for allowing meter activation by the operators of handicapped vehicles without the need for making repeated trips to the meter.

Even if the practice of not requiring handicapped vehicles to pay for parking is not changed, an ordinance clarifying a maximum time limit for parking in on-street metered spaces should be adopted. This time can vary from street to street, and can be a relatively long time such as four hours, or as short as 15 to 30 minutes. An ordinance that reflected the current meter zones could be quickly implemented with a minimum of disruption to current parking patterns. If the ordinance or practice is changed, some time should be allowed for education of the public who use downtown parking, especially to the operators of handicapped vehicles.

Since this plan has not been looked at since 1996, the long-term options would be to review the downtown on-street parking patterns and adjust the ordinance accordingly.

The Strategic Operating Plan has consistently provided for improved management of transportation and congestion. In addition, the Downtown Master Plan calls for the development of new unified parking management strategies.

Staff's recommendation is for Council to establish time limits for parking in downtown metered zones, with delayed effective date to facilitate public education. In addition to monitor space utilization and turnover.

Since this does affect the handicapped community that any initiative that Council directs staff to take should be reviewed by the Mayor's Committee on Disabilities for input.

In response to Councilman Bothwell, City Attorney Oast reiterated that state law provides in essence that where cities limit the amount of time that an on-street parking space may be used, a handicapped vehicle may park in that space without limitation as to time. This exemption applies whether or not a space is metered. Thus, if a city limits the amount of time for which a space may be used (by establishing maximum time limits, or requiring activation of a meter, or both), that limit would not apply to handicapped vehicles. This exemption applies to any legal on-street parking space, not just spaces reserved for handicapped parking. Significantly, there is no language in the statute providing for activation of a meter by a handicapped vehicle, or providing that meter activation is not required.

When Councilman Bothwell questioned enforcement of the maximum time limit, City Attorney Oast said that there are methods for doing that. For most of the time, people who park in a metered space don't exceed the time that the meter allows. He felt that if it were clear that the maximum amount of time for parking is what the meter says, or what a sign placed near the meter said, then it would not be that big of a problem.

Councilwoman Manheimer clarified that if we decide to clarify the ordinance and limit the amount of time you can park in a spot, handicapped parking is still available for one individual the entire day, but we can elect whether or not to require that meter to be fed, currently it is not required.

In response to Councilman Smith, Mayor Bellamy said that part of the City Attorney's due diligence on this topic is to seek input from the Mayor's Committee on Disabilities and back to the Downtown Commission and the Downtown Association because they have been important in bringing this to the forefront. After that input has been received, the City Attorney will bring this back to City Council for public comment and consideration of adoption of an ordinance.

Councilman Davis understands the frustration of seeing several cars staying parked in regular spaces continuously and felt it needed fairly immediate attention.

City Attorney Oast said that without adoption of an ordinance we can direct the parking staff to start enforcing the meter activation requirement with respect to any vehicle. He did recommend that we clarify our own ordinance so that it's absolutely clear that parking is only allowed in a particular space for a certain amount of time, regardless of the time noted on the meter.

Mayor Bellamy noted that City Attorney Oast recommends is a delay of the effective date to facilitate public education. We need to have some time built into this process after we approve whatever we're going to do, to let the community know this is no longer an acceptable practice in downtown Asheville. She asked City Attorney Oast to research how many handicapped spaces we have in downtown Asheville to see if we are lacking marked handicapped spaces. Also, can we open up more handicapped spaces available in the parking decks for the handicapped? She questioned if we can partner with the Basilica on the parking a lot across from them since we have the Vanderbilt Apartments and the Battery Park Apartments so close.

Vice-Mayor Newman seems like either of these two policies can go a long way of addressing the problem of cars being parked for a long time. Based on the information he has at this time, he would support the option to clarify that the requirement to activate parking meters applies to handicapped vehicles and clarify that there is no limit as to the amount of time that such a vehicle may park in a particular space. He hears more concerns about cars being parked in prime spots downtown for long period of time with handicapped placards on them, rather than the problem of people feeding meters. That is really expensive and he felt the market itself would limit that to a very large degree. If we did say every vehicle, whether it's handicapped or not, has a maximum time limit, he felt that would be a lot of work for parking enforcement vs. seeing whose meter ran out. He agrees with the sentiment expressed by the Mayor that to encourage people to not just park in a spot downtown for a long time without having to pay anything to give people discount or even a free space in the parking deck. He noted that we have a lot of not prime on-street parking along the edges of downtown that we rent out for a low price. Maybe there are some other on-street parking options that are less valuable than our prime places downtown.

Councilwoman Manheimer leaned in the direction of the second option as well to clarify that the requirement to activate parking meters applies to handicapped vehicles and clarify that there is no limit as to the amount of time that such a vehicle may park in a particular space. However, she felt we needed to hear public input before that decision is made. She felt it might be worthwhile to research other tourist towns to see how they have dealt with parking issues to see if they have a good working model.

Councilman Davis said that one of the persistent problems is the cars with handicapped placards being stored in prime parking spaces. In some instances there are spaces provided by the facility where those folks live, but they choose to park on-street as a matter of convenience. It

would be fine to give them free parking spaces in the parking garages, but we will have to use more enforcement to get those people to use that option. We are certainly not trying to make it difficult for handicapped people and we have an aging population, but it is the persistent ones that we are having a problem with that use the parking spaces for car storage.

Mr. Dwight Butner, Chairman of the Downtown Commission, said that the substance of the Commission's motion essentially was to suggest City Council explore charging for any vehicle parked in a metered space. There was some concern expressed that that might drive people who are permanently parking in these metered spaces to our designated handicapped spaces. The simplest way to approach this issue, we believe, is to begin with financial influences. He felt we need to be both a compassionate city and a fiscal city; and we need to balance our general concern for the handicapped community with an overall just outcome economically for everyone concerned. They stand ready to advise Council in anyway they can.

When Mayor Bellamy noted that City Attorney Oast will be again seeking in put from the Downtown Commission, Mr. Butner said that they have a standing committee on transportation associated with the Downtown Master Plan. He asked if Council would like to put this issue on their agenda and maybe expand the scope of that committee somewhat to address this issue. He felt that would be appropriate since it would eventually come to the full Downtown Commission. Councilman Davis, member of the Downtown Commission, said that the transportation committee meets monthly and we may be able to move this issue forward a little more quickly if it is scheduled in both arenas.

Mr. Byron Greiner, President of the Downtown Association and member of the Downtown Commission, noted that the Downtown Commission did review this issue with a motion. The motion was to request the City pursue metering all parking spaces (except currently marked handicapped spaces) and to enforce collecting fees for parking in all metered parking spaces whether they have a handicapped placard or not. The Downtown Association, nor the Commission, does not support limiting the amount of time, other than the designations we currently have because we feel the meters will enforce that for us. We are ultimately looking for the turnover of parking spaces rather than the storage of vehicle.

Mr. Joe Minicozzi, Interim Executive Director of the Downtown Association, said that this issue has been going on for two years. They paid an intern to go out on various days (three times a day) to research if vehicles were being parked all day. He showed pictures of handicapped placard vehicles parking all day long in regular metered spots around the Grove Arcade, the City-County Plaza, College Street, Haywood Street, etc. If we use the figure of 10% of 700 spaces, this is a loss of revenue to the City in the amount of $160,650. To park in the parking deck is $70/month and the Vanderbilt residents are offered a discount of $35/month, but to park on the street is free. If someone chooses to feed the meter all day, it would be $190/month. They feel that if people park in a metered space, they should feed the meter.

Ms. Ruth Summers, Executive Director of the Grove Arcade Foundation, felt that while the City has 3 parking decks downtown they are often occupied and not available for public hourly parking. Due to 911, the federal building parking lot is not used due to national security issues and therefore, the federal building and the federal court system have basically taken over the Wall Street parking garage. She said the lot behind the Battery Park Apartments is owned by the Basilica. They have done research for about 4 years around the Grove Arcade and they lose between 25-35 spaces a day to people storing their cars, which is a lost revenue to the City of approximately $80,000 a year.

Mayor Bellamy said that she has recently met with the Director of Public Buildings for the U.S. Government and talked about the issue of their employees who have already been screened having the ability to park in their facilities and how that would help the City with their parking. She will continue to work in that direction.

C. RESOLUTION NO. 10-167 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE COOPERS HAWK DRIVE AREA AND SETTING THE PUBLIC INFORMATION MEETING ON SEPTEMBER 13, 2010, AND THE CITY COUNCIL PUBLIC HEARING OCTOBER 12, 2010

RESOLUTION NO. 10-168 - RESOLUTION STATING THE INTENT OF THE CITY TO ANNEX THE ROYAL PINES AREA AND SETTING THE PUBLIC INFORMATION MEETING ON SEPTEMBER 13, 2010, AND THE CITY COUNCIL PUBLIC HEARING OCTOBER 12, 2010

Urban Planner Blake Esselstyn said that this is the consideration of resolutions stating the intent of the City to annex two areas contiguous to the current boundaries of the City of Asheville.

The City's policy is to include within its corporate boundaries areas that are urban in nature and meet State of North Carolina qualification requirements. Staff has identified two areas that meet the state requirements. Both of these areas are contiguous to the current municipal boundary. The Coopers Hawk Drive Area is 41.8 acres in size and is the last remaining residential portion of the Biltmore Park development to be brought into the City. The Royal Pines Area is 388.8 acres in size and is largely residential in nature. He explained a very small modification to the Royal Pines area map and description stating that there is a small sliver (unopened right-of-way) that was included on the map and in the description that is outside the area of consideration for annexation.

Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

Staff has provided the following proposed schedule for these annexations. The effective date for both would be June 30, 2011. The following steps and dates meet the process required by State law:

- Council Adoption of Resolution of Intent – 7/27/10
- Council Adoption of Services Plan – 8/10/10
- Public Information Meeting – 9/13/10
- City Council Public Hearing – 10/12/10
- Annexation Ordinance Adopted – 10/26/10
- Effective Date – 6/30/11

After hearing this item at their July 20, 2010, meeting, the Planning and Economic Development Committee agreed by consensus that the item should move forward to the full City Council.

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.

Con:

- Residents of proposed annexation areas may object to such annexation.

The fiscal impact of this round of annexations will be addressed in the Plan for Services document, which is scheduled to come before City Council on August 10, 2010.

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex these annexation areas.

Ms. Betty Jackson said that the idea of people who live in the County that come into Asheville are users and abusers of City services is insulting to County residents. Those people work in Asheville, do business in Asheville and some even own businesses and properties in Asheville, which all contribute to the City's coffers. It is not realistic that County residents contribute nothing to the well-being of the City. She said the reality is that most streets County residents use are maintained by the N.C. Dept. of Transportation and even if they use City-maintained street, municipalities get gas tax and Powell Bill funds.

At the suggestion of Mayor Bellamy due to a lot of misinformation, it was the consensus of Council to have staff develop communications to educate the public on how the City receives a minor share of the sales tax revenues collected here. It might be appropriate to show (at the public information meeting) a comparison of Asheville vs. other cities in North Carolina to illustrate how Asheville does not get as much taxes as people think we do.

Councilman Russell could not support either annexation because he didn't feel they want to become a part of the City of Asheville and we are ready to double their taxes.

Mayor Bellamy that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-167, with the public information meeting being held on September 13, 2010, and the City Council public hearing being held on October 12, 2010. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

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Councilwoman Manheimer said that the Planning & Economic Development Committee reviewed these annexations and with regard to the Royal Pines area, and since it is an older subdivision, they questioned what benefit we would be bringing this development. They felt it was an appropriate annexation and one where we could demonstrate some of the benefits we could bring to this community. She believed it has some older roadways and the water and sewer infrastructure may need some enhancement. While there is normally some resistance to annexation, this could be am area that could see some return for their tax dollar long-term.

Mayor Bellamy could not support the Royal Pine annexation area in that she felt this annexation was not the right time due to the City's financial situation.

Councilman Bothwell moved for the adoption of Resolution No. 10-168, as amended deleting the small unopened right-of-way described by Mr. Esselstyn, with the public information meeting being held on September 13, 2010, and the City Council public hearing being held on October 12, 2010. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Bellamy and Councilman Russell voting "no".

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D. BOARDS & COMMISSIONS

RESOLUTION NO. 10-169 - RESOLUTION APPOINTING GUS SIMS TO THE BOARD OF ELECTRICAL EXAMINERS

At the recommendation of the Boards & Commissions Committee, Councilman Davis moved to appoint Mr. Gus Sims to fill the unexpired term of Mr. Randy Osborne on the Board of Electrical Examiners (as the licensed engineer), said term to begin immediately and expire on July 1, 2012, or until his successor has been appointed. This motion was seconded by Vice-Mayor Newman and carried unanimously

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RESOLUTION NO. 10-170 - RESOLUTION REAPPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

At the recommendation of the Boards & Commissions Committee, Councilman Bothwell moved to reappoint Stephanie Cooper, James Lewis and Dr. Stephen Hulkower to each serve an additional two year term respectively, terms to expire July 19, 2012, or until their successors have been appointed. This motion was seconded by Councilman Smith and carried unanimously.

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Civic Center Commission

The following candidates applied for a position on the Civic Center Commission: Dan Breneman, Bill Jones, Jeffory Quick, Jeremy Gillespie, Katrina Bragg, James Richards, Carol Ann McLendon, Linda Brandt, Jeff Kenrick and Saul Chase. It was the consensus of Council to instruct City Clerk Burleson to arrange interviews for Dan Breneman, Bill Jones, James Richards, Carol Ann McLendon and Saul Chase (all City residents).

Civil Service Board

The following candidates applied for a position on the Civil Service Board: Daniel Bradshaw and Jacquelyn Hallum. Councilman Davis moved to appoint Jacquelyn Hallum, with said motion being seconded by Mayor Bellamy. However, due to the importance of this Board, it was the consensus of Council to instruct City Clerk Burleson to arrange interviews for both applicants.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the issue of no sleeping in parks.

Mayor Bellamy thanked City Manager Jackson, his staff and the volunteers for the hard work during this year's Bele Chere festival.

The following claims were received by the City of Asheville during the period of June 4-24, 2010: Kenya Lee (Water), Robert C. Orth II (Parks & Recreation), Jameela Griffin (Water), AT&T (Water), AT&T (Water), Joey Webb (Fire), Otto Logan (Transit), Reginald Robinson (Sanitation), Loretta O'Hanlon (Streets), Caleb Whitaker (Streets) and Amber Schnar (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

Closed Session

Mayor Bellamy announced that the formal meeting would be adjourned after the closed session. At 7:48 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is approximately 11 acres at Shelburne Road and hominy Creek Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To prevent disclosure of information

that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 8:08 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Vice-Mayor Newman and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:08 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 10, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis (excused at 8:03 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Esther E. Manheimer

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

A. DONATION OF MEMORIAL WREATH BY WALTER PLAUE

Mayor Bellamy said that the City of Asheville is pleased to accept the gift of the Memorial Wreath from Mr. Walter Plaue. She thanked Mr. Plaue for his leadership, especially regarding veterans. She said this wonderful donation will be used for every patriotic holiday. Mr. Plaue said that this is a token from the Western North Carolina Veterans Memorial Board of Directors, in conjunction with Michael's craft store. He hoped the wreath would not just be used at the Veterans' Memorial, but at other places where there are patriotic ceremonies.

Parks & Recreation Director Roderick Simmons also thanked Mr. Plaue for the beautiful wreath and for Mr. Plaue's efforts in bringing light to the veterans.

B. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Fire Division Chief Mike Clark who has successfully completed the process that awards him the professional designation of "Chief Fire Officer" (CFO), one of only 680 CFO's worldwide; and (2) James Lee, Minority Business Program Coordinator, who was awarded, through a competitive application process, the North Carolina Economic Developers Association Scholarship to attend the N.C. Economic Development Institute held annually at UNC-Chapel Hill.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

Mayor Bellamy asked that an item be added to the Consent Agenda regarding a Federal Aviation Administration grant offer to the Airport.

Mayor Bellamy said that Consent Agenda Item "I" will be removed from consideration to be rescheduled at a later date.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 27, 2010

B. RESOLUTION NO. 10-171 - RESOLUTION IN SUPPORT OF THE CITY OF ASHEVILLE SUBMITTING AN APPLICATION FOR THE HUD SUSTAINABLE COMMUNITY CHALLENGE PLANNING GRANT

Summary: The consideration of a resolution in support of the City of Asheville submitting an application for the HUD Sustainable Community Challenge Planning Grant in the amount of $3 million.

HUD's *Sustainable Community Challenge Planning Grants* are available for local efforts to prepare for housing and economic developments that are connected to transportation projects. HUD funds of $40 million have been combined with DOT funds of $35 million to create a $75 million pool. Only government entities are eligible to apply. The maximum amount available per grant is $3 million. The grant requires that the Six Livability Principles adopted by HUD, DOT and EPA in the Partnership for Sustainable Communities be at the core of proposed activities.

The Housing and Community Development Committee recommends that Asheville seek $3 million to create a model for sustainable development in Asheville's East Riverside area. The proposed target area is roughly bounded by the French Broad River to the west, Patton Avenue (but including Hillcrest) to the north, the CBD and McDowell Street to the east and the Swannanoa River to the south. In summary, the proposed project outcomes are to complete pre-development activities that will lead to an increase in the supply and diversity of housing in that area, new economic opportunities and job creation along the riverfront, and an improved system of transportation that will connect residents of the area to jobs, training and services, and connect the city to the River. The goal is to advance projects to the point of being "shovel ready."

Specific activities proposed include:

- Create the regulatory environment for sustainable development by integrating existing master plans and revising ordinances and other codes to provide incentives for sustainability; and to create "form-based" zoning for the area;

- Conduct assessments of infrastructure, connectivity, vacant land and buildings, and general physical conditions in the east Riverside area to determine development capacity in that area;

- Complete pre-development surveys, engineering analyses, and other implementation readiness activities to enable construction of Town Branch and Clingman Forest greenways as soon as implementation funds are available; and to prepare for roadway and other improvements in that area;

- Complete pre-development surveys, engineering analyses, preliminary design, and other implementation readiness activities for City and other publicly-owned land in the east Riverside area;

- Assess public transit needs, potential ridership and other public transit factors to establish multi-modal and public-transit capital and operational plans specific to the east Riverside area;

- Assess the energy use in the area, and prepare for a multi-sectoral approach to reduce the use of non-renewable fuels and reduce the area's "carbon footprint;"

- Provide new capital to the City's Housing Trust Fund, to loan for land purchases for affordable housing development in the City's east Riverside area;

- Involve the community, especially residents, property owners and businesses operators in the east Riverside area, in determining the direction of development there;

- Support a broadly representative and effective partnership to perform the work under the grant, including City departments, non-profit organizations, the Riverfront Redevelopment Commission, Housing Authority and others

Pros:

- This grant could provide much needed funding to advance existing City plans. Often the most difficult funding to obtain is for the pre-development stage, to bring projects to the point of implementation;
- The practical partnership being formed will lead to projects that are comprehensive and coordinated;
- Targeting the east Riverside area will lead to "transformational investment" that will create new opportunities for people already living there, as well as incentivize new housing and economic development that will spur the sustainable reuse of existing property, including property now owned by the City;
- This grant will enhance the recommendations in the Wilma Dykeman Plan, and create opportunities for funding for implementation of the plan;
- The opportunity to fund the acquisition of land for future affordable housing development will enhance the ability of our partners to plan development that will be accessible to jobs, training and services, and for the City to plan for the efficient use of its resources to support that development.

Cons:

- There is a danger that unless grant-funded activities are carefully managed so that the planned implementation is feasible and allowable, plans will "sit on shelves."
- Although the nature of this grant lends itself to a targeted focus, targeting one area of the City may cause concern that other City areas are not being treated fairly;
- New resources can create expectations of immediate future funding; although HUD and other agencies have implied that this funding will be available, it will depend on the federal (and state and local) budget processes and constraints;
- New development brings inherent conflicts between competing interests. The success of any planning activity will be the ability to create win-win relationships.

This opportunity will support the following goals and objectives of Council's Strategic Plan:

- Affordable: this project will
  - Help create and preserve affordable housing by creating UDO and other code reforms to encourage and align affordable housing with access to transit;
  - Explore opportunities for public/private partnerships and innovative financing for affordable housing;
  - Provide new funding for the Housing Trust Fund;
- Fiscal Responsibility: This project will explore alternatives for master plan implementation and position the City to proactively seek funding opportunities for infrastructure maintenance and capital improvements;
- Green, Sustainable: This project will bring closer to reality the implementation of a multi-modal transportation plan in a strategic area of the City;
- Job Growth and Community development: This project will
  - Expand partnerships in economic development around common goals of sustainable economic development;

- Promote sustainable, high-density infill growth that makes efficient use of existing resources.
- Support the riverfront development partnership.

The City must provide evidence of commitment of 20% non-federal matching funds for specific transportation activities. Staff time and in-kind services will meet this match requirement. The non-transportation community development activities require evidence of at least 20% leverage, which can include federal, state, local and private funds committed to the purposes of the grant activities. No new funding is requested from the City to meet these match and leveraging requirements.

Because no new funding is requested from the City, and existing City staff are preparing the application, there is no immediate fiscal impact. If awarded, the City will assess the benefit and impact of accepting funding. By getting the proposed "pre-construction" steps done now, we will be better positioned to leverage future state and federal funding.

The Housing and Community Development Committee recommends that the City of Asheville apply for $3 million in funding from the HUD Sustainable Community Challenge Planning Grant program, for the outcomes described above.

In response to Mayor Bellamy, Community Development Director Jeff Staudinger briefly summarized the specific activities outlined above that are proposed to be included in the grant.

When Mayor Bellamy asked if there will be any benefits to the Hillcrest community in these efforts, Mr. Staudinger said that they are engaging the Housing Authority in this conversation. There are five public housing communities within or contiguous to this target area and we would be looking specifically at those communities and how they work into the opportunities for HOPE 6 or Choice Neighborhood funding and for other ways to improve the conditions for people living there.

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C. RESOLUTION NO. 10-172 - RESOLUTION IN SUPPORT OF THE CITY OF ASHEVILLE JOINING AS A CO-APPLICANT FOR A HUD SUSTAINABLE COMMUNITY REGIONAL PLANNING GRANT

Summary: The consideration of a resolution in support of the City of Asheville joining as a co-applicant (Consortium Partner) for a HUD Sustainable Community Regional Planning Grant in the amount of $2 million.

HUD *Sustainable Community Regional Planning Grants* are available for consortium of regional partners to create or improve a Regional Sustainable Development Plan. Consortia within metropolitan statistical areas (MSA's) or another defined region must include the largest city of the MSA, the next largest local government, the Metropolitan Planning Organization (MP) and at least one non-profit organization. For regions of Asheville's size the maximum grant is $2 million, and the minimum is $200,000.

Asheville will join with Buncombe County, UNC-Asheville/RENCI, Community Foundation of Western North Carolina and others as a necessary and required co-applicant of a regional consortium, with Land of Sky Regional Council as the lead applicant, to apply for $2 million of Regional Planning Grant funding.

Using the grant, the partners will unify elements of existing plans into a Regional Sustainable Development Plan with specific "Actionable Implementation Strategies," to be used to guide sustainable development within a five-county region, to include Buncombe, Henderson, Haywood, Madison and Transylvania Counties. The Plan builds upon the region's many local and

regional quality plans and the Western North Carolina Livable Community Vision, adopted by the Land of Sky Board in April of this year.

The proposed outcomes include:

- To forecast and model growth scenarios in development for 20 years, and to determine the integrated needs for affordable housing, transportation, job creation, energy, natural resource utilization and protection over that time period;
- To develop regional agreement about how the region will grow in a sustainable way;
- To establish regional priorities and criteria to guide development;
- To develop specific benchmarks to evaluate the region's progress towards sustainability;
- To engage as many stakeholders as possible in the development on this plan, including engaging and involving the general public and typically underrepresented or affected populations.

The Consortium will build this Actionable Implementation Strategy from the existing plans and work, and seek not to duplicate prior planning, so that the document and tools created support specific actions on the part of member governments, non-profit organizations and the private sector.

Consortia showing a threshold level of commitment in their application will receive a "Preferred Sustainability Status", whether their proposals are funded or not. HUD suggests that this designation will make these communities eligible for special funding in the future. Staff believes that future federal funding, led by HUD, EPA and DOT, will be contingent on developing sustainability plans.

Evidence of at least 20% in leveraged funds is required. This can include federal, state, local and private funds committed to the purposes of the grant activities and relevant and related activities. No new funding is requested from the City to meet these match and leveraging requirements. The grant application deadline is August 23.

Pros:

- Sustainable development could lead to growth that will support the City of Asheville and other partners in creating and preserving jobs, building affordable housing strategically located to transportation resources and job centers, and wisely using and protecting natural resources;
- Reaching a regional agreement about the definition and methods for sustainable development could lead to creative collaborations among local and regional entities;
- Federal "Preferred Sustainability Status" should benefit the region in obtaining future funding for development projects;
- Asheville will enhance its reputation as a sustainable community, and increase its attractiveness to businesses that will create new "green" job opportunities.

Cons:

- A new planning program could be perceived as duplicative of existing planning efforts and unnecessary;
- If governments and other organizations and communities of the region cannot agree about goals, objectives, definitions and benchmarks, regional consensus can be difficult to realize over time.

This opportunity will support the following goals and objectives of Council's Strategic Plan: (1) Affordable: this project will help create and preserve affordable housing by creating regulatory reforms and regional incentives to encourage and align affordable housing with transit; (2) Fiscal Responsibility: This project will align existing local and regional plans and position the City to proactively seek funding opportunities for infrastructure maintenance and capital

improvements as a "Sustainable Community;" (3) Green, Sustainable: This project will bring closer to reality the implementation of a multi-modal transportation plan for the region; and (4) Job Growth and Community Development: This project will (a) Expand partnerships in economic development around common goals of sustainable economic development; and (b) Promote sustainable, high-density infill growth that makes efficient use of existing resources.

The grant application requires evidence of at least 20% leverage, which can include federal, state, local and private funds committed to the purposes of the grant activities. No new funding is requested from the City to meet these match and leveraging requirements.

Because no new funding is requested from the City, and existing City staff are assisting in preparing the application (Land of Sky COG is doing the majority of the work), there is no immediate fiscal impact. If awarded, the City will assess the benefit and impact of accepting funding.

The Housing and Community Development Committee recommends that the City of Asheville join as a co-applicant for $2 million in funding from the HUD Sustainable Community Regional Planning Grant program, for the outcomes described above.

In response to Mayor Bellamy, Community Development Director Jeff Staudinger said that Buncombe County is also making an application. Staff is supportive of other applications as they are complimentary, not competing and not conflicting. We have been advised by HUD that the more applications from municipalities and governmental entities in this area, the more they are convinced we are ready to move towards these sustainable community activities.

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D. RESOLUTION NO. 10-173 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH SUNCOM WIRELESS PROPERTY COMPANY, LLC, FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED PROPERTY AT 300 MERRIMON AVENUE

Summary: The consideration of a resolution authorizing the Mayor to execute a License Agreement with Suncom Wireless Property Company, LLC for antennas at 300 Merrimon Avenue, Asheville North Carolina.

The property located at 300 Merrimon Avenue is used primarily by the Asheville Fire Department, as the headquarters for the Asheville-Buncombe Arson Task Force. In 2001, the Asheville City Council authorized Triton PCS Wireless to install a concealed telecommunications tower and a concrete equipment shelter at this property. This tower is disguised as a flagpole and located on the rooftop of the fire training tower. For the past several years, Triton PCS and its subsequent designees have operated antennas and equipment at this site. The current license agreement between Triton PCS and the City of Asheville is now held by Suncom Wireless Property Company, LLC, and is to expire in January 2011. As such, Suncom has offered to enter into a new license agreement upon expiration based on the following:

(1) Term of five years, with a five year renewal.
(2) Annual license fee at an initial rate of $23,000 per year with 3% annual increases

The proposed License Agreement will enable Suncom to operate 3 panel antennas and 3 tower-mounted amplifiers, with 12 coaxial lines connecting to ground equipment. These facilities are separately metered and the tenant will continue to pay for the utility services. A tower analysis, to be paid for by Suncom, is required to assure that the roof is structurally capable of handling the load.

The initial rate was determined by gathering and comparing rates used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were reviewed and endorsed by the Council's Planning and Economic Development Committee on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for vertical stand-alone towers. For equipment located on top of buildings, as seen in this instance, a small decrease in the fair market rate is commonplace.

The Notice of Intent to enter into a License Agreement with Suncom was published on July 30, 2010, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. Strategic tower asset management, through the renewal and creation of new license agreements, presents the City with revenue enhancements to the General Fund.

Pro:

- Enhanced revenue through the license fee income

Con:

- None

In the initial year of the lease, FY 2010-2011, Asheville will receive $23,000 in revenue in the General Fund if the lease is approved by City Council. During the next four subsequent years, the lease rate will increase by 3 percent annually. Over the life of the five year lease, the city will realize more than $122,000 in revenue.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the license agreement with Suncom Wireless Property Company, LLC on behalf of the City of Asheville.

City Manager Jackson responded to concerns raised by Mr. Douglas McDowell regarding this lease, noting that this is a continuation of a lease of equipment located on top of a building and the rate is comparable to other municipalities.

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E. RESOLUTION NO. 10-174 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR THE FEDERAL FISCAL YEAR 2007-08 AND FEDERAL FISCAL YEAR 2008-09 FEDERAL TRANSIT ADMINISTRATION ALLOCATIONS TO BE USED FOR THE PURCHASE OF TWO DIESEL BUSES AND TWO LOW FLOOR HYBRID DIESEL-ELECTRIC BUSES

Summary: The consideration of a resolution authorizing City staff to apply for the FFY 2007-08 and FFY 2008-09 Federal Transit Administration (FTA) allocations in the amount of $1,068,000 and $237,500 respectively to be used towards the purchase of two diesel buses and two low floor hybrid diesel-electric buses and for the Mayor to execute the appropriate documents to accept the grant.

The N.C. Dept. of Transportation (NCDOT) awarded the City of Asheville a FFY 2007-08 Federal Transit Administration allocation in the amount of $1,068,000 to purchase two diesel buses and to match previous earmarks that were awarded to the City through Congressman Shuler's office ($531,500) for the purchase of two hybrid diesel-electric buses. The City has already accepted $294,000 of the $531,500 in earmarks from Congressman Shuler's office, and now action is required to accept the remaining $237,500 as well as the $1,068,000 FTA allocation.

In total, the City will then have available $1,599,500 in federal funds toward the purchase of the four buses. The total cost of the four buses is approximately $1,999,375, so the federal funds will cover 80% of the cost. City funds will provide 10% of the cost, which equals $199,938, and City staff will request that the NCDOT provide the additional 10% of the required match. The City funding is already included in the Transit Capital Fund. Due to end of the fiscal year timing issues and the fact that the FFY 2007-08 funds are lapsing on September 30, 2010, staff moved forward and applied for the subject allocations which were approved by the NCDOT Board of Transportation meeting on July 1, 2010.

This action complies with the current City Council's Strategic Operating Plan by helping to achieve short-term and long-term energy goals and reducing city carbon emissions, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to fully leverage funding for transportation improvements. This action also complies with the capital improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- The subject allocations would enable the City to continue replacing its aged transit system fleet which would produce savings in maintenance and fuel costs.
- The subject action would help reduce the City's carbon emissions.
- The FTA would fund 80% of the subject project cost.
- The NCDOT would fund 10% of the subject project cost.
- The City of Asheville's local match has been identified and would not require any additional allocation of funds.

Con:

- The City is required to fund 10% ($199,938) of the subject project cost.

The total cost of the subject project is about $1,999,375. The City has already been awarded $531,500 for two hybrid diesel-electric buses from Congressman Shuler's office. Federal Funds will provide 80% of the project cost, State Funds will provide 10% of the project cost, and City Funds will provide 10% of the project cost. The City's cost, which equals $199,938, is already included in the Transit Capital Fund.

City staff recommends City Council adopt a resolution authorizing City staff to apply for the FFY 2007-08 and FFY 2008-09 Federal Transit Administration allocations in the amount of $1,068,000 and $237,500 respectively to be used towards the purchase of two diesel buses and two low floor hybrid diesel-electric buses and for the Mayor to execute the appropriate documents to accept the grant.

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F. RESOLUTION NO. 10-175 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A GROUND LEASE AMENDMENT AGREEMENT WITH THE SKYLAND VOLUNTEER FIRE DEPARTMENT INC. FOR THE SOUTH ASHEVILLE POLICE SUBSTATION AT 9 MILLER ROAD SOUTH

Summary: The consideration of a ground lease amendment agreement, in the amount of $5,000 per year, between the Asheville Police Department and the Skyland Volunteer Fire Department, for office space at 9 Miller Road.

The Asheville Police Department has occupied office space on property owned by the Skyland Volunteer Fire Department since 1997. The ground lease amendment agreement has

expired and staff has negotiated a five year extension of this ground lease with the Skyland Volunteer Fire Department. City of Asheville Real Estate Manager Nikki Reid has conducted a detailed market analysis on the 2,000 square feet of office space and parking area and has determined its value to be $5,000 annually. The Skyland Volunteer Fire Department Board of Directors will meet at their regularly scheduled meeting in September to approve this ground lease. All documents are subject to approval of the City Attorney's Office to ensure adherence to Council's direction.

This action complies with the City Council Strategic Operating Plan goal to make Asheville the safest City in America based on approved metrics for similarly sized cities.

Pro:

- This action allows for the Asheville Police Department to continue operating its South Asheville Police Station with the most efficient use of tax dollars.

Con:

- None identified

Funding for this ground lease amendment will come from the Asheville Police Department's operating budget. The funds have already been budgeted within Council's Fiscal Year 2010/2011 adopted budget.

City staff recommends City Council approve the ground lease amendment agreement between the Asheville Police Department and the Skyland Volunteer Fire Department.

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G. MOTION TO EXTEND THE SERVICE HOURS FOR THE PUBLIC RESTROOMS THAT ARE LOCATED IN THE HALLWAY BETWEEN THE RANKIN STREET PARKING GARAGE AND HAYWOOD STREET TO 10:00 P.M. MONDAYS THROUGH SATURDAYS

Summary: The consideration of a motion authorizing City staff to extend the service hours for the public restrooms that are located in the hallway between the Rankin Street Parking Garage and Haywood Street to 10:00 pm Mondays through Saturdays.

During the Fall 2007, the City of Asheville opened public restrooms in the hallway between the Rankin Street Parking Garage and Haywood Street and they are available for use from 7:00 am until 6:00 pm Mondays through Saturdays. Currently, the Parking Services Division of the Transportation Department is tasked with the responsibility of cleaning and maintaining the restrooms.

Two full-time employees working four 10-hour shifts (Monday through Thursday and Wednesday through Saturday) clean and maintain the public restrooms. They also provide a presence to discourage possible vandalism. During the two overlap days, these employees also clean the City's three parking garages, which enabled us to cancel a $16,000 per year cleaning contract with an outside vendor. We typically budget about $60,000 per year to accomplish the task of cleaning and maintaining the restrooms.

The Parking Services Division currently has contracts with March Staffing and Asheville Staffing, two local companies, to provide temporary employees on an as-needed basis. Based on these contracts, the total cost to extend the service hours for seven months during the current fiscal year equals $9,828. The subject cost was calculated as follows:

- 4 hours per day times 6 days per week = 24 hours per week
- 24 hours per week times 52 weeks per year = 1,248 hours per year

- 1,248 hours per year times $13.50 per hour = $16,848 (yearly cost)
- $16,848 times 7/12 = $9,828 (cost for seven months)

Extending the service hours to 10:00 pm Mondays through Saturdays is possible and if approved, City staff recommends the following conditions:

- Use temporary employment services during the first year of operation to provide flexibility as it might be difficult to find people willing to work the subject hours (24 hours per week).
- Maintain the extended hours from September 1, 2010 through December 31, 2010 and from April 1, 2011 through June 30, 2011 (a total of seven months during the current fiscal year). City staff anticipates that usage for the extended service hours would be low during the winter months of January, February, and March.
- Collect customer usage data during the extended hours and share that information with the City Council during January 2011.

The Planning and Economic Development Committee approved the subject action on July 20, 2010, and recommended that it move forward to City Council.

Pro:

- The public restrooms would be open and available for use for a longer period of time Mondays through Saturdays.

Con:

- The total estimated annual cost equals $9,828.

The total estimated annual cost for this program is about $9,828. The cost of this program was not contemplated in the Parking Services Fund's FY 2010-11 budget. However, City staff believes that the cost of this service expansion can be absorbed within the existing Parking Services Fund budget, and is therefore not requesting a budget amendment at this time. City staff will monitor the impact of this program on the Parking Fund budget and report back to Council at a future Quarterly Financial Update if a budget amendment becomes necessary.

City staff recommends City Council approve a motion authorizing City staff to extend the service hours for the public restrooms that are located in the hallway between the Rankin Street Parking Garage and Haywood Street to 10:00 pm Mondays through Saturdays per the conditions set forth in the staff report.

H. RESOLUTION NO. 10-176 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO PURCHASE DIGITAL ALLY IN-CAMERA SYSTEMS BASED ON STANDARDIZATION NEEDS

Summary: The consideration of a resolution authorizing the Asheville Police Department to purchase Digital Ally in car camera systems based on standardization needs.

The Asheville Police Department (APD) currently has 16 Digital Ally DVM 550 plus In Car Camera systems installed. The APD has grant funds available to purchase additional wireless download camera systems through JAG 2007 (purchase request modified to cameras with remaining funds $49,554); JAG 2009 ($64,516), and JAG 2010 ($64,389) is pending approval. In order to maintain consistency with the operation of the camera systems; both in car and back end software management, it is necessary to maintain one product. The in car operation is an officer safety issue that requires consistent functionality among all cars equipped with cameras. This standardization will enable officers to utilize any cruiser equipped with a camera without any additional training on various camera systems.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Standardizing In-Car video systems will allow for consistent equipment operation and documentation of incidents.
- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

The Standardization of Equipment will have not fiscal impact beyond what was requested with the original JAG grant authorizations. There will be maintenance and replacement costs for the equipment, which will need to be included in future fiscal year budgets.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase Digital Ally in camera systems based on standardization needs with funding from JAG 2007($49,554), JAG 2009 ($64,516), and JAG 2010 ($64,389) pending approval of the grant.

RESOLUTION BOOK NO. 33 – PAGE 171

I. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WASTE MANAGEMENT CAROLINAS INC. TO PROVIDE BULKY WASTE AND MUNICIPAL SOLID WASTE DISPOSAL SERVICES FOR THE PUBLIC WORKS DEPARTMENT, SANITATION DIVISION

This item was removed from consideration to be re-considered at a later date.

J. RESOLUTION NO. 10-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HENSONS' INC. TO PROVIDE BRUSH AND LEAF DISPOSAL SERVICES FOR THE PUBLIC WORKS; PARKS. RECREATION AND CULTURAL ARTS; AND WATER DEPARTMENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hensons' Inc., to provide brush and leaf disposal services for the Public Works; Parks, Recreation and Cultural Arts; and Water Departments.

The City of Asheville Public Works Department, Sanitation Division provides year round, monthly collection of brush for residents in the City of Asheville. In addition, the Sanitation Division provides seasonal curbside leaf collection services during the period November 1st to January 31st. The Public Works Department Streets Division provides tree trimming and maintenance services for vegetation located within the City's rights-of-way The Parks, Recreation and Cultural Arts Department provides tree trimming services for their parks and recreational areas. The Water Department during the course of construction and maintenance generate a minimal amount of brush.

The City does not have a brush and leaf disposal facility and requires a permitted facility to accept the bush and leaves generated by City operations for disposal.

The City conducted a competitive bid process, receiving two (2) bids for the disposal of brush and leaves generated by the City. Hensons' Inc. was the lowest responsive and responsible bidder at a cost not to exceed $90,800.

This action complies with the City Council Strategic Operating Plan, Green & Sustainable and Safe by diverting brush and leaves from the landfill and processing in the form of mulch for reuse and by removing potentially dangerous vegetation in our parks and recreation facilities and from our right-of-ways.

Pros:

- Provides a key residential service for all residents of the City of Asheville.
- Provides a safe environment by trimming potentially dangerous vegetation in the City's parks and recreational areas and the City's rights-of-way.
- Provides a permitted facility to accept brush and leaves.
- Vegetation is kept out of the landfill and is ground into various types of mulch for reuse.

Cons:

- None

The $90,800 is budgeted in the FY 2010 – 2011 operating budgets of the aforementioned Departments.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract to provide leaf and brush disposal services with Hensons' Inc., not to exceed $90,800.

RESOLUTION BOOK NO. 33 – PAGE 173

K. RESOLUTION NO. 10-177- RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION FOR PROJECT NO. 3-37-0005-038-2010

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $1,389,870.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $1,389,870 is for (1) "A" Gates – Terminal Improvements and Renovations Project – Alternate 2 – Expansion of Holding area; and (2) "A" Gates – Terminal Improvements and Renovations Project – Alternate 3 – Expansion of Concessions Area (apron side).

RESOLUTION BOOK NO. 33 – PAGE 172

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. HOMELESS INITIATIVE UPDATE

Mr. David Nash, Chairman of the Homeless Initiative Advisory Committee, said that this is the annual update report on progress to date on the implementation of the 10-year Plan to End Homelessness.

He said that the Homeless Initiative Advisory Committee are appointed members representing public, private, non-profit, community at large members, and people who have experienced homelessness. Their goals are (1) adequate funding for housing and services; ()

housing and services reduce homelessness; (3) accurate data collection, evaluation, and dissemination; and (4) community collaboration.

Funding - In addition to $898,401 in renewal funding granted to the Asheville-Buncombe Continuum of Care for housing and services, HUD just announced an additional $44,503 in additional funding for housing and services.

While there was an increase in funding the community, it affords only additional financial assistance; associated funding for supportive services still must be developed.

Regarding private funding, key foundations and private donors continue to support agencies seeking to prevent and end homelessness. Regarding public funding, there is a continuum of care, Community Development Block Grant/HOME funding; recovery funding: HPRP; and Housing Authority subsidies.

Data Collection & Evaluation

UNC Study- A final copy of a longitudinal study from UNC is expected soon. Preliminary reports from the researchers suggest that emergency costs to the community decrease once people obtain housing.

HMIS – Our community's data quality allowed us to participate in the National Annual Homeless Assessment Report for the first time this year. Our participation makes us much more competitive for key federal homeless funds.

10 agencies currently enter data for 21 programs in HMIS. Within the past year, the community has increased the number of records in HMIS by 90%, and over 96% of those records are not missing data.

Housing Status is now included at intake at Jail and DSS allowing for early identification of people who are experiencing a housing crisis.

Evidence-Based Programs

SOAR: Asheville-Buncombe's SSI, SSDI. Outreach & Recovery Program (SOAR) leads the state in efficacy. Pisgah Legal Services is the lead agency, partnering five other local agencies to implement SOAR. The program works to help people who can not work due to a disability and who are experiencing homelessness access benefits within months instead of years. This past year, a $1:$62 return was measured for people accessing the SOAR program.

HPRP: The Homeless Prevention and Rapid Re-Housing Program (HPRP), funded by the American Recovery and Reinvestment Act offers agencies an opportunity to help people who are homeless or at imminent risk of homelessness by providing financial assistance and housing stabilization services.

Total number of people served to date:

112 people in 42 households have been prevented from becoming homeless
42 people in 26 households have left homelessness

HPRP spends an average of $1975/household to prevent or end homelessness. 60% of HPRP funds are used in direct financial assistance and 40% are used for housing stabilization services.

Community Collaboration & Outreach

In April, a Homeless Persons Memorial Day Service memorialized 25 who died while homeless in 2009.

A Faith Summit in February brought 70 people from a variety of faith groups together to strategize around how to end homelessness.

Landlord Lunch and Learn, scheduled for 8/13/2010, will offer landlords an opportunity to learn about housing programs managed by local housing agencies and learn about the legal rights and obligations of being a landlord.

Project Connect and the VA Stand Down are scheduled for September 10, 2010. It is expected that about 300 people will access barrier-free housing and services on that day. Volunteers are still needed.

Successes recognized are (1) unprecedented collaboration; (2) federal plan to prevent and end homelessness; and (3) focus on housing and services is yielding results. Challenges include (1) increased economic pressures; and (2) limited funding for services.

Ms. Amy Sawyer, Homeless Initiative Coordinator, reiterated that 10 agencies currently enter data for 21 programs in HMIS. Within the past year, the community has increased the number of records in HMIS by 90%, and over 96% of those records are not missing data.

When Councilman Bothwell asked how has this recession affected the number of chronic homeless, Ms. Sawyer said with our point in time count we have seen our numbers stay pretty stable. In fact, we have seen the number of people who are sleeping outside experiencing chronic homelessness decrease. We do know; however, that there are people who are experiencing homelessness and people who are in imminent risk of homelessness that if there isn't some type of prevention, their homelessness will become chronic.

In response to Mayor Bellamy, Mr. Nash explained the vet quarters and the positive difference it is making to our community.

On behalf of City Council, Mayor Bellamy thanked Mr. Nash, Ms. Amy Sawyer, and the entire Homeless Initiative Advisory Committee for their work on this very important Committee.

B. ASHEVILLE-BUNCOMBE CRIME-STOPPERS UPDATE

Mayor Bellamy said that this update will be rescheduled.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-179 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH TRIANGLE J COUNCIL OF GOVERNMENTS ACCEPTING SUB-GRANTEE FUNDS FROM THE DEPT. OF ENERGY CLEAN CITIES GRANT

ORDINANCE NO. 3885 - BUDGET AMENDMENT ACCEPTING FUNDS FROM THE DEPT. OF ENERGY CLEAN CITIES GRANT

American Recovery & Reinvestment Project Manager Brenda Mills said that this is the consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the Triangle J Council of Governments accepting sub-grantee funds from the Department of Energy's Clean Cities Grant to upgrade 29 fleet vehicles to CNG and upgrade the existing City of Asheville CNG station expand capacity; (2) a budget amendment, in the amount of $779,020, accepting the sub-grantee funds.

Through a grant in 2005 the City of Asheville installed the regions first compressed natural gas (CNG) fueling station. Mission Hospital and UNC-Asheville partnered with the City in this grant by investing in CNG fleets. Since that time the City of Asheville has also invested in CNG by growing the fleet to include 10 CNG vehicles. The Carolina Blue Skies Green Jobs grant will award the City of Asheville $779,020 to build upon the regions CNG leadership.

Regional partners who will also expand their CNG fleets through this grant include: The Biltmore Estate, Public Service of North Carolina (PSNC) Mission Hospital and the City of Hendersonville. To support this large scale effort the City of Asheville is also funded to expand the capacity of the existing CNG station.

This grant requires a 1:1 in-kind match with the City of Asheville. City of Asheville grant activities include:

Grant Activity	Grant Funds	In-Kind Match Funding
Upgrade 29 fleet vehicles to CNG	$425,326	$762,000 -- budgeted capital expenses for vehicle procurement in FY 10-11; FY 11-12; FY 12-13 coupled with the value of existing vehicles which will be converted through this grant
Increase capacity of existing CNG station	$353,694	$10,000 – project management costs
TOTAL	$779,020	$772,000

This action complies with City Council's Strategic Operation Plan in the following ways: (1) Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects; (2) Continue to proactively pursue funding opportunities with state and federal economic stimulus packages; (3) Work with regional partners to create incentives for green building, energy conservation and energy independence; and (4) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%.

Pros:

- Triple the city's CNG fleet
- Support municipal carbon reduction efforts
- Expand regional partnerships that support energy independence

Con:

- Matching funds of $10,000 project management costs

Matching funds of $10,000 for project management costs will be absorbed in the existing FY 2010-2011 Budget. As noted above, the remainder of the City's match requirement will be met from the value of vehicles that were previously purchased or are planned for replacement as a part of the five year Capital Improvement Program.

Staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter in to an agreement with the Triangle J Council of Governments accepting sub-grantee funds from the Department of Energy Clean Cities Grant to upgrade 29 fleet vehicles to CNG and upgrade the existing City of Asheville CNG station expand capacity; (2) and approval of a budget amendment, in the amount of $779,020, accepting the funds.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-179. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 174

Councilman Smith moved for the adoption of Ordinance No. 3885. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 257

IV. PUBLIC HEARINGS: None

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 10-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE WACKENHUT CORPORATION TO PROVIDE CONTRACTED SECURITY SERVICES FOR THE CITY OF ASHEVILLE PARK SYSTEM

Parks & Recreation Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with the Wackenhut Corporation to provide contracted security services for the City of Asheville park system.

On July 27, 2010, City Council reviewed the recommendation to enter into a contract with the Wackenhut Corporation for security services in the City's park system. Council requested additional information as outlined below, which is followed by the original information as presented at the July 27 Council meeting.

Below is the additional information requested:

- How does the cost of the contract compare to City employees providing the service?

  To provide the same level of park security as identified in the Wackenhut contract with in-house staff requires hiring two permanent and one temporary employee which is estimated to cost $104,399 per year including salaries and associated cost. It was determined to re-engineer to the contract security services at $76,445 resulting in a savings of $27,954.

- Will the employees of the security company be paid a living wage?

  Wackenhut employs skilled and well-trained security personnel. Wackenhut's bill rate for labor is $12.98 per hour.

- What kind of police powers are we handing off to the security company?

  Wackenhut will provide uniformed security officers to protect park property by maintaining a high visibility presence in parks and facilities to deter illegal activity and watch for signs of crime and disorderly conduct. Wackenhut officers have no police powers in that they do not carry a weapon, cannot make citations, and cannot make an arrest. In the event such action is needed, Wackenhut will contact the Asheville Police Department. The City currently contracts with Wackenhut for similar security services at City-owned parking decks and water pump stations.

The following is contract information: The City of Asheville has historically provided security in its 54 parks via one Park Warden to patrol all parks at 40 hours per week, one Park Ranger at Pritchard Park at 40 hours per week, and Asheville Police Department regular patrol

schedule at all other times. The security plan left significant gaps in coverage due to the large number of parks located in a large geographic area, and did not provide sufficient round the clock patrol. The lack of park patrol resulted in a high incident of vandalism and graffiti in parks.

In preparation for the City to accept security and maintenance operations of Pack Square Park, and recognizing the limited resources to provide security in the entire park system, staff conducted a cost comparison to provide a sufficient level of park patrol in all parks with in-house resources verses contracted services.

The re-engineered operations to provide full-time park security coverage include 1) Assign the two existing in-house park patrol employees to patrol downtown parks with an emphasis on Pritchard Park and Pack Square Park during most day-time hours, 2) Contract for security services to patrol all parks during night-time hours, and 3) Asheville Police Department supplement security operations. The cost of in-house park patrol employees and the contracted security service is shared between the Pack Square Park budget and the Park Maintenance budget in the Parks, Recreation & Cultural Arts Department.

To activate the contracted park security, the City conducted a competitive bid process for park security for the entire park system. The Wackenhut Corporation located at 9-H Drive Arden, North Carolina was the lowest responsive and responsible bidder at a cost not to exceed $76,445.32, and is proposed to be selected to perform contracted park security services within the City's park system.

This action complies with the City's Strategic Operating Plan in that it supports making Asheville one of the safest and most secure communities when compared to similar cities; and making smart investments that accomplishes lasting and tangible returns by investing in security services for the City's park system. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and security for the City's park system.

Pros:

- Enhances making the City park system safe for park visitors.
- Re-engineer resources for ongoing, core park security services within same budget as previous year.
- Fulfill commitment for security of park system.

Con:

- None

The $76,445.32 to support the contract is budgeted in the FY 2010-2011 operating budget in Parks, Recreation & Cultural Arts Department, and shared by the Pack Square Park and Park Maintenance budget. This is a $27,954 savings compared to providing the security services in house via additional City employees.

6 City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract to provide park security with the Wackenhut Corporation not to exceed $76,445.32.

Councilman Bothwell noted that the Miami Transit System had to end their contract with Wackenhut Corporation because they were billing for ghost workers; however, he was not accusing the local provider of that behavior. He asked if our cost estimate includes oversight on the part of the City to make sure the workers are showing up. Mr. Simmons responded that the Parks, Recreation and Cultural Arts Department have a sensor that an id card must be swiped.

Councilman Bothwell noted that the company's billing rate is $12.98, but expressed concern that that is not what they are paying their workers.

When Councilman Bothwell asked if the Police Department was involved in this process, City Manager Jackson said that the Police Department was involved and if we use sworn officers, the cost would be significantly higher. This would not be the highest and best use of our sworn officers.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished a copy of the resolution and it would not be read.

Councilman Russell moved to adopt Resolution No. 10-180. This motion was seconded by Councilman Davis and carried on a 5-1, with Councilman Bothwell voting "no."

RESOLUTION BOOK NO. 33 – PAGE 175

B. RESOLUTION NO. 10-181 - RESOLUTION TO SUPPORT FEDERAL LEGISLATION IN PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

City Energy Coordinator Maggie Ullman said that this is the consideration of a resolution in support of Federal legislation allowing property assessed clean energy (PACE) programs.

At its January 12, 2010, meeting, the Asheville City Council directed staff to complete a feasibility analysis and pilot program design for the Asheville Energy Independence Initiative, a program that would allow citizens to invest in energy efficiency and renewable energy improvements on their private property through a loan issued by the City of Asheville and repaid through a property tax assessment. On June 22, 2010, staff provided an update to Council outlining state legislative and national regulatory home loan issues in relation to the PACE model. Since that time, the state legislative session has come to a close, and staff is providing an update on PACE progress.

- **State Legislative Update**: Although some barriers to implementing a PACE program in North Carolina were removed through the 2010 short legislative session (May- July 2010), some barriers remain. A state wide coalition of municipalities and stakeholders believes a legislative fix to these barriers is realistic during the 2011 long legislative session (January 2011- Summer 2011).

- **Home Loan Regulatory Update:** On July 6, 2010 the Federal Housing Finance Agency (FHFA) - the regulator and conservator of Fannie Mae, Freddie Mac, and the regulator of the 12 Federal Home Loan Banks - issued a statement explaining that a senior PACE lien is in violation of any Fannie Mae or Freddie Mac mortgage contract. The FHFA statement stated "significant safety and soundness concerns" with PACE liens assuming senior lien status since PACE liens may increase lenders' risk of non-repayment of mortgage loans.

- **Federal Legislative Update:** In response to the July 6 FHFA letter, a national coalition formed to pursue Federal legislation securing local governments' ability to implement PACE programs. On July 15, House Bill 5766 was introduced and has since referred to a committee. The national coalition is encouraging local governments to pass resolutions in support of federal legislation.

Pursuing a PACE model or other investments in renewable or energy efficiency improvements supports City Council's goal of becoming the southeastern leader in clean energy

and environmental sustainability, specifically the Council's objective to reduce energy consumption in the community.

Pros:

- Provides more time to gathers more data to best understand the local market and help better design a larger-scale PACE program
- Postpones expenditure of EECBG monies for use to leverage capital to begin a PACE program

Cons:

- PACE enabling legislation in not guaranteed
- Uses ARRA money in the long term

Up to $20,000 for the feasibility analysis to be used from EECBG funding and DOE technical assistance support.

Staff recommends City Council approve a resolution in support of Federal legislation that affirms local governments' ability to implement PACE programs.

Given the ongoing legislative action related to PACE, staff further recommends that City Council wait for clear legislative and regulatory authority to launch a PACE program in Asheville. By waiting for clear authority, Asheville would retain the remaining $250,000 in EECBG funds until the PACE model is deemed legally feasible, and then apply those funds toward launching a full-scale program. In the meantime, staff recommends conducting a formal market feasibility study intended to quantify the demand for a PACE program in Asheville, and thus scope any future capitalization of a PACE loan fund.

Alternatively, City Council could consider other opportunities for using the $250,000 in EECBG in the near-term, including funding a loan loss reserve fund in partnership with an existing loan service provider (local credit union or bank) to issue private loans for renewable and energy efficiency improvements; funding renewable and energy efficiency demonstration improvements through a grant process to residential or commercial properties; making energy efficiency investments in city-owned facilities; or other options.

Vice-Mayor Newman understood that laws take a long time to enact; however, he felt the next step is to talk with our local legislators to get their feedback and ask for their help. In terms of the $250,000 in EECBG funds, he felt we have at least three options. One option is to hold these funds in reserve in hopes that the legislative authority for the PACE programs will be worked out and we can begin implementation. The second option is that since the EECBG funds can be used for a revolving loan fund for clean energy community based financing, similar to what the PACE program would be, we could start a demonstration project using those funds for that purpose. It would be a good way to see how receptive the community is in getting involved in this effort. If there is strong community support we could go to our legislators and urge them to work this out. The third option would be to use those funds on our own facilities to make them energy efficient while we keep working on the PACE program. He is most inclined to get started with Option Two.

Councilman Davis could not support using the $20,000 on planning at this time. He could support Option Two with our own model but he would prefer to see a more clearly defined program outlined. On the other hand, we have $250,000 we could actually put to work now on our own facilities. He supported looking at all the opportunities and asking staff to report back to Council.

Throughout discussion, Ms. Ullman and City Attorney Oast responded to various questions/comments regarding the PACE program and the legislation, some being, but are not limited to: since we have adopted two resolutions to the state legislature requesting authority to

do this, why do you think this resolution will work; what is staff's thoughts on what is holding this up at the state level; it is unclear whether the City has the legal authority (even though it is a voluntary program) to have a special assessment placed on someone's property for this purpose; and a loan loss reserve fund would get the money into the community.

Councilman Smith supported the legislation moving forward as there is an urgency due to the climate change, necessity of reducing our carbon footprint, and reducing our energy demand. He suggested we get some sort of framework to look at the different options.

Rev. Scott Rogers, representing the Asheville-Buncombe Community Christian Ministries, explained why he felt the PACE program was important and supported Option Two. He urged Council to move forward as quickly as possible.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved to adopt Resolution No. 10-181. This motion was seconded by Councilman Bothwell.

Mayor Bellamy said that it is her understanding, from the N.C. League of Municipalities, that the hold-up is on the federal level and that is what stopped the momentum at the state level. She suggested a conversation with our federal legislators. She also supported looking at the Housing Trust Fund model and also the old Rehab Program model. The Rehab Program was a federally funded program that allowed cities to use CDBG funding to make investment in houses that were dilapidated on the rental side as well as the homeowners. Those are two successful models we have done in the past.

Councilman Russell could not support the motion in that the two largest issuers of these mortgage contracts are saying it can't be done. He understood the concept, but if someone wants to put solar panels on their roof they can get a home equity line of credit from their bank. He could not support government getting into the lending business for this program.

Vice-Mayor Newman felt that this is a new idea and there are high level discussions about the concept. He felt there are a lot of people in the housing financing institutions who would like to find a way to make this work. He felt that if these programs are run well, they should not have a negative impact on the strength of people who are homeowners.

Mayor Bellamy said that part of the issue with the PACE program is not having those regulations in place. She thought that was a main concern for the regulators in that they didn't want cities from all over the country developing their own PACE programs without any unified guidelines. She felt that by having the federal government look at some of the guidelines being put in place will provide some assurity that when a loan is issued that there are some stop-gap measures that the money will be recouped. She supports the program because we have been successful with the community with the Housing Trust Fund model and the old Rehab Program model. If we look at what is available to us and find a way that this loan program is paid back, it would help create jobs in the immediate future as well as pay us back in the revolving loan fund.

This motion made by Vice-Mayor Newman and seconded by Councilman Bothwell carried on a 5-1 vote, with Councilman Russell voting "no."

Vice-Mayor Newman moved to continue the discussion about the EECBG funds to September 14, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

C. RESOLUTION NO. 10-182 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS COOPERS HAWK DRIVE AREA

RESOLUTION NO. 10-183 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION KNOWN AS ROYAL PINES AREA

Urban Planner Blake Esselstyn said that this is the consideration of resolutions approving the Annexation Services Plan for the Coopers Hawk Drive and Royal Pines annexation areas.

On July 27, 2010, the Asheville City Council passed resolutions of intent to annex two areas contiguous with the current corporate limits. These areas are the Coopers Hawk Drive Area and the Royal Pines Area. Staff had identified these areas as areas that meet the statutory requirements for annexation as set forth by the State of North Carolina and areas in conformance with current City annexation policy.

The second step in the annexation process is for the City Council to consider and approve an Annexation Services Plan for the areas to be annexed. The Annexation Services Plan includes a demonstration of how each area proposed for annexation meets the statutory qualifications for annexation and further demonstrates the capability of the City to provide urban services to these areas.

A public information meeting on the annexations is scheduled for September 13, 2010, and a public hearing is scheduled before the Asheville City Council on October 12, 2010.

Pros:

- Supports City of Asheville's Smart Growth Annexation program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefiting from existing City services in participation in the costs of such services.

Con:

- Residents of proposed annexation areas may object to such annexation.

The fiscal impact of these annexations is contained in great detail on pages 29-34 of the plan. General fund impact is enumerated on pages 33 and 34.

He said the annexation standards consist of (1) At least 1/8th of area's boundary must be adjacent to city; (2) Must meet 1 or more of 4 development tests: (a) Population density: estimated population of at least 2.3 persons per acre; (b) Subdivision: at least 60% of total acreage subdivided into lots of 3 acres or less, at least 65% of lots are 1 acre or less, and an estimated population of at least 1 person per acre; (c) Development: 60% of lots are developed, and 60% of total acreage in residential use or vacant consists of lots 3 acres or less in size; or (d) Nonresidential Urban Use: All lots within area are used for commercial, industrial, governmental, or institutional purposes; (3) May include non-urban area(s) provided: (a) Total of area(s) less than 25% of total annexation area; and (b) Each area must be adjacent on at least 60% of its boundary to existing city limit or area developed for urban purposes.

Using maps, Mr. Esselstyn summarized the Plan for Services as follows: (1) Coopers Hawk area (a) 31 parcels (or portions of parcels); (b) 41.8 acres; (c) 16 dwellings; (d) approximately 35 people); (e) residential land use; and (f) meets development test; and (2) Royal Pines area (a) 682 people; (b) 388.7 acres; (c) 670 dwellings; (d) approximately 1,595 people; (e) residential land use; and (f) meets population density test, subdivision test and development test.

Ms. Julia Fields, Urban Planner, then briefly reviewed the Plan for Extension of Services for police protection (one new police officer); fire protection; solid waste collection (additional automated truck, additional leaf truck and three additional positions, noting that there was an automated truck programmed in the 2007 annexations but never purchased pending the Biltmore Lake area litigation - even if the litigation is resolved favorably to the City, a truck will not need to be purchased as a new truck is programmed in these (2011) annexations); street maintenance in Royal Pines area includes minor repairs on Cedar Lane, Locust Court and Morgan Boulevard; overlays on Crestview Court and Fox Hollow Court; and reconstruction of Rosscraggon Court; water distribution (500' of 6" waterline and 3 additional fire hydrants in the Royal Pines area); sewer collection; and administration and other services.

Revenue summary for both areas total (1) ad valorem - $521,957; (b) state utility taxes - $90,361; (c) sales tax - $189,170; (d) Powell Bill - $40,112; (e) fees, charges and permits - $46,783 for a total of $888,383.

Annually recurring expenditures totals (1) police - $46,100; (2) fire - $97,914 (5-year duration for rural fire district); (3) solid waste - $224,645; (4) recycling - $24,284; (5) street maintenance – zero; and (6) street lighting – $2,520 for a total of $395,463. After five years total - $297,549.

Capital expenditure totals are $41,500 (Police); $82,526 (Fire); $45,500 (water lines); $594,277 (solid waste); $35,190 (rollout containers); $3,142 (street signs; $116,073 (street repair); and $4,000 (stormwater) for a total of $922,208. Further details are as follows: (1) Police capital costs include equipment ($6,500) and a vehicle ($35,000) for the new officer; (2) Fire costs show debt service to be paid to rural fire departments. Debt service to be paid after 5 years if debts still outstanding. Estimates are based on most recent information available from the rural departments. In most instances there is no outstanding debt and these expenses are never incurred by the City; (3) Water costs are for infrastructure improvements for fire protection (500' of 6" waterline and three additional fire hydrants). These expenses will be paid out of the Water Resources Fund; (4) Solid waste costs include potential economic loss (fifteen months) to private waste haulers ($209,277); additional automated truck ($270,000); and, additional leaf collection truck ($115,000). The payment to private waste haulers will occur in Year 1 ($197,651) and Year 2 ($11,626). It is proposed that both trucks be financed over a five (5) year period resulting in annual payments estimated at $90,000. [NOTE: An automated truck was programmed in the 2007 annexations but never purchased pending the Biltmore Lake Area litigation. Even if the litigation is resolved favorably to the City, a truck will not need to be purchased as a new truck is programmed in these (2011) annexations]; (5) Street Repair in Royal Pines includes minor repairs on Cedar Lane, Locust Court and Morgan Boulevard ($2,000); overlays on Crestview Court and Fox Hollow Court ($51,810); reconstruction of Rosscraggon Court ($61,463); and (6) Stormwater costs are for the replacement of six stormwater lids in Royal Pines. These expenses will be paid out of the Stormwater Enterprise Fund.

She then reviewed a comparison of the General Fund annual revenues/expenditures.

City staff recommends that City Council adopt the resolutions approving the Annexation Services Plan for the Coopers Hawk Drive and Royal Pines Areas.

Vice-Mayor Newman understood the state process but questioned at what time could Council amend the services plan if they hear compelling arguments or ideas in terms of services and infrastructure. Ms. Fields replied that Council can amend the services plan at anytime up to adoption of the ordinances on October 26.

Mayor Bellamy felt that staff should program information regarding needed sidewalks in the annexation services plan before the new residents are wrapped into the equation of all the other sidewalk needs in the City. Ms. Fields replied that typically those are dealt along with all the other needs of the City once the area comes into the City. The Royal Pines area would probably

become part of the Pedestrian Plan and staff would look at what their needs were and then they would be programmed in along with the rest of the City.

Mayor Bellamy said that as policy direction, she recommended instead of having over 600 people come to Council and say they want sidewalks, that staff program those into the annexation services plan so we will know what those expenditures are and get those done. She suggested the policy direction be changed to identify the annexation area sidewalk needs early on and factor that cost in.

Planning & Development Director Judy Daniel said that when staff assesses a need for sidewalks, a lot of factors are considered, i.e., density of the neighborhood, topography, access of the neighborhood to areas where people want to walk, etc. To do the assessment is a fairly complex matter which is why it is something done after the residents are brought into the City. Programming in sidewalk needs into the annexation services plan will add time into the process.

Mayor Bellamy said that if we don't include sidewalks in the plan then the projected expenditures are not true numbers. She felt sure that those residents will be asking for sidewalks because we provide sidewalks to other residents of the City. She felt if we approach it proactively by giving policy direction to program in sidewalks, then we will know that we will have to pay for those sidewalks over a given period of time. She felt that would be a good incentive to come into the City and have sidewalks.

Director of Transportation Ken Putnam said that we already have established policy direction under the Pedestrian Plan, but if we are looking at annexation and trying to consider that one of the perks that you would get as part of the annexation might be sidewalks, then we would look at them on a different tract. We already have in our Engineering Standards a policy that says if a street has less than 300 vehicles a day, then we probably would not put a sidewalk on that street at all. If it gets between 300-1,000 a day, there would be a sidewalk on one side of the street. If it's greater than 1,000 or if the street width is greater than 30 feet, then we would want sidewalks on both sides of the street. Given that criteria, we could certainly go through and create the potential costs for any kind of annexation area.

Mayor Bellamy reminded Council that the City spent $1.8 Million on a sewer line for the Brevard Road annexation area and immediately gave it to MSD and they are reaping the benefits. There's no guarantee that the sewer line will be used to its fullest extent, but we know that sidewalks will be used. That tells her that our policies need to be in line with what we want to occur.

Director of Public Works Cathy Ball said that this is a policy direction because it is not something that every citizen in the City has or a service that we provide every citizen. From an implementation standpoint she asked for Council's consideration of adding a provision that all of the property owners donate the right-of-way to install sidewalks. That is the biggest hurdle we have in going into neighborhoods to install sidewalks. Mayor Bellamy was agreeable to that provision.

Councilman Smith felt the sidewalks issue is an interesting idea and he would be interested in exploring this policy direction at perhaps an upcoming retreat.

Vice-Mayor Newman said there are a lot of neighborhoods that have been in the City for years that don't have sidewalks in places where people would like to have sidewalks. The houses were built at a time when developers did not build sidewalks or at a time when the City did not have regulations to require developers to build sidewalks. He didn't think it would be realistic to say that we can give everybody sidewalks. He reiterated that if there are some compelling arguments made that in key locations that sidewalks are really needed and if those are identified through this process he hoped we will do something about it.

Councilwoman Davis felt it was a good thought for future annexations. He felt that probably many of the streets in the Royal Pines area do not meet the criteria for sidewalks and felt we need to be careful about changing our annexation policy at this time in the process. He felt it was difficult to have staff assess the sidewalk needs this quickly, and to put that as one of our service provisions at this point is very difficult.

Mayor Bellamy felt that going forward the only way we will address the vast need of sidewalks in our community is to look at our policies to see how they can support the goal of meeting those needs. She asked for Council's support to direct staff to look at sidewalks as part of the annexation services plan and noted in the plan either as a reoccurring expense or a one-time capital expense for all new annexations.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-182. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Russell voting "no".

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Vice-Mayor Newman moved for the adoption of Resolution No. 10-183. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Russell voting "no".

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Closed Session

Mayor Bellamy then announced a short recess at which time City Council would conduct a closed session.

At 7:05 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:26 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-184 - RESOLUTION AUTHORIZING THE MAYOR TO DISPOSE OF CITY-OWNED REAL PROPERTY LOCATED ON PISGAH VIEW ROAD BY PRIVATE SALE TO ASHEVILLE AREA HABITAT FOR HUMANITY

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing the City to convey by private sale, an interest in real property acquired through an upset bid process in foreclosure proceedings for the Villas at Cedar Hill.

In summer 2003 and early 2004, a total of $217,000 was loaned from the Housing Trust Fund to Villas at Cedar Hill, LLC for the development of forty-two (42) units of affordable multifamily housing. Only ten (10) of the units were completed, and in May 2009 the City received notice that the senior lien holder had moved to foreclosure. The outstanding principal balance owed to the Trust Fund by Villas at Cedar Hill, LLC was $206,785.

The property went to auction, along with other property held as security by the senior lien holder. In an effort to protect the City's substantial investment, City Council authorized Staff to bid at the foreclosure auction for undeveloped parcels that could potentially be purchased below market value. In that auction, the property on which Phase I of the original development was sited, containing the ten (10) completed units and infrastructure, was purchased by Mr. Jim Hitt for $165,375. Although bidding as a private buyer at auction, Mr. Hitt is also Managing Member of Villas at Cedar Hill, LLC. Following the sale, the property was then immediately deeded from Mr. Hitt to a newly formed LLC (Resurgence Development LLC). Mr. Hitt, as Managing Member of Resurgence Development LLC, remains in control of that parcel.

The City purchased two parcels adjacent to the original site: a 9.806 acre parcel (PIN no. 9628.16-9767-00000) which was appraised in September 2008 at $461,000 and for which the City paid $270,000; and a 6.2 acre parcel (PIN no. 9628.27-4164-00000) with a deteriorated vacant home and barn with an estimated value of $291,400 and for which the City paid $115,500.

In total, new investment in the amount of $397,195 (which includes land purchase, payment of delinquent taxes, and attorneys' fees) was used to acquire the sixteen (16) acres of undeveloped land.

The estimated value for these sixteen (16) acres, based upon the appraisal of the 9.806 acre parcel in September 2008 was $752,000. The actual value in the current market is difficult to establish due to the lack of comparable sales. Assuming depreciation as high as 20%, the current market value would be in the vicinity of $600,000-$640,000. Additionally, that value assumes sewer and water access; currently, only water access is available. Sewer access is via an existing easement to an MSD-owned pump station. This station is located on the parcel controlled by Mr. Hitt. Once access to the pump station is obtained, an access fee of $107,000 will be payable to MSD. Total investment by the City to date, including the outstanding balance on the original HTF loans and the new investment used to purchase the subject property, is $603,980.

Letter of Intent: The property has been listed for sale by the City on the Karnes site since March 16, 2010. While there have been a handful of inquiries, no tentative offers had been received during the period of listing. On July 27, 2010, staff received a formal written offer from Habitat for Humanity to purchase the sixteen (16) acres from the City for the development of fifty-five (55) single-family homes. The homes would be sold to families below 80% of area median income. Habitat's offer is for a sales price of $450,000, with $300,000 at closing and an additional $150,000 to be applied as second mortgages to be held by individual homeowners as homes are completed and sold. A similar agreement was reached for the development of the Brotherton Subdivision. These second mortgages would be due and payable only when the houses were sold to families earning more than 80% of median income. The Housing and Community Development Committee reviewed the proposal at their July 29th meeting and have recommended that the offer be accepted.

The offer is contingent upon the City acquiring access to an existing easement which is needed to provide sewer access to the property. The MSD pump station is located on the parcel controlled by Mr. Hitt. If Council accepted the purchase offer from Habitat, City staff would prepare a formal offer letter to Mr. Hitt for purchase of the right-of-way at market value. If the offer is refused, the Housing and Community Development Committee is supportive of the City taking the necessary action to begin eminent domain proceedings. The condemnation would only apply to an existing easement and is less than 2,000 square feet.

Pros:

- Fifty-five (55) units of affordable housing will be created.
- All units will be constructed to Energy-Star and NC Healthy Built standards.
- The Housing Trust Fund will be partially repaid.
- Sale of the property provides additional liquidity for new Housing Trust Fund investments at a time when resources are extremely scarce.
- The creation of fifty-five (55) single family homes will increase the City tax base by an estimated $7.5-$8 million in new development.
- The proposed development complements other City investment in the area.
- A completed sale will end the ongoing expenses and responsibilities associated with owning the property (insurance, taxes, liability, legal fees).

Cons:

- The offer price may be less than the current market value.
- Approximately $155,000 of taxpayer funds will be written off as a loan loss to the Housing Trust Fund
- An additional $150,000 due to the Trust Fund will be deferred until homes are resold by the initial purchaser to a household below 80% of Area Median Income.
- The stated purpose of bidding on the property at auction was to protect the City Investment. The total City investment is $604,000; this sale would realize protection of 75% of the total investment.
- A potential condemnation for access to the sewer easement would require additional cash resources, and the City's role in that process may be questioned.

The project directly supports the City's Strategic Operating Goals: (1) *Affordable*: The development proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourages higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable homeownership units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Housing Trust Fund is $210,776. Acceptance of the offer to purchase will increase the balance by $300,000 upon closing and incrementally when houses are sold over time to non-income qualified buyers. The total value of the fund (appropriations plus interest income less administration and loan losses) is currently $5,431,625. The total value of the fund will be decreased by approximately $155,000 when the actual loan loss is recorded.

The proposed development on the subject property is new construction and is anticipated to add approximately $7.5-$8 million dollars in new development to the City tax base.

The Housing and Community Development Committee recommends City Council approve a resolution authorizing the Mayor of the City of Asheville to execute documents and convey to Asheville Area Habitat for Humanity by private sale the City's interest in the real property located on Pisgah View Road, upon approval of the City Attorney at a final sales price of $450,000, of which $300,000 is due and payable upon closing and the remaining $150,000 to be applied as second mortgages to be held by individual homeowners as homes are completed and sold.

When Mayor Bellamy asked for public comments, none were received.

Vice-Mayor Newman said if that our plan was to sell this and get the highest market value. They were then approached by Habitat with a specific proposal and we thought that with

this proposal we would get a high percentage of our funds back sooner rather than later. The original purpose we made this loan to the developer was to encourage affordable housing, and he thinks this is a positive resolution while preserving most of the public investment. If this does not get approved, we will market it again and get as much value as we can.

In response to Councilman Russell, Mr. Stalling said that the Karnes site is a commercial listing site.

Mayor Bellamy was looking forward to getting this property back on the tax rolls. Also, the City did get 55 affordable single-family homes in our community. She was happy to be a partner with Habitat on this endeavor. She was also pleased to see the money being put back into the Housing Trust Fund for more affordable housing.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-184. This motion was seconded by Councilman Davis and carried unanimously.

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B. SIDEWALK UPDATE

Director of Transportation Ken Putnam said that this is to update City Council on sidewalks within the City of Asheville including completed sidewalk projects, current sidewalk projects, and priority sidewalk projects prior to the East Asheville community meeting which is scheduled at the end of August.

Since the City of Asheville has more requests and needs for pedestrian facilities (sidewalks) than annual funding and staff resources can respond to, staff follows the recommended criteria included in the City of Asheville Pedestrian Plan (February 22, 2005) to prioritize projects. The city only has one surveyor and two Engineering Technicians that provide surveying and design services for all city departments.

According to information in the pedestrian plan, staff undertook a process of creating a sidewalk inventory and estimated that as of 1999 there were 132 linear miles of existing sidewalk (including state-maintained and city-maintained streets). Then in 2004, staff conducted a pavement condition rating survey (PCR) and through that process, estimated that there were 152 linear miles of existing sidewalk (including state-maintained and city-maintained streets). The pedestrian plan also identified about 108 linear miles of needed sidewalk linkages.

Staff has been working with March 2009 aerial photography over the past several months and to date, they have "mapped" about 165 linear miles of sidewalk (47 linear miles along state-maintained streets and 118 linear miles along city-maintained streets). This data confirms the data that is included in the pedestrian plan. Staff is also working towards creating a more accurate database for all future projects including tracking developer funded and constructed sidewalks to better track our progress.

As a part of that effort, staff has determined that during the past five fiscal years city funds and/or crews have been used to construct about 7.5 linear miles of new sidewalk at a total cost of about $1,371,000 (As staff's research continues, the subject numbers will continually be fine tuned).

City crews are currently constructing a new sidewalk along the east side of Beverly Road connecting to an existing bus shelter including revising the shelter to be ADA compliant. The project also includes a new sidewalk along the north side of US 70 (Tunnel Road) from

Governor's View Road to Lynnstone Court and then to Avon Road if the available funds hold up. The North Carolina Department of Transportation has partnered with the city and they are fully funding and installing the pedestrian signals and crosswalks at the intersection of US 70 (Tunnel Road) and Beverly Road. This project was developed as a result of the public meeting that was held on April 19, 2010, at Bell Elementary School and a priority listing of potential pedestrian improvement projects from the neighborhood groups that were represented at the public meeting. The subject project has a preliminary budget of $45,000 and when complete, it should increase the city's sidewalk inventory by about 1,200 linear feet.

A contract has been let to construct a new sidewalk along the north side of US 19-23 (Patton Avenue) from NC 63 (Leicester Highway) to Regent Park Boulevard. This project should be completed during November 2010 and when completed, it will increase the city's sidewalk inventory by about 4,800 linear feet.

As of July 1, 2010, available funds for new sidewalk construction total about $274,000 including $115,000 from the East Fee-In-Lieu-Of Fund, $109,000 from the West Fee-In-Lieu-Of Fund, and $50,000 from the CIP. Staff plans to spend the subject money during the next two fiscal years. Potential projects include, but are not limited to the following:

- US 70 (Tunnel Road), from SR 2032 (New Haw Creek Road)/Crockett Avenue to Avon Road – Total length = 3,400 linear feet +/- – Estimated Cost = $102,000 +/- (Project is currently in the survey and design phase).
- US 70 (Tunnel Road), from US 74-A (South Tunnel Road) to SR 2032 (New Haw Creek Road)/Crockett Avenue.
- NC 191 (Brevard Road), from I-26 to I-40 – TIP Project # U-3601 – Estimated Cost = $65,000 (Due to the NCDOT during FY 2011-12, project is currently under construction).

Given the city's limited resources, especially during the current economic climate, staff is committed to surveying, designing, and constructing new sidewalks in the most efficient manner possible including leveraging our resources with appropriate partners while making viable connections to existing infra-structure such as bus stops and/or shelters and community buildings, schools, parks, and libraries. Staff is currently looking at ways to revamp the CIP process and merging all of the approved master plans with the idea of putting together a realistic 5-year CIP plan.

The Pedestrian Plan identifies a priority policy and 6 criteria: (1) zoning jurisdiction; (2) proximity to schools, parks and community centers; (3) proximity to transit stops; (4) need linkages that complete a pedestrian thoroughfare or address a safety concern; (5) feasibility of construction; and (6) major thoroughfares and connector roads.

He asked for guidance of what Council would like him to present regarding sidewalks at the community meeting on August 31.

Mr. Putnam responded to various comments/questions from Council, some being, but are not limited to: is the 7.5 miles included in the 165 miles identified off the GIS maps; do we have a clear list of the top ten sidewalks we want to do based on available funding or does it continually shift based on engineering and other criteria; explanation of the $274,000 amount for sidewalks; and when does the Bicycle/Pedestrian/Transit Master Plan overlays come together for review.

Mayor Bellamy felt a list of top sidewalks would be helpful. For the community meeting she felt it would be helpful to explain the criteria used for determining if a sidewalk is warranted by the number of vehicles per day; the goat path and how much of that is the state's responsibility and how much is the City's; and information on the partnerships of the City, e.g., the N.C. Dept. of Transportation. She said that on the community meeting agenda there will be an item for our strategic plan and how this all ties together. She felt we should have some recognition that we

can approve resolutions supporting the N.C. Dept. of Transportation making sidewalks a higher priority within our City.

In response to Mayor Bellamy, City Manager Jackson said that we are working with Congressman Shuler's Office to provide estimates for construction of a link between the A-B Community Christian Ministries facility and the VA Hospital.

At 8:03 p.m., Councilman Russell moved to excuse Councilman Davis from the remainder of the meeting. This motion was seconded by Councilman Smith and carried unanimously.

C. CAPITAL IMPROVEMENT PLANNING

Administrative Services Director Lauren Bradley said that this is the consideration of scheduling a City Council Capital Improvement Planning Retreat in September 2010.

At the City Council retreat in January 2010, staff presented *Asheville 2010: A Financial Crossroads*, a paper that explored Asheville's financial structure in the context of meeting the community's expectations for services and capital improvements. Among other recommendations, the paper suggested that Asheville should begin to explore opportunities to diversify its revenue sources to achieve long-term capital investments, including exploring the feasibility of a bond program.

During the retreat, City Council updated its strategic plan for Fiscal Year 2010-2011and included a goal to "explore alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities," with a specific objective to "explore the feasibility of a bond program now or in future years, and [to] learn more about financing options outside of a property tax increase." In order to move this initiative forward, staff is seeking City Council approval to schedule a Capital Improvement Planning Retreat in September to gain Council feedback on the strategy and timing of expanding the city's capital program.

A municipality's capital improvement program (CIP) is a primary tool for implementing goals and priorities to achieve community transformation. The CIP plans for the construction and maintenance of the city's water and storm drain systems, roads, sidewalks, greenways, bridges, government buildings and facilities, parks, and other major projects and purchases. A comprehensive capital improvement program provides a framework for identifying and prioritizing these projects, a schedule for implementation, and a plan for financing the portfolio.

Communities with advanced capital improvement planning programs establish defined and recurring processes to identify projects and secure funding, typically for a five-year period. Projects are indentified and prioritized based on adopted master plans, needs assessments, citizen input and evolving community priorities. Funding policies that identify revenue sources, define how often the jurisdiction will pursue referenda and issue debt (biennially, every three years or every five years, for example), and how cash contributions (pay-as-you-go funding) will be used are established and adopted. Once a successful process is established, the jurisdiction repeats the capital improvement planning cycle as part of its annual budget process, and new debt is issued to fund emerging projects as old debt is retired.

Asheville has identified the need to enhance its capital improvement planning process and associated funding plans in order to meet the needs and expectations of a dynamic community. Asheville has a recent history of paying for capital needs through pay-as-you-go funding, meaning that most projects and improvements have been paid for on an annual cash basis. Project financing has been utilized on a small scale, case-by-case basis. The last successful General Obligation Bond referendum was passed in 1986 for street and sidewalk

improvements ($17,000,000) and Pack Place improvements ($3,000,000). This pay-as-you-go funding strategy has limited the size and scope of capital improvements the city has been able to make, particularly when compared to the scale of capital priorities indentified in the city's adopted master plans.

The fiscal impact of planning a half-day retreat will be minimal. Any associated costs will be covered by the existing City Council budget for meetings and retreats.

Discussions surrounding a comprehensive capital improvement program can be complex, and shared vision and support at the City Council level will be essential for a successful CIP that includes referenda as a part of the financing plan. In order to give the subject matter the policy dialogue it requires, staff is recommending that City Council schedule a capital improvement planning retreat on September 28, 2010, or another preferable date. Staff would propose scheduling the retreat for at least a half day at an off-site location, similar to January's retreat held at Warren Wilson College.

To take the city's capital planning process to the next level, staff would use time at the retreat to seek City Council's input on how a five-year capital improvement program should take shape along with direction on what funding strategies Council is prepared to pursue. Staff would be prepared to provide more information about specific items including:

- An overview of CIP best practices from other cities;
- Background on the city's past progress with capital projects;
- A review of the city's financial strength and debt capacity;
- An overview of current, internally identified and prioritized capital projects, and;
- Options for a financing plan.

Staff would seek Council input and direction on:

- Defining the criteria by which capital projects are identified and prioritized;
- The prospect of establishing a Capital Improvement Planning Committee made up of community leaders and citizens;
- Seeking additional citizen involvement and input on the CIP, and;
- Scheduling and financing options for the CIP, among others.

After the retreat, it would be staff's goal to take City Council's input and develop a comprehensive Capital Improvement Program and associated policies for City Council adoption later in the fall 2010. The adopted program would serve as the roadmap for Asheville's capital planning cycle in FY 2011-2012 as well as future years.

This recommendation was brought forward to and endorsed by the City Council Finance Committee on July 27, 2010. In addition to moving forward with a retreat, the Finance Committee recommended that City Council delegate the task of planning the retreat and its agenda to the Finance Committee.

Councilman Russell felt that instead of the Finance Committee planning the retreat and its agenda, he felt it would be more appropriate to have an ad hoc committee of Council.

After a brief discussion of the members, Councilman Russell moved to schedule a half-day capital improvement planning retreat with said planning of the retreat, the date, and its agenda be developed by an ad hoc committee consisting of Mayor Bellamy, Councilman Bothwell and himself. This motion was seconded by Councilman Smith and carried unanimously.

D. APPROVAL OF A WASTE STREAM REDUCTION PILOT PROGRAM

Director of Public Works Cathy Ball said that this is the consideration of a motion approving a Waste Stream Reduction Pilot Program intended to test the feasibility of a variable-rate waste program model in Asheville.

In January 2010, City Council developed a strategic plan that included a goal to continue to make Asheville the southeastern leader in clean energy and environmental sustainability. A specific action item under this goal states that staff should look for ways to take the city's sustainability program to the next level, specifically by seeking ways to reduce city-wide solid waste.

As part of the City of Asheville's Sustainability Management plan, special attention was focused on solid waste. The plan recommended that Asheville increase its role as a state leader in sanitation and recycling with an emphasis on expanding recycling by developing a market-based incentive program.

Variable-rate waste programs provide citizens with an economic incentive to reduce the waste they throw away because garbage bills increase as the volume of waste increases. Variable-rate pricing is being adopted in thousands of communities to create incentives for increased recycling in the residential sector.

Although above average when compared to other cities in the state, recycling over the last several years has been essentially flat in the City of Asheville. In order to be progressive stewards of our recycling service and increase waste diversion, staff has been investigating a variable-rate waste program that would include the benefit of single-stream recycling.

Analysis: The Waste Stream Reduction report outlines a variable-rate waste program model as well as a proposed pilot study (page 5) that will assess the viability of implementing such a program within the City of Asheville. The pilot program will involve 572 homes in three neighborhoods and will incorporate a detailed communication and outreach component. Analysis during the pilot study will provide additional details of the financial impact both to residents and the city which will in turn form baseline data for options to move toward a full or partial cost recovery model.

Pros:

- Reduction of land filled solid waste
- Increased awareness of recycled material for residents in pilot area
- Supports Council's sustainability goals

Con:

- Cost per month per household may increase if the single stream program is implemented citywide.

This action complies with City Council's Strategic Operating Plan in that Asheville will be the southeastern leader in clean energy and environmental sustainability by expanding community education programs and implementing ways to reduce city-wide solid waste.

Costs for the pilot program is $5,000, which will be funded through already budgeted funds in the Public Works Department.

City staff recommends City Council approve a Waste Stream Reduction Pilot Program. Results of the pilot program and recommendations for considering program expansion would be brought forward for City Council consideration in late 2010 or early 2011.

The pilot program will consist of (1) 572 homes pilot 95 gallon rollout recycle carts (a) Burton Street; (b) Norwood Park; and (c) Park Avenue; (2) single stream recycling; (3) bi-weekly collection; (4) 90-day pilot; and (5) October 1, 2010, to December 31, 2010.

The goals will be to reduce solid waste to landfill; more convenient for residents to recycle; provide data on the increase in amount of material recycled; evaluate effectiveness of the program; evaluate operation challenges with collection; and expand program in July 1, 2011.

Data collection will include a (1) increase in recycling; (2) decrease in solid waste; (3) participation in program; (4) specific hurdles to participation; (5) operational changes needed to facilitate program; and (6) willingness of customers to use varying can sizes with varying rates for trash collection.

The communication plan will consist of (1) pre-survey; (2) post-survey; (3) 90-day pilot for data collection purposes; (4) community meetings; (5) door hangers; and (6) Channel 11, press releases and social media.

Cost of pilot program is (1) $5,000 October 1, 2010, to June 30, 2011 (cost-plus to be recovered in reduced tipping fees; and (2) data collection for 3 months but customer will retain services until June 30, 2011, or full city-wide implementation date.

Future considerations (1) financially incentivize recycling; (2) implement a city-wide "variable rate waste" program; (3) utilize various sizes of trash containers; (4) evaluate the weekly/bi-weekly service; (5) city-wide implementation goal of July 1, 2011; and (6) Phase I of multi-phased approach to increase recycling.

City staff recommends approval of a waste stream reduction pilot program.

Mayor Bellamy felt we should have a street in east Asheville included in the pilot program.

In response to Councilman Russell, Ms. Ball said that the City pays the County $1.4 Million a year in tipping fees.

Councilman Bothwell suggested that when staff is collecting data, they should ask if people would be willing to go bi-weekly on their garbage collection.

It was the consensus of Council to approve a Waste Stream Reduction Pilot Program.

E. RESOLUTION NO. 10-185 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Newman said that (1) the term of Mr. John Broadbooks expired on June 30, 2010; (3) Mr. J.L. Thompson has resigned as a member of the Civic Center Commission, thus leaving an unexpired term until June 30, 2011; and (3) Ms. Elizabeth Jones has resigned, thus leaving an unexpired term until June 30, 2011.

At the July 27 Council meeting, it was the consensus of Council to interview Dan Breneman, Bill Jones, James Richards, Carol Ann McLendon and Saul Chase. City Clerk Burleson was unable to make contact with Mr. Breneman or Mr. Chase to see if they were interested in being interviewed.

Vice-Mayor Newman moved to (1) appoint Bill Jones to serve a three year term, term to expire July 1, 2013; (2) appoint Carol Ann McLendon to fill the unexpired term of Mr. Thompson, term to expire July 1, 2011; and (3) appoint James Richards to fill the unexpired term of Ms. Jones, term to expire July 1, 2011. All terms are until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

Vice-Mayor Newman said that the Boards & Commissions Committee discussed County residents serving on City boards and it is the sense of the Committee to continue our policy of applicants being City residents. However, it was determined that it would be desirable to have County representation on two of our boards – the Civic Center Commission and the Transit Commission.

When agreement was expressed amongst Council, Vice-Mayor Newman moved to instruct the City Attorney to prepare an ordinance amendment (2) to the Civic Center Commission expanding it's membership by two individuals which will be appointed by the Buncombe County Commissioners; and (2) to the Transit Commission ordinance membership make-up to allow the Buncombe County Commissioners to appoint one member to the existing 7 member board when the next vacancy occurs. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 180

F. RESOLUTION NO. 10-186 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Newman said that Mr. John Miall has resigned as a member of the Civil Service Board, thus leaving an expired term until May 21, 2011.

At the July 27 Council meeting, it was the consensus of Council to interview Daniel Bradshaw and Jacquelyn Hallum. Ms. Hallum was unable to attend the interview date and time; however, she expressed interest on the Board.

After Council spoke highly of the candidates, Daniel Bradshaw received no votes and Jacquelyn Hallum received 5 votes. Therefore, Ms. Hallum was appointed as a member to the Civil Service Board, to serve the unexpired term of Mr. Miall, term to expire May 21, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 33 – PAGE 181

G. BOARDS & COMMISSIONS

RESOLUTION NO. 10-187 – RESOLUTION APPOINTING A MEMBER TO THE AMERICAS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Newman said that the terms of William Madison and Kelly Rowe Rodriquez, as members on the Americans with Disabilities Act Compliance Committee (both representing the disabled community) expired on August 22, 2010.

The following candidate applied for the position: Mr. Kelly Stamey.

At the Boards & Commissions Committee recommendation, Vice-Mayor Newman moved to reappoint Mr. William Madison (representing the disabled community) to the Americans with Disabilities Act Compliance Committee for an additional three-year term, term to expire August 22, 2013, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

It was also the recommendation of the Boards & Commissions Committee and the consensus of Council, to postpone appointment of the second disabled representative seat (vacated by Ms. Rodriquez) until there is a need for the Committee to meet. It was noted that should there be a need for the Committee to meet the existing Committee can function.

At the suggestion of Mayor Bellamy, it was the consensus of Council for the Boards & Commissions Committee look at the potential of folding the Americans with Disabilities Act Committee's responsibilities into the Asheville-Buncombe Fair Housing Commission. City Attorney Oast said that he would research this issue.

RESOLUTION BOOK NO. 33 – PAGE 182

RESOLUTION NO. 10-188 – RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Newman said that the terms of Terry Meek (at large member), Pattiy Torno (owner of property within the River District), Rod Baird (member of the RiverLink Board of Directors), Marty Black (owner of property within the River District), and Jane Mathews (design professional) as members on the River District Design Review Committee expire on September 1, 2010.

The following candidates applied for the positions: Mr. Philip Ellis and Mr. Carleton Collins.

At the Boards & Commissions Committee recommendation, Vice-Mayor Newman moved to reappoint Terry Meek (at large member), Rod Baird (member of the RiverLink Board directors) and appoint Mr. Carleton Collins (design professional) to each serve a three-year term respectively, or until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

It was the consensus of Council to re-advertise for the two positions of owners of property within the River District. Mayor Bellamy suggested reviewing the Riverfront Redevelopment Commission's resource list for an applicable applicant and ask if they would be interested in serving on this Committee.

RESOLUTION BOOK NO. 33 – PAGE 183

BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Newman said that the term of Mr. Ron Storto (owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units) as a member on the Buncombe County Tourism Development Authority expires on August 30, 2010.

The following candidates applied for a position on the Buncombe County Tourism Development Authority: Jared Breneman, Carol Ann McLendon and David Nutter.

At the recommendation of the Boards & Commissions Committee, it was the consensus of Council to delay consideration of this appointment until a confirmation is received that Mr. Ron Storto continues to be an eligible appointment.

RESOLUTION NO. 10-189 – RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Newman said that the terms of Marsha Shortell and Suzanne Jones, as members on the Asheville-Buncombe Historic Resources Commission, expired on July 1, 2010. In addition, two vacancies exist from Mr. Todd Williams (term to expire July 1, 2010, and Mr. Brad Brock, term to expire July 1, 2012.

The following candidates applied for a position on the Historic Resources Commission: Richard Fast, Susan West, Amanda Warren, E. Ashley Black, Jeremy Gillespie, Bill Allison and David Nutter.

City Council interviewed Ms. Amanda Warren and Ms. E. Ashley Black on February 23, 2010.

At the recommendation of the Boards & Commissions Committee, Vice-Mayor Newman moved to appoint Ms. Amanda Warren to fill the unexpired term of Mr. Brock, term to expire July 1, 2010; appoint Ms. E. Ashley Black to a three-year term, term to expire July 1, 2013, and appoint Mr. David Nutter, term to expire July 1, 2013 – all terms until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

In addition, after discussion at the Boards & Commissions Committee, Vice-Mayor Newman said that the Committee still feels that the Historic Resources Commission is too large (12 members) and suggested the membership size be re-considered to be further reduced next summer.

RESOLUTION BOOK NO. 33 – PAGE 184

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy encouraged all citizens to attend the North Carolina Dental Society free clinic on August 13 and 14; 2010, on the campus of the A-B Tech Community College to help meet the dental needs of our residents.

Councilman Russell congratulated Mr. Pat Thompson who qualified for the Senior U.S. Open.

Councilman Bothwell updated the Council on the volunteer sidewalk clean-up efforts.

Rev. Christopher Chiaronmonte questioned Council about the process to get unbanned from City parks. Mayor Bellamy asked City Manager Jackson to provide Council with the process in writing in order to provide it to Rev. Chiaronmonte.

Rev. Scott Rogers, representing the Asheville-Buncombe Community Christian Ministries (ABCCM), provided Council with the 2009 summary of the ABCCM homeless services. He said that the ABCCM provides homeless services in multiple settings which address: (1) homeless prevention and rapid re-housing; (2) day shelter; (3) shelter: emergency and transitional housing plus permanent supportive housing; (4) homeless education, training and employment; (5) incarceration services; and (6) medical, dental and pharmacy care. He said that the ABCCM is contributing the resources through a combination of church funding, community funds and government funds for a total resource amount of $2,628,000.

The following claims were received by the City of Asheville during the period of July 23 – August 5, 2010: Steven K. Stearns (Transit), Amanda Walker (Streets), Don Clayton (Water), Skyland Fire Department (Fire), Gregg Goodman (Water), Virginia Schmidt (Water), Cool Mountain Construction (Water), Progress Energy (Water), AT&T (Water), Darlene Hamlin (Parks & Recreation), Robert Sain (Water) and Casey R. Silvers (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:44 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 24, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman (arrived at 5:15 p.m.); Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 13-17, 2010, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Bellamy read the proclamation proclaiming September 13-17, 2010, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to 2010 MED Week Board of Directors Chair Hope Huskey, who introduced other Board members in the audience briefed City Council on some activities taking place during the week.

B. PROCLAMATION RECOGNIZING THE 75TH ANNIVERSARY OF THE BLUE RIDGE PARKWAY

Mayor Bellamy read the proclamation recognizing the 75th Anniversary of the Blue Ridge Parkway. She presented the proclamation to Ms. Marla Tambellini, Marketing Chair on the Blue Ridge Parkway 75th Anniversary Board, who briefed City Council on some activities taking place during the anniversary celebration.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda Item "L" was removed from the Consent Agenda from consideration.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 10, 2010

B. ORDINANCE NO. 3886 - ORDINANCE INCREASING THE SIZE OF THE MEMBERSHIP OF THE ASHEVILLE RIVERFRONT REDEVELOPMENT COMMISSION AND TO CHANGE IT'S NAME TO THE ASHEVILLE AREA RIVERFRONT REDEVELOPMENT COMMISSION

Summary: The consideration of an ordinance approving the alteration of the Asheville Riverfront Redevelopment Commission's name and the expansion of Commission's membership.

At their regularly scheduled meeting on July 8, 2010, the Asheville Riverfront Redevelopment Commission (ARRC) unanimously passed a motion to ask Asheville City Council

to amend the ARRC ordinance's membership section to include an appointee from the Town of Woodfin. The motion was made by City Councilman Jan Davis and seconded by County Commissioner Bill Stanley. In discussion, ARRC members expressed interest in having the Commission reflect regional partnership in riverfront redevelopment efforts.

The ARRC subcommittee charged with recommending by-laws to the Commission met with City Attorney Bob Oast and Riverfront Coordinator Stephanie Monson on August 5, 2010. At this meeting, the by-laws subcommittee decided to ask the ARRC to consider altering the Commission's name from "The Asheville Riverfront Redevelopment Commission" to "The Asheville Area Riverfront Redevelopment Commission" in order to further reflect the intention for a regional partnership. At the ARRC's next regularly schedule meeting on August 12, 2010, the ARRC members were asked to consider said change. While no formal motion was made, the group unanimously agreed that altering the Commission's name to include the word "area" was a desirable change.

The proposed name change would make the Commission's official title "The Asheville Area Riverfront Redevelopment Commission" instead of "The Asheville Riverfront Redevelopment Commission".

The proposed membership change would increase the number of Commission members from thirteen to fourteen. The Town of Woodfin, as a new appointing board, would have one member on the Commission and would be exempted from the requirement that one half of any board's appointees shall own land or a business within the Riverfront District.

This action aligns with the following goals from Council's strategic operating plan: (1) Sustainable: Pursue a stronger riverfront redevelopment partnership and dedicated office; (2) Affordable: Support diversified job growth and small business development; (3) Green: Support open space preservation; and (4) Sustainable: Promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- Expansion of membership to the Town of Woodfin encourages participation by a more diverse stakeholder group towards the Commission's stated purpose: to support the sustainability and continued development of the Riverfront District.
- Alteration of Commission name better reflects a regional partnership on riverfront revitalization efforts.

Cons:

- Expansion of membership to the Town of Woodfin but not to other stakeholders may be perceived as exclusionary instead of inclusionary.
- Alteration of Commission name may not accurately reflect the Commission's current primary focus on the geographic area within the City's jurisdictional boundaries.

No fiscal impact is expected to occur as a result of these ordinance changes.

If Council approves of the ordinance adoption of it is recommended.

Councilman Davis spoke in support for the additional seat for the Town of Woodfin.

ORDINANCE BOOK NO. 26 - PAGE 259

C. RESOLUTION NO. 10-190 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF DAVIDSON DRIVE

Summary: The consideration of a resolution of intent to permanently close a portion of Davidson Drive and setting the public hearing on September 28, 2010.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owner, Buncombe County, has requested the City of Asheville to permanently close a portion of Davidson Drive.

The Greenway Commission approved the closure, without restrictions, at their meeting on August 12, 2010.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close a portion of Davidson Drive and setting the public hearing on September 28, 2010.

RESOLUTION BOOK NO. 33 – PAGE 185

D. ORDINANCE NO. 3887 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE WNC NATURE CENTER

Summary: The consideration of a budget amendment, in the amount of $110,621, for a grant from the State of N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative for the WNC Nature Center.

Each year the State of North Carolina allocates funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Museums Collaborative as supported by North Carolina Senate Bill 1741. WNC Nature Center is a member of the collaborative.

Funds will be used to enhance Nature Center operations and to make improvements to the facility and animal exhibits at the Nature Center.

The action complies with the City Council 2010-2011 Strategic Plan in fiscal responsibility in that it makes use of alternative funds to enhance the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via grants.

Pros:

- Provide funds to enhance the well-being of the animals, operations and special projects, and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:

- None

The project budget for one-time operational and facility improvements at the Nature Center will increase by $110,621. This increase is funded by a grant from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative. Thus, there is no impact to the City's General Fund budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of $110,621 for the WNC Nature Center with a grant from the State of N.C. Dept. of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

ORDINANCE BOOK NO. 26 – PAGE 265

E. ORDINANCE NO. 3888 - BUDGET AMENDMENT TO RECEIVE DONATED MONEY FROM CITIZENS FOR PROCUREMENT OF SUPPLIES FOR THE PURPOSE OF FIREFIGHTER DONATION

Summary: The consideration of a budget amendment, in the amount of $3,527, to receive donated money from citizens, for procurement of supplies for the purpose of firefighter recognition.

The Asheville Fire Department has received donations from private citizens for the purpose of firefighter recognition. These donations have been received throughout fiscal year 2009/2010. The department would like to use these funds to purchase supplies for the annual 9/11 Memorial and Recognition program as well as to purchase holiday meals for on duty firefighters this fall and winter. The Fire Department's annual program allows employees to be recognized for professional accomplishments throughout the year. The meal purchases allow on duty firefighters to prepare a meal in their stations without securing these supplies on their own when many restaurants and stores are closed for the holiday.

This action complies with the City Council Strategic Operating Plan in that it helps to attract and retain quality employees and to ensure operational effectiveness by paying sound wages and benefits.

Pro:

- This action allows for recognition of firefighters without utilizing city tax funds. This action also provides for utilization of these funds as the donating citizens intended.

Con:

- None identified

These funds have been obtained through donations from private citizens for the purpose of firefighter recognition. No city tax funds will be utilized.

City staff recommends City Council approve the budget amendment to receive donated money from citizens.

ORDINANCE BOOK NO. 26 – PAGE 267

F. ORDINANCE NO. 3889 - BUDGET AMENDMENT FOR YEAR 3 FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER

Summary: The consideration of a budget amendment in the Grant Fund, in the amount of $104,000, for Year 3 funding from the N.C. Dept. of Public Instruction for the 21st Century Community Learning Center as part of the City of Asheville Weed and Seed Initiative.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of target area residents and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life.

Weed & Seed sites are required to leverage additional funds to carry out goals and objectives. The 21st Century Community Learning Center grant relates directly to the Weed & Seed prevention/intervention/treatment strategy and provides funds for afterschool programs serving youth who are academically at risk. Community-identified goals such as increased parent involvement in education and afterschool activities, and increased community input on programming are addressed through the programming.

The following sites will have 21st CCLC activities funded through this grant: Burton Street Recreation Center, Pisgah View Community Center, Shiloh Community Center, Asheville Middle School and Randolph Learning Center. Programming was initiated at the Shiloh Community Center last year as the Shiloh community has been identified as an area experiencing challenges similar to those in the Weed & Seed designated area.

Aboard Spaceship Earth (ASE) is one of many innovative teaching tools being used to engage students and improve academic performance through the program. ASE is a national academic based program using high tech tools and experiences to improve academic success. The use of certified teachers, law enforcement officers and community leaders ensures program participants are given opportunities to build trusting relationships in the community while at the same time improving self esteem. In 2009/2010, the City of Asheville 21st CCLC program provided services to 161 middle and high school youth with a majority of students (121) attending Asheville Middle School.

This action complies with the City Council Strategic Operating Plan in that it implements strategies to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime and supports recreation and employment alternatives for youth at risk of gang exposure. This action also complies with the community-based Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults.

Pros:

- Program will bring much needed academic assistance to middle and high school students who are struggling in school and/or reside in high risk neighborhoods.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the targeted area.

Con:

- Additional funds will need to be leveraged during the 2011-2012 school year to sustain the program since funding decreases by 20% that year.

Grant revenue in the amount of $104,000 will cover all personnel and operating expenses related to the afterschool program at no additional cost to the City. Expenses include, but are not limited to: salary for a full time program director, part-time assistants, contracted teachers and resource providers, and supplies and transportation costs.

City staff recommends City Council adopt a budget amendment in the Grant Fund in the amount of $104,000, to establish a budget for Year 3 of the 21st Century Community Learning Center grant.

ORDINANCE BOOK NO. 26 – PAGE 269

G. ORDINANCE NO. 3890 - BUDGET AMENDMENT FROM THE N.C. ARTS COUNCIL TO SUPPORT THE PUBLIC ART 360 CONFERENCE

Summary: The consideration of a budget amendment, in the amount of $5,000, for a grant from the North Carolina Arts Council to support the Public Art 360 Conference.

Funding from the North Carolina Arts Council Creating Place grant will be used to support the Public Art 360 Conference, a Southeastern regional conference to be held in Asheville September 23 – 25, 2010 which celebrates and examines the collaborative benefits of public art for working artists, arts administrators, and the community as a whole.

The action complies with the City Council 2010-2011 Strategic Plan Goal of fiscal responsibility of exploring alternative funding for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative sources, enhance public confidence for and appreciation of the arts, and enhance facilitation and resources among arts interests.

Pros:
- Provides additional funds to support the Public Art 360 Conference

Con:
- None

The existing budget for a one-time project within the Cultural Art Program will increase by $5,000. This increase is funded by a grant from the North Carolina Arts Council. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget by $5,000 for a grant from the North Carolina Arts Council to support the Public Art 360 Conference.

ORDINANCE BOOK NO. 26 – PAGE 271

H. RESOLUTION NO. 10-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH MOTOROLA INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2010 through

July 31, 2011 has increased by approximately three percent and this year we have included audio logging maintenance for unified and consistent maintenance support.

The renewal agreement reflects an annual charge of $142,877.40 and covers additional equipment purchased by the City that has come out of warranty during the past year.

This ties back to Council's goal of partnerships to improve critical services and supports the sustainable focus of maintaining our radio infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pro:

- By keeping the radio system in optimal condition the City is able to provide communication services to several outside agencies, thereby improving interagency communications.

Con:

- None noted.

Funding for this contract is included in the Adopted FY 2010-11 Information Technology Services and Police Departmental Budgets.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2010 through July 31, 2011.

RESOLUTION BOOK NO. 33 – PAGE 186

I. ORDINANCE NO. 3891 - ORDINANCE AMENDING THE CIVIC CENTER COMMISSION MEMBERSHIP SIZE TO INCLUDE TWO BUNCOMBE COUNTY APPOINTEES

Summary: The consideration of an ordinance expanding the membership of the Asheville Area Civic Center Commission to include two Buncombe County appointees.

The Asheville Area Civic Center Commission consists of seven members, all appointed by the City. This structure has existed since 1965, when the Commission was established.

Even though the Civic Center is operated by the City, it continues to be recognized as a regional facility. Expanding the membership of the Commission to include some county appointees reflects that regional status.

The Boards and Commissions Committee recommended expanding the membership of the Commission from seven to nine members, with two appointments to be made by the Buncombe County Commissioners. The terms would be for three years and shall be deemed to commence on July 1, 2010. Terms of current members would not be affected.

Pro:

- Recognizes regional status of Civic Center

Con:

- Some additional administrative cost.

The Strategic Operating Plan encourages the pursuit of regional partnerships to achieve common goals and pursue economic development strategies.

Adoption of the ordinance is recommended.

Councilman Davis stressed that this is an opportunity Buncombe County has afforded themselves by participating in partnership with the City. These two new appointments have been earned and not taken lightly. This is no less significant than a seat on any enterprise board. He felt it would be appropriate to put in place and then speak with the County Commissioners.

ORDINANCE BOOK NO. 26 – PAGE 273

J. RESOLUTION NO. 10-192 - RESOLUTION SUPPORTING THE ASHEVILLE FIRE DEPARTMENT'S PARTICIPATION IN MISSION HOSPITAL'S LIGHTEN UP 4 LIFE CAMPAIGN

Summary: The consideration of a resolution for City Council support for the Fire Department's participation in Mission Hospital's "Lighten Up 4 Life" campaign.

Mission Hospital is coordinating a regional "Lighten Up 4 Life" campaign to begin September 1, 2010, and has requested fire departments to participate in support of the overall effort to promote healthy diet and exercise in our community.

An organized kickoff event is being proposed to be held at the Municipal Building. Mission Hospital representatives will be there to kick off the event with Fire Department personnel.

Short video interviews in which participants share what healthy diet and exercise means to them would be taped. The interviews would then be utilized to advertise in media outlets to promote Mission's Lighten Up 4 Life campaign.

Pros:

- Participation in the event will allow individuals the opportunity to express their desire to promote healthy diet and exercise.
- The event and associated videos will make a visual statement about the City's support of health and wellness.

Con:

- None identified.

Participation in the event would require no significant fiscal impact involved.

City staff recommends City Council adopt a resolution of support for Asheville Fire Department participation in Mission Hospital's "Lighten Up 4 Life" campaign.

Ms. Maureen Skullen, representing Lighten Up 4 Life, thanked City Council and the Asheville Fire Department personnel for their support and participation in this program to get our community healthier.

RESOLUTION BOOK NO. 33 – PAGE 187

K. RESOLUTION NO. 10-193 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH SUNGARD, INC., FORMALLY HTE, TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S HTE SOFTWARE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with SUNGARD, Inc. formally HTE, to provide maintenance coverage for the City's HTE Software.

SunGard/HTE, located in Lake Mary, Florida, has provided maintenance services for the City's HTE Software since installation of the system in 1997. Since this company received the bid for this software in 1997 and its proprietary software, we must contract our maintenance though this company and they have no subsidiaries in North Carolina. The service agreements are renewed annually. This maintenance covers currently used critical applications such as payroll, banking, and other core financial services during the transition to the BTIP project. The maintenance cost of this software for the renewal period of July 1, 2010, through June 30, 2011, has been reduced due to transitioning to Munis.

This ties back to Council's goal of supporting a sustainable community through a strong commitment to infrastructure maintenance.

Pros:

- By keeping the HTE Software in optimal condition, the City is able to provide service that is more efficient to our city employee users, giving them the ability to do their jobs in a timely manner.
- This allows the City to provide excellent service to the customer of the City of Asheville and to the vendors who conduct business with the City of Asheville.

Con:

- None noted.

The renewal agreement reflects an annual charge of $118,342. Funds have been appropriated in the Information Technology Services Contracted Service and the Parking Services Interfund accounts.

City staff recommends City Council adopt the resolution for HTE software maintenance coverage for the term of July 1, 2010, through June 30, 2011.

RESOLUTION BOOK NO. 33 – PAGE 188

L. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN DOCUMENTS RELATED TO THE APPLICATION FOR AND IMPLEMENTATION OF TWO GRANTS FROM THE APPALACHIAN REGIONAL COMMISSION

This item was removed from the Consent Agenda from consideration.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. HOUSING AUTHORITY UPDATE

Mr. David Nash, Deputy Executive Director of the Housing Authority of the City of Asheville (HACA), updated City Council on the following two focus areas: (1) HACA Five Year

Plan: Board of Commissioners has established priorities that are aligned with the Asheville Consolidated Strategic and Housing and Community Development Plan; and (2) Update on Recovery Act and Energy Performance Contract projects.

He explained the following City priorities and how they align with the HACA goals: City Priority #1: Provide affordable rental housing, particularly for households earning 60% of median income or less. (Greatest need is for one bedroom units.). HACA Goals: (1) Preserve Aston Park Tower with energy efficient and more attractive exterior (1-3 years), (2) Redevelop Aston garden apartments as workforce housing with emphasis on 1BRs (2-5 years); and (3) Replace burned Hillcrest units with 1BRs at another location (1-3 years). City Priority #2: Coordinate housing development with transportation, jobs, and services and make efficient use of available land and infrastructure. HACA Goals: (1) Collaborate with City on Sustainable Communities Initiative – including projects above (current); and (2) Expand job opportunities for HACA residents through programs like Asheville Green Opportunities (ongoing). City Priority #3: Help those with special needs – the homeless, the frail elderly, persons with mental illness, and people with disabilities and help people succeed through supportive services coordinated with housing. HACA Goals: (1) Participate on Homeless Initiative Advisory Committee – advocate for supportive services (ongoing); and (2) Include opportunities for the chronically homeless people with disabilities in all existing and future developments (ongoing). City Priority #4: Emphasize high quality, energy efficient, environmentally friendly designs. HACA Goals: (1) Complete Energy Performance Contract and Recovery Act work (ongoing - more below); (2) Complete implementation of green maintenance and operations commitments (1 year); and (3) Become an environmental and conservation leader in the Public Housing community (1-5 years). City Priority #5: Target low-wealth neighborhoods for improvements that will improve housing conditions and create stronger communities. HACA Goals: (1) Aston Park work above (1-3 years); and (2) Collaborate with City and other local partners on a Choice Neighborhoods or other major grant for Lee Walker Heights (2-5 years). City Priority #6: Preserve existing housing and focus preservation efforts to make rental and ownership housing affordable. HACA Goals: (1) Apply for additional Housing Choice Vouchers whenever possible (application pending); (2) Apply for renewal of Asheville Terrace Housing Assistance Contract (next 3 months); and (3) Complete Klondyke Homes comprehensive modernization project (3 years) (a) Refinance Woodridge Apartments to ensure long term affordability (next 3 months).

Energy Efficiency Projects include (1) Recovery Act ($5.9MM in grants): (a) 24 Klondyke Homes units complete; 18 more under construction; (b) Pisgah View Community Services Building complete; (c) Altamont roof - 29% complete; (d) Bartlett Arms roof -17% complete; (e) Hillcrest/Deaverview – prototype installed and approved; contractor to begin in September replacing ~3,450 windows; and (f) Pisgah View – contractor to begin in October replacing ~3,000 windows; (2) Energy Performance Contract ($3.6MM loan) (a) Water improvements 100% complete: 313 new dual flush toilets; 970 lower flow toilet retrofits; 3,600 lower flow aerators/showerheads; (b) Weatherization 55% complete: 970,000 square feet of living space in six developments; (c) Insulation 37% complete: 290,000 linear feet in walls; 350,000 square feet in attics – four developments; and (d) Livingston starting this month – 900 window replacements.

The Guaranteed annual energy savings: (1) Electricity - 680,000 kWh; (2) Natural Gas - 180,000 therms; (3) Water - 41 million gallons; and (4) Utility Bills - $757,000.

The Annual Carbon Dioxide Reduction: (1) Electricity - 490 metric tons; (2) Natural Gas - 900 metric tons; and (3) www.epa.gov/RDEE/energy-resources/calculator.htm.

When Mayor Bellamy asked if there was any way to begin to capture with those agencies related to us (e.g., Housing Authority, MSD, Airport) in some way all their carbon dioxide reductions, City Manager Jackson said that efforts are being made in the community to begin gathering that information on a community-wide and regional basis.

Mr. Nash responded to various questions from Council, some being, but are not limited to: are utility bills included in the rents; do the utility bill savings result in rental cost savings; how are crime statistics in our public housing developments; and how is the City progressing with the Weed & Seed program in Pisgah View.

Mr. Nash responded to Councilman Smith on the six grants the Housing Authority is exploring and gave more detail on the Lee Walker grant.

On behalf of City Council, Mayor Bellamy thanked Mr. Nash, Executive Director Gene Bell, Housing Authority Board Chair Brian Weinkle and the entire Board for their service.

B. ECONOMIC DEVELOPMENT COALITION UPDATE

Mr. Ben Teague, Senior Vice-Present of the Economic Development Coalition for Asheville-Buncombe County, said that the Economic Development Coalition (EDC) is a public-private partnership committed to: (1) Creating and retaining high quality jobs; (2) Serving as a trusted resource for better business decisions; and (3) Providing expertise and community leadership. They serve the Asheville Metropolitan Area which is a dynamic four-county region with a population of 412,672 and a workforce of 204,100+.

He said that the core services of the EDC enables businesses to thrive in Asheville. Using charts, he explained our region's industry employment patterns and how they chart the economic indicators.

Activities for Fiscal Year 2009-10 include (1) Business & Industry Services (a) announced six expansions totaling $16.4 Million in new capital investment and 304 new direct jobs; (b) made 130 industry visits; (c) hosted 4th Annual Homecoming Job Fair; (d) lead WNC Transportation Alliance; (e) launched Advanced Manufacturing Partners in Education; (f) conducted 4 educational business & industry seminars; and (g) facilitated Advocates for Industry Forum; (2) Small Business and Entrepreneurship (a) facilitated Business Healthcare Roundtable (i) HB 212 and ChamberCare; and (ii) actuarial cost comparison complete for HB 212 Demonstration Project; (b) five award programs; (c) nine Hot Tips educational seminars; (d) assistance to 600+ small business inquiries; and (e) leadership development training classes; (3) Research & Analysis (a) 400 detailed business research requests; (b) 20 presentations on business, industry, and economy for metro region; (c) 10th Annual Asheville Economy Outlook –audience of 350+; (d) six economic impact analyses; (e) green economy analysis; (f) data updates for 20+ public demographic and economic indicator reports; (g) Business & Industry Directory for 600+ local businesses; and (h) ACCRA cost of living index data for metro region; and (4) Marketing and Recruitment (a) 79 proposals in response to corporate RFI's; (b) hosted 62 new-to-area client visits representing 25 projects; (c) exhibited at 2 major aerospace and climate conferences; (d) five marketing missions to targeted communities; (e) aerospace direct mails and call campaigns to 48 companies; (f) real estate e-blast to 200 site selection consultants/brokers; (g) co-sponsored Asheville Metro site consultants "FAM" tour; (h) over 100,000 marketing exposures; and (i) solicited and assisted 6 firms with Recovery Zone Bond applications – RZ Bond allocations went to Ingles Markets and AVL Technologies.

Using a chart, he showed a June 2010 snapshot of active projects with a total investment of $327,250,000 and total jobs of 1,992. Also using a chart, he showed a June 2010 snapshot of lead development investment by sector for a total investment of $59,500,000 and total jobs of 537.

He explained the return on investment history since 2005-06 to the present. He also spoke about the alignment with the City's Strategic Plan in (1) Job Growth and Community Development (a) partnership with EDC fosters regional economic development strategies; (2) fiscal responsibility (a) EDC has demonstrated consistent positive return on investment; and (b)

EDC generates ongoing opportunities to attain community goals; and (3) Green and Sustainable, outlining several company examples.

In summary, he showed Council the EDC's success stories for Fiscal Year 2009-10, which amounted to a total of 549 jobs and an investment of $44,440,000.

Mr. Teague responded to various questions/comments from Council, some being, but are not limited to: review in detail of the June to June economic indicators; in the future, can the Board report back to Council on if they have any thoughts about things that the City of Asheville can do better in bringing in new business, and their thoughts on why are other companies are leaving; what things can we do as a City or a region to do a better job in the marketing and professional & business services areas; have you looked at what other regions in the country are doing in terms of marketing for specific areas; and does the economic indicator of the unemployment rate take into account people who have dropped out of looking for jobs; and further explanation of projects that are identified as active.

Mayor Bellamy said that AdvantageWest and representatives from Henderson County are preparing educational opportunities for us to look at the new norm when it comes to economic development and job growth.

On behalf of City Council, Mayor Bellamy thanked Mr. Teague and the entire Board for their service.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT AT 105 BLEACHERY BOULEVARD

ORDINANCE NO. 3892 - ORDINANCE AMENDING A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT AT 105 BLEACHERY BOULEVARD

Councilwoman Manheimer moved to excuse Councilman Davis from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Russell and carried unanimously. At this time Councilman Davis left the Council Chamber.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Regarding disclosure, Mayor Bellamy noted that she was on City Council when the overall development came to Council and Councilman Smith said that he was liaison to the River District Design Review Committee when this project came through that Committee. Both said they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or

advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that the applicant is requesting review of site plans for a new retail structure at 105 Bleachery Boulevard. This project is being considered as an amendment to the previous Conditional Use Permit (Ordinance # 3275) which placed specific restrictions on any future development at this site.

The project site consists of a single parcel, 1.14 acres in size, located at 105 Bleachery Boulevard, just off of Swannanoa River Road. The area is zoned River District and located in the Riverbend Shopping Center. Other tenants include Wal-Mart, Kohl's, several restaurants and multiple smaller retail establishments. The eastern portion of the parcel (closest to the Swannanoa River and greenway) is within the 100 year floodplain (but no portion of the site is within the floodway) (City Exhibit 3 – Staff Report).

The applicant is proposing the construction of a 6,950 square foot building for retail tire sales and installation. The structure is a single-story with a mezzanine (30 feet to the tallest architectural element) and will be located towards the southwestern corner of the parcel (Attachment to City Exhibit 3 – Conceptual Landscape Plan).

Access to the site is proposed in two locations – an entrance (left-turn only) from the one-way Wal-Mart driveway on the eastern boundary of the parcel and a two-way entrance/exit on the western boundary into the existing Wal-Mart parking lot. The vehicular use area surrounds the structure to north and east and contains 42 parking spaces (including two accessible spaces and three bike spaces). The applicant is proposing elimination of parking lot lighting because of existing surrounding lighting. Staff approves of this request.

Landscaping required on the site and includes street trees, building impact landscaping, parking lot landscaping and a street buffer. 7,419 square feet of open space is provided (15% of the total site area). Sidewalks currently exist along two sides of the parcel and there is no change proposed.

The applicant has requested several modifications:

- *Number of Parking Spaces* – Number proposed (42) exceeds maximum allowance in UDO (20-35 for retail sales). Excess spaces will be pervious per 7-11-2(c.)2. and require additional landscaping. This request (per the UDO) has been reviewed by the Public Works department and granted approval by the Planning Director.

The following modifications need approval by City Council:

- *Front Setback* – A corner of the building encroaches approximately 5 feet into the front setback along Bleachery Boulevard. The building's placement on the lot is set to maximize internal site maneuverability of delivery trucks. Staff is supportive of this request.
- *Parking in Setback* – A portion of several parking spaces encroach into the front setback along Bleachery Boulevard. Staff is supportive of this request.

- *Interior Landscape Islands* – The applicant is proposing elimination of all required interior landscaping in order to provide an unobstructed area for maneuverability of large delivery trucks to and within the site. Although understanding of the applicant's concerns, staff feels there may be other design options available that would, at a minimum, allow for the placement of reduced interior islands that would not inhibit maneuverability of delivery trucks. Staff would be supportive of a request that reduces the number and/or size of interior islands and plantings but is not supportive of eliminating the requirement altogether. During the River District Design Review Committee discussion, the applicant offered to plant trees offsite (along the greenway) as a means of "alternative compliance." Alternative Compliance requests, however, are typically only considered when physical conditions or site constraints exist (not perpetuated by a preferred site or building design) and that the relocation and placement of landscaping elsewhere onsite will mitigate the impact created by the loss of plant materials, which would not be the case with the planting of trees offsite.

Ordinance No. 3275 was adopted by City Council on August 23, 2005, amending the original Riverbend Shopping Center Conditional Use Permit, conditioning the development of Outparcel 1 as "a 5,000 square foot high-turnover restaurant or similar use of an equal or lesser impact," with the primary concern being traffic impacts to the surrounding area.

Although the proposed development of the Discount Tire store is for a different use and a larger structure than the conditions specified for this outparcel, the number of trips generated is significantly less than would be generated by a 5,000 square foot high-turnover restaurant so there should be no expansion of the traffic impact.

The River District Design Review Committee reviewed the proposed design and their approval was granted on May 26, 2010. Details such as façade elements, materials, color scheme, landscaping and signage were discussed.

This proposal was recommended for approval with conditions by the Technical Review Committee on July 19, 2010. No members of the public were present to speak on this project and no comment has been received by staff. As an amendment to a Conditional Use Permit, this project was not required to be reviewed by the Planning & Zoning Commission.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The most notable natural feature in the vicinity of the site is the Swannanoa River, located more than 100 feet to the east. The easternmost half of the parcel is within the 100 year floodplain. Development on this portion of the site is proposed as surface parking, which is an acceptable use with the 100 year floodplain. Otherwise, the outparcel site is relatively flat, having been previously graded during demolition and

remediation of the Sayles Bleacheries site and development of the Wal-Mart / Riverbend Shopping Center. The proposed use and development of the land is compatible with natural and topographic features on the site and within the immediate vicinity.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
When the Riverbend Shopping Center was approved for development by City Council in 2002, development was included on this outparcel. Some retail / commercial use has always been intended for this site and it is expected to complement, not injure, the value of adjoining or abutting property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The design for the proposed retail tire store has been evaluated by the River District Design Review Subcommittee, with specific attention given to façade materials, colors and landscape material for compatibility with the existing surrounding development. The building façade is proposed to match that of the nearby Walgreens and Aldi stores with a brick pattern and parapet design. Punched brick window openings with keystone detail will break up the predominant brick veneer siding. The site design is similar to this style of large retail shopping center layout.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
This outparcel development helps near the completion of a large retail development approved by City Council in 2002 that met multiple goals of the *2025 Plan* such as infill development on a previously disturbed site resulting in increased pervious area, environmental remediation from the Sayles Bleacheries use, siting commercial development at transportation nodes and other transportation elements such as the greenway, inclusion of bike lanes on the new bridge connection, improvements to Swannanoa River Road.

   The goal of *Job Growth & Community Development* recommends promoting infill development that makes use of existing resources – this proposal is situated on a outparcel of a large, existing retail development where infrastructure exists and has been improved in recent years.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project site is located off of major transportation corridors (I-240 and Tunnel Road) as well as accessed via transit (Routes 12, 13, 26 & 29). Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The original traffic study's adopted condition outlines the allowable impact for the subject parcel as "the development of Outparcel 1 as 5,000 square foot high-turnover restaurant or similar use of an equal or lesser impact." The developer has provided an updated technical memorandum comparing the projected vehicular impacts for the 'High-Turnover Restaurant' category versus the 'Tire Store' category as described in the most recent edition of the ITE Trip Generation manual. Despite an increase of 1,950 square feet to the store footprint, the Tire Store development has significantly less new trips generated.

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Therefore, this intended use is in accord with the outlined impact tolerance of the original traffic impact study.

Use	Size	Weekday Total	Weekday Peak Hour of Adjacent Street Traffic (7-9 am)	Weekday Peak Hour of Adjacent Street Traffic (4-6 pm)
High-turnover Restaurant	5,000 SF	635	58	55
Tire Store	6,950 SF	173	20	28

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pro:

- Proposed use (tire store) results in less traffic impact than originally intended use (high-turnover restaurant)

Con:

- Although the applicant has offered to plant trees along the greenway area as an alternative, elimination of interior landscape islands within the parking field is contrary to the stated goals of the landscape ordinance

Staff recommends approval of this amendment to the Conditional Use Permit for the construction of the Discount Tire use based on the lesser traffic impact. In addition, staff recommends approval of the modifications for parking in the front setback and for the encroachment of the structure into the front setback due to the somewhat irregular shape of the frontage along the roundabout. Staff is not fully supportive of the request to entirely eliminate interior parking islands and suggests a lesser modification to require reduced interior planting.

Mr. Charlie Robinson, representing the Civil Engineering Firm for this project, urged City Council for their support of this project.

After rebuttal, Mayor Bellamy closed the public hearing at 6:06 p.m.

Councilman Russell moved for the adoption of Ordinance No. 3892, amending the amendment to the Conditional Use Permit adopting the proposed plan for Discount Tire to include the modifications for parking in the front setback and for the encroachment of the structure into the front setback; and the modification request to allow a reduction in umber of plant materials and interior island size requirements that are required within the parking field with a condition that the plans be revised to show this reduction interior landscaping, subject to the conditions recommended by City staff; all subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) Plans shall be revised to include reduced interior island landscaping within the parking field. This mtoion was seconded by Councilman Bothwell and carried unanimously (with Councilman Davis being recused).

At this time, Councilman Davis returned to the Council Chamber and participated in the remainder of the meeting.

ORDINANCE BOOK NO. 26 - PAGE 275

V. UNFINISHED BUSINESS:

A. ENDORSEMENT OF ECONOMIC DEVELOPMENT INCENTIVE GRANT REQUEST FOR THE MONTFORD COMMONS PROJECT IN CONCEPT

At the request of Mayor Bellamy, City Attorney Oast said that Council has to make a policy decision on whether to extend the economic development policy to encompass residential housing developments.

Planning & Development Director Judy Daniel said that local developer Frontier Syndicate is seeking an Economic Incentive Grant (EIG) to support Phase I of the Montford Commons Urban Village project. The Montford Commons project was approved and rezoned in September 2007, and amended in June 2009.

When the economy changed, they proposed a public/private partnership (requiring a cash contribution from the City) that would enable them to proceed with the first phase of their project; as private lending sources had become difficult to obtain. A presentation from the developer and an initial staff assessment were heard at the April 2010 meeting of the Planning and Economic Development (PED) Committee. After some discussion, but no specific action, the PED Committee suggested that the proposal should also be heard by the Finance Committee.

At their June meeting, the Finance Committee heard the petition and a revised staff recommendation that did not recommend support for the request. The developers, however, then requested another type of support from the Finance Committee than had been requested at the PED meeting, an EIG in the form of tax relief similar to what was approved for the Biltmore Town Center development. The Finance Committee directed the representatives of Frontier Syndicate to submit required materials to the staff in time to consider the request and prepare a recommendation for the Council for the July 27 Council meeting.

The developers requested the Council to approve an EIG equal to the amount of anticipated property tax revenue generated by Phase I of the development for its first ten years after completion; and 100% relief of permitting fees and water tap fees. The staff report again did not recommend support for the proposal because it did not meet thresholds of expectations for projects requesting public support.

At the July 27 Council meeting, the development team was given suggestions by members of the Council about modifications they could consider to their request that would better align the request with Council adopted goals and policies, and past practice. Following that meeting the staff sent a summary of those suggestions to the development team, posed as a series of questions. Staff received answers to those questions (and a few more questions from the developers) on August 2, 2010. The staff assessment of those answers follow. On August 13, 2010, staff met with the developers to discuss their financial projections. At that time, the developers made the following revised request and an analysis by City staff of that revised request follows:

"Frontier Syndicate LLC plans to develop 250 rental units and 390 structured parking spaces that specifically targets Asheville's workforce by providing housing that is practically sustainable and affordable. The developer has previously requested economic assistance. In response to input from City Council at its July 27th meeting and subsequent communications with City staff Frontier Syndicate LLC is amending its request as follows:

1. The developer requests an economic incentive grant equivalent to:
    a. The City property taxes (in excess of currently assessed taxes) that will be generated by the project for the first five years after construction is complete.
    b. Relief of one-half of the permitting fees of $350 per unit. This represents an estimated consideration of $43,759 ($87,500 * 50%).
    c. Relief of one-half of the tap fees of $103,012 representing an estimated consideration of $51,506.
    d. The grant would also be subject to reduction to the extent of any costs incurred by the City to defend the grant.
2. The developer will incorporate significant green development strategies into the project but without burdening the project with certification costs.

Although the $3 million financial gap remains the same, the rationale for this revised request is that with the City's support, subsequent investment might be enticed.

Other Council Concerns

Parking

Our Lender has first deed of trust on all of the real property. In order for the HUD funding to close, our Lender must agree to release their property so that it will be owned outright by the Montford Commons development. They will do this for the six acres upon which the current design is located, but they will not do this for the 3+ acres of prime real estate along I-240 for its use as a surface lot. This would preclude their ability to market and/or sell this property to another interest.

Our HUD consultant, architect and builder all agree that changing the parking deck to a surface lot is not feasible and would be detrimental to our current Lender and the HUD Lender. Also, a surface lot is contrary to all community input to date. Our perception is that three and a half acres of surface parking right along Hill Street would create an unsightly project and ill-will with the community.

Regarding a reallocation of funds from a deck to surface parking, the financial structure in place does not allow for reallocation, per se. If the scope of the project was changed to remove the parking deck, then the financial structure would also change and the same basic "financial gap" dilemma would still exist, likely to a greater degree.

Green

There are at least four different options for obtaining defined "green" certifications. The most expensive is LEEDS but there are other choices (outlined in Exhibit A2a - A2c to the original proposal) including Energy Star and NAHB. The project gains many green points as it is presently designed due solely to its proximity, location and site plan (see LEEDS worksheet: A2c) but the administration costs of the "certification" process is prohibitive. We request that Council allow us to develop in a manner consistent with "getting the points" without the requirement to obtain formal certification.

Due to timing constraints we request that City Council consider and approve this request at its August 24, 2010, meeting."

Staff Analysis

The list of questions below reflects the comments the staff heard from the individual Council members, related to their concerns and to get their support for an ECI. The developer answers and the staff thoughts follow the questions:

1. *Would you be able to reduce the grant request from 10 to 5 years? If so, what changes to the project would result from that reduction?*

The developers state that there are two constraining dynamics that limit what they can do. Their HUD loan guarantee required commitment to a design, and the project was designed as minimally and functionally as they could. Because of that, it would be extremely difficult and costly to change the plan design. Second, because the lender (Carolina First Bank) has the first position on all the land holdings they have to release property to be used for development.

They suggested that they could reduce the term of the request from 10 to 6 years, but would need the City to pay for installation of the Phase I infrastructure, which would have a lower cost if the City did the work. They noted that this was the process used for the Biltmore Town Square development.

The staff does not recommend support for this suggestion, as it essentially reverts back to a proposal requiring initial fiscal outlay for the City for the infrastructure needs for the project, without providing substantial public benefit.

On August 13, the developers proposed reducing their request to $750,000, equivalent to the estimated increase in City taxes upon completion of the construction for a five-year period commencing upon receipt of the Certificate of Occupancy. This essentially reduces their request by 50%. It removes from consideration City up-front investment in infrastructure, as the EIG would only be payable upon completion of the project.

2. The EIG would mean the City would not have revenue for the established timeframe but would need to provide services to the project. In this time of very tight city budgets that will be problematic. Could you consider a lower percentage of relief from taxes to compensate for this?

The development team asked if the City could provide an estimate of the anticipated service costs from the project. A review found that there would be small increases to budgets of Public Works and Fire and Rescue, and a bit more for Police. Police estimates that a 250 unit complex with parking garage adjacent to the CBD could yield an appreciable need for service calls, with an average cost per year of somewhat over $25,000 per year – escalating higher over the years. The use of city facilities by residents of the complex are more difficult to estimate, but will also contribute to city expenses.

The developers note that private garbage service is a possibility, but private garbage service would be required anyway for a large multi-family project. They suggest that more could be considered if the City contributed to installation of the infrastructure.

The staff does not believe that the answer meets what we understood to be the concern expressed by the Council. It implies that something would be considered only if the City had more fiscal participation in the project.

As noted above, the developers have now proposed a significantly lower percentage of relief from taxes.

3. Can you reconsider and add additional "green" features, "Healthy Built" features, or LEED certification? Maybe things like solar panels for water heating? This seemed to be important to several members of the Council.

The developers state that there are four options for obtaining defined "green" certifications; and the most expensive is LEED. They state that the goals of Energy Star and NAHB are easier to reach. They state that the project as already designed "gains many green points" due to its location and site plan; but the administrative costs for getting LEED certification (developer estimate is $500,000) are prohibitive for them. No additional elements have been added; however, the developers state that the project already incorporates significant energy conservation elements, as well as green locational and siting elements.

They ask if the Council would agree that the points they get on the LEED forms are sufficient, without requiring the formal certification. They would invite staff inspections, or other third party inspections, if these could be provided at a nominal cost to the developers. The staff tends to agree with the request, as the cost of certification itself (not only the construction costs) can be prohibitive for a very large project. The request could be considered, but the design would need to include additional energy conscious elements.

4. Would you consider reducing your costs by converting from structured to surface parking for this Phase? The staff would support that change with a commitment to the garage in a future Phase. How much could your grant request be reduced if you did this? How would that reduction in your costs alter the pro forma submitted previously?

It appears that removing the parking garage from this Phase would allow reallocation of those funds elsewhere, improving your "bottom line" and perhaps allowing you to invest in city strategic elements like LEED certification, trail development, making a percent of units affordable or a percent of tax revenues to flow to the Housing Trust Fund.

The developers state that Carolina First Bank will not release any additional land for use by the development to be used for a surface parking lot, even if that is considered an interim use of the property. The rationale is that this would preclude the ability of the bank to market/sell the property elsewhere should the developers default because the area that would be suitable for surface parking is considered the most highly valued part of the assembled properties.

They state that they consulted with their HUD liaison and the bank and concluded that a change to a parking lot is not feasible, primarily because it would be fiscally detrimental to the bank. They further state that this would be contrary to community input they have received which strongly prefers structured parking. Finally, they state that the financial structure for this project will not allow modifying it.

The staff believes this to be a rational reason for their inability to consider an alternate form for parking for the development. They cannot act without support from HUD and the bank; and these partners appear to be unwilling to modify the terms of their participation. This is unfortunate, but is not an uncommon situation between developers and their lenders these days.

The staff does not believe, however, that this unfortunate situation changes the fact that it would be a substantial precedent for the City to give fiscal support through an EIG for a project that has only modest public purpose, and includes construction of a structure that is not really needed for the project to move forward. This is a financial bind for the developers, and it seems a short-sighted decision on the part of the bank, but the staff does not see that such a situation is sufficient reason for EIG participation by the City.

5. Would you reconsider allocating some units for affordable housing? Or would you consider an agreement to restrict a percentage of units to those at "workforce" housing income levels? Or could you accept a lower grant and suggest that Council earmark a percent of future annual tax revenue to the Housing Trust Fund?

The developers make a point that when the cost of transportation is factored into housing affordability, this project would likely to meet new indexes that measure affordability (45% of income toward housing and transportation costs).

Additionally, they have proposed to consider a form of "preference queue" that could be offered to civil service employees. They suggest that City staff would manage such a list. When a unit because available, the rental office would first call that list manager to find the next person on the wait list.

The staff believes that this proposal could work, and could address one of the concerns with the project – but would entail a cost for the City in allocating staff time to maintaining the list. It also raises a question as to whether it should be only government employees on such a list. It does not change the proposed rent structure.

6. Are there other ideas you may have to enhance the public benefits offered and thus enhance the potential for approval by the Council? You stated that you could not offer an easement on the "ravine" property due to encumbrances on that property; but do you have other ideas that add to the public benefits?

The developers restated the severe fiscal constraints the project faces; but offer as part of an agreement offered by the Council, they would make a formal proposal to Carolina First Bank to request a release of the "ravine" portion of the property for the purpose of creating a greenway connection. Rather than an "easement' they might be stronger interest from the bank in deeding a portion of the property to the City in exchange for a tax benefit.

They state that they might also consider working on a "green" public transportation shuttle (a multi-person golf cart type vehicle) to run a continuous route connecting the parking garages in the CBD and the development. They suggest that perhaps it could be run by volunteers.

The staff does not believe that these proposals go far enough to reach the expectations stated by members of the Council. The first depends on the support of the lender, who has already chosen to not allow use of some of the assembled land for a rational interim purpose as a parking lot; which might allow the bank to get a good return on their investment over time as the property developed. The second is an interesting idea, but is tied to the use of volunteers to run the shuttle. Neither, although intriguing, seem to have substantial chance of success.

7. Would you possibly reconsider your construction work position and guarantee a percent of construction contract work be committed to Buncombe County or WNC contractors and subs?

The developers confirm that they have a very strong interest in offering the construction work to local firms as much as possible, but feel that any "guarantee" would be problematic as they believe that there are few contractors in this area with the required capacity to complete a project of this size and scope in the required timeframe. And they believe that such an agreement might "create havoc with the costing" as they fear the local subcontractors would be inclined to bid higher. They stand by the process proposed previously, whereby local subs are given the first chance at the work. But they also state that cost and response time would be critical factors.

They also stand by their general contractor choice and architect because of their extensive experience with HUD and working together as a team.

Given all the constraints on this process, the staff can understand the reasons for their concerns, but again, the staff does not believe that the proposed process provides incentives for using local contractors sufficient to meet the expectations heard from members of the Council.

8. Given the potential for a legal challenge of this new type of use for the ECI statute, the Legal Department has asked if you would be willing to assume the risk of a legal challenge. If so, what entity would be assuming the risk? We would need to know the assets/collateral of that entity (LLC or corporation).

The developers agree to accept the risk of such a legal challenge, with a few "reservations"; but they believe this is something that should be negotiated after adoption of a formal resolution approving the support.

The staff agrees that details on such an agreement would need to be worked out if the Council should agree to the EIG requested.

9. Would you be willing to reduce your fee waiver request to the 50% level that is already established in Council policy for affordable housing?

The developers state that they are willing to accept the 50% reduction in the fee and permitting request. This is the level of reduction that has been established for defined "affordable" housing projects.

The staff notes that this would be the first time that the Council has authorized this level of reduction in fees to a project that does not contain any defined "affordable" housing; setting another precedent for future proposals.

10. We will need to see a revised pro forma, as it seems the Finance Department found an error in the original PV calculation that was submitted.

A pro-forma was submitted and reviewed by the Community Development Division staff. Their assessment notes that in this request, to enable a reduction in the number of years that assistance is being requested, the developers were calling for City assistance in two forms:

> First, they were requesting assistance through an interpretation of an EIG (a form of TIF) through the suspension of tax payments on the project for a period of six years, at an estimated cash value of $900,000 (from the City). (These numbers were also used in a net present value (NPV) calculation, which is not really relevant to an analysis of proposal.)
>
> Second, they were requesting the direct construction of infrastructure by the City or the equivalent in a grant. They seemed to be looking for this in direct assistance, paid out as cash during a period of construction, with a total amount provided (in actual construction or cash) of $789,000 (appearing in the table of values tab as $698,500 of actual infrastructure and $90,000 of fee rebate. This does include $89,500 of sewer system improvements, which is not a city controlled element.

The submitted data is incomplete and problematic in several ways:

a. This would be a first time use of the EIG authorization for a residential project, and is legally tenuous.

b. They reduced the years of tax relief requested from 10 to 6, not by reducing the amount of the request in any way, but rather by restructuring $700,000 of the request (the infrastructure) into a straight grant. The staff believed that this proposal defeated the intent of the Council request.

c. The submitted information appears to be incomplete in several ways, making interpretation of it somewhat confusing to interpret, and leading several unanswered questions:

> No capital or operating reserves are provided, or a projection of future net operating income provided. From what was submitted it appears that the project can be self-supporting without additional subsidy.
>
> The development budget, however, does not appear to be complete. No rationale is provided for the construction cost estimates. The infrastructure line item is $2.1 million compared to the $2.9 itemized costs estimate provided with the EIG request. Has the additional $800k been diverted to another line item or is this assuming final costs after a $790k contribution from the City?
>
> The land acquisition costs and total equity position are unclear. Total land cost is shown as $4.1 million, but the RERC report in March noted a $5.15 million acquisition loan with

a $4.9 million principal balance. It appears in this proforma that $2.4 million of the $4.1 million land costs will be financed with $1.7 paid in cash. Is there existing debt service on the $5.15 million? If so, what are the terms? Will there be additional debt service incurred following closing on the $4.1 million? Are these separate transactions or one in the same?

Can the developer provide additional clarification regarding the $2.4 million Builders & Sponsors Profit & Risk Analysis (BSPRA) equity contribution? Will this equity be realized at closing of the HUD financing, or at the end of construction? How will operational costs overruns be covered in future years without the benefit of deferred developer fees? [BRSPA is a financing mechanism used on HUD 221(d)(4) loans which allows a builder to decrease the hard equity requirement from 10% to 3% on HUD financing. We are not familiar with this process and have not heard the term before, but information found via a weblink suggests they are waiving future profits in exchange for creating an additional 7% equity investment on the front end of the deal. From the City's perspective this seems to be a fairly creative form of financing rather than a negative risk factor. Deferred developer fees, however, would not be available to cover any future operating losses which could create a future cash flow problem. It may be helpful to have the developer provide more information as to how and when this equity will be recognized given it is such a large component of the overall cash investment.]

Finally, clarification is needed regarding a stated $3 million in "new equity". Is this an additional cash investment by the development team or a reference to the requested City and County contributions?

To fully assess the fiscal status of the project, these questions noted above would need to be answered.

Staff met with the developers on August 13, 2010. Staff learned the following:

* The full project proforma does include capital and operating reserves. Although the actual reserve percentage was not confirmed, there was a mutual understanding that 5% of gross rents is normal and appropriate.

* Construction cost estimates appeared to be reasonable and customary.

* The cost of land acquisition was $7.5 million; $5.1 million of that was financed. Of the 20 acres purchased, approximately six acres will be used for the project. The estimated value of these six acres is $4.1 million. HUD will allow a value of $2.4 million for purposes of configuring their guarantee, because of the uncertain nature of land values in this economy. The bank financing for the land was intended to be taken out by the construction financing for the project. Since that has not yet occurred, the land not used for the project will still be held by the bank as security, and a new arrangement for its finance will need to be made.

* The BPSRA is an allowance made by HUD for developers' profit. It enables the HUD guarantee to be made on a total project cost that includes projected developers' profit. The developers will leave this amount, agreed to by HUD, in the project as equity.

* In order for the project to succeed, the developers will need to raise an estimated $3 million in new equity. They consider City participation a key factor in creating sufficient investor confidence in the project to incentivize additional investment.

d. According to what was submitted the project starts generating income as soon as lease-up is achieved (estimated by spring of 2013). The cash available would be sufficient to pay the taxes on the project, assuming that reserves were created through the financing to cash flow the

deficits until the project started making money. The project proforma shows cash of $28,000 monthly before the tax benefits kick-in, and before funding reserves. This is $336,000 annually.

The staff believes that while there could be some discussion on the availability of some participation by the City as a lender for the infrastructure segment; grant assistance does not appear to be necessary for the simple operational cash flow of the project. Knowing that lenders are quite conservative these days, the comfort of the lenders would probably be greatly enhanced by a City grant of almost $1.7 million, but that the project cash projections do not show this necessity if the project can get built and start generating cash flow.

If the City were to provide subsidy through tax deferments or through participation in the initial infrastructure costs, could we require those funds to be repaid over time at a nominal interest rate?

The developers believe that to raise the needed additional equity, they must provide a reasonable return on investment. They believe that no additional debt service can be carried without hindering their ability to offer a reasonable return to the new equity investors.

e. Support of the infrastructure might be justifiable in terms of cash flow. Looking at annual revenues of $3.4 million, a 5% reserve of $170,000 would be reasonable ($50/month for 250 units = $150,000 annually). This would eat up about half of the annual cash available. It might be difficult to get conventional financing for the $700,000 of proposed infrastructure.

The new request of five years of support equal to the incremental tax increase is roughly equal to the estimated cost of the infrastructure. No up-front City funds for infrastructure are requested, except for the 50% fee rebate, discussed above.

f. Since the property appears to produce a relatively healthy cashflow after lease-up, why cannot affordable units be required in exchange for City subsidy? Using the same proration of units for the entire project (8.4% 0 BR, 46% 1-BR, 45.6% 2-BR), a 20% affordability requirement would reduce the monthly gross rents by only $17,350 using the current HTF standards of $600, $650, and $780 respectively.

Given the limited information available for our analysis, it would appear the request for assistance is not needed. Perhaps the City could offer to finance $700k of the infrastructure in exchange for 20% affordability if there is a dedicated funding source other than the HTF.

The developers maintain that both because of the constraints of the HUD guarantee program (for market rate housing) and the need to provide a return for the additional equity investment, they cannot change their rate structure. This is contrary to Staff's discussion with HUD. In exchange for additional subsidy, the City can impose additional restrictions; however, the loan would need to be returned to HUD for underwriting and any change in the proposed rents could place their commitment at risk. Staff continues to believe that lower rents on affordable units could be absorbed thru very slight increases on the market rate units without substantially decreasing the total gross rents.

In summary, given the concerns noted, and with the analysis of information submitted; the staff does not recommend that the Council support the proposed request. The developer has responded positively to Council's request for significant changes in the amount and structure of the proposed City assistance. However, two key policy questions remain unresolved. First, is this a transformational project in terms of either creating housing affordable to low-income persons, and/or being a catalyst for redevelopment of a targeted area. Second, provided the first condition is met, is the level of assistance commensurate to the public value of the project and in line with past precedents or what we would similarly grant in the future.

Although the developers are getting closer on the second condition, the proposal is still missing the mark on the first and most critical condition.

In response to Councilwoman Manheimer, Ms. Daniels said that the infrastructure that would be construction would eventually be dedicated to the City.

In response to Vice-Mayor Newman, Community Development Director Jeff Staudinger explained that this is a HUD guarantee program (which is a very competitive program) which provides a level of security to the first lender. HUD does monitor the rents over the course of the guarantee situation (30 years) to make sure they are what was agreed to as part of the guarantee situation, which has the effect of capping rents so it is affordable to a workforce-type housing clientele.

Mr. Staudinger responded to Mayor Bellamy when she asked what the criteria is to get HUD backing.

When Councilman Smith asked for the range of rents, Mr. Staudinger believed for a 2-bedroom apartment it was in the range of $1,000-$1,200.

Councilman Bothwell noted that when the loan guaranteed by HUD is paid off, then there is no control on rents.

Vice-Mayor Newman noted that this is not a grant, but it really is a rebate on their property taxes for a period of time and some partial rebates on permit fees. He felt there are a lot of reasons to support this proposal, including smart growth, infill development, and the opportunity to have 250 units in middle-range housing within ½ mile of downtown. Luckily we have Mountain Housing Opportunities (MHO), and others, to build truly affordable homes in our community, but he doesn't see a lot of mid-range housing built. He felt the difficulty with this request is that it does not fit into our current policies. He felt this is a good time to create a policy with some incentives to encourage infill development near downtown and other key job centers.

Councilman Davis agreed with Vice-Mayor Newman in the need for a policy for workforce housing near key job centers.

Councilman Bothwell felt that we have other apartment projects that are not luxury which are being constructed without asking for City assistance. He was uncomfortable in providing incentives for one developer and not others unless there was a policy in place.

Councilwoman Manheimer felt there was consensus that a policy needs to be crafted and she imagined that it would reflect a lot of components of this application. But, what the developers are asking for with the Montford Commons project is that if it is completed, and if it results in an increase in property value, and if it results in an increase net benefit to the City in terms of future property taxes, can they be remitted 5 years worth of that increase to offset the cost of public infrastructure construction. The City gets a project supported by HUD for workforce housing which includes a green building component, urban infill development and walkability to the downtown. She felt that the City should be encouraging development of this type and to incentivize developers to do these types of projects. If the Montford Commons does not get built, it does not cost the City anything. If this project is approved, she would want the following conditions imposed: (1) the City's participation would be contingent upon approval by Buncombe County; and (2) reimbursement of any legal fees should there be a challenge to this tax structure reimbursement program.

When Councilman Bothwell wondered if we could intentionally limit the number of parking spots to make it a truly walkable development, Ms. Daniels understood that the developer has an agreement with the lender of a parking garage, which will be built to serve other phases of the project

Vice-Mayor Newman moved to endorse the public/private partnership request on the Montford Commons Project that would include 5 years property tax relief and 50% relief from permitting and water tap fees as outlined in staff's report. This motion was seconded by Councilwoman Manheimer.

City Attorney Oast understood the motion is (1) to endorse the Montford Commons proposal in concept; and (2) to direct staff to develop an agreement that incorporates those conceptual principles and bring it back to City Council for approval, which is the way we would do any other economic development agreement, contingent on Buncombe County approval and reimbursement of any legal fees should there be a challenge to this tax structure reimbursement program. He also noted that staff may come back with additional suggestions for protection of the City. Vice-Mayor Newman and Councilwoman Manheimer agreed with City Attorney Oast's interpretation of the motion.

Mayor Bellamy asked for a friendly amendment that Council delegate to staff the responsibility for incorporating Council policy direction into the final development agreement with the developer. Vice-Mayor Newman and Councilwoman Manheimer agreed to incorporate this friendly amendment into their motion.

Mr. Fred English did not support the City's participation in this project.

The amended motion made by Vice-Mayor Newman and seconded by Councilwoman Manheimer carried on a 4-3 vote, with Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

At Vice-Mayor Newman's request, it was the consensus of Council to direct the City Manager to begin crafting a policy to look at additional incentives to encourage infill development in the City for affordable and mid-range priced housing within walking distance of the downtown and potentially other key job centers in the City. Said policy should recognize the opportunities to partner with workforce or affordable housing in the private sector in the urban areas and walkable job centers. This draft policy should be reviewed by the City Council Planning & Economic Development Committee prior to being brought back to City Council for consideration.

At 6:59 p.m., Mayor Bellamy announced a short recess.

B. DISCUSSION OF PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS

Director of Transportation Ken Putnam said that the purpose of the subject memorandum is to provide information to City Council to help them with their consideration of the potential reopening of the Hillcrest Pedestrian Bridge.

Using pictures, he showed several pictures of the pedestrian path to Hillcrest Apartments.

Whether or not the subject pedestrian bridge is reopened, the N.C. Dept. of Transportation (NCDOT) and the City of Asheville share the goal of minimizing or eliminating pedestrian fatalities along I-240 on the east side of the Smoky Park Bridges. In addition, both parties share the goal of providing good pedestrian and bicycle access between West Asheville and downtown Asheville.

Background: A tragic fatal pedestrian crash occurred on June 16, 2010, at 9:27 p.m. while a pedestrian was attempting to cross I-240 on the east side of the Smoky Park Bridges.

The pedestrian, a black male 25 years old, was walking to Hillcrest Apartments at the time of the crash.

According to information from the NCDOT, two similar fatal crashes have occurred in the same area during the past 20 years. The first one occurred on September 17, 1996, at 9:41 p.m. and the second one occurred on February 20, 1998, at 5:17 p.m.

The NCDOT closed the subject pedestrian bridge on November 28, 1994, at the request of the City of Asheville, the Asheville Housing Authority, and the residents of Hillcrest. After the second pedestrian fatality, City Council revisited the closing of the pedestrian bridge including a meeting at the Carl Johnson Hillcrest Community Center. City Council approved a motion *(with a 4 to 3 vote)* to keep the pedestrian bridge closed on July 9, 1998.

A report was presented to the Public Safety Committee on July 20, 2010, that outlined four possible solutions that could be considered. After receiving public comment, the committee agreed that the subject item should move forward to the City Council including the fiscal impact for the solutions.

Possible Solutions:

- Work with the NCDOT to "beef-up" the signing in the immediate area to emphasize to pedestrians that they are not to cross a controlled-access facility at points other than such designated points at which access may be permitted. Estimated Cost = $500
- Work with the NCDOT to repair any and all "breaks" in the controlled-access fencing to prevent pedestrians from crossing a controlled-access facility at points other than such designated points at which access may be permitted. Estimated Cost = $15,000
- Work with the Asheville Housing Authority and the residents of Hillcrest Apartments to emphasize alternative routes and modes of transportation. Estimated Cost = $0
- Reopen the pedestrian bridge *(Safety issues including bridge assessment, brush clearing, and lighting, sidewalk maintenance and repair, and fence repair need to be pursued in greater detail including determining applicable costs)*. Estimated Initial Cost = $178,725 and Estimated Annual Cost = $145,799

Fiscal Impact:

If the decision is made to reopen the subject pedestrian bridge, the tasks and their associated costs outlined in Table 1 would need to be accomplished. The total estimated initial cost equals $178,725 and the estimated annual cost equals $145,799. Depending on the results of the bridge inspection, the initial cost could be more due to the age of the bridge, which is 35 + years.

Table 1

Task Description	Initial Cost	Annual Cost
Inspect Bridge – NCDOT	$1,000	$0
Remove and install new fenced "cage" on the bridge (sloped top)	$86,525	$0
Remove and install new fenced "cage" on the bridge (flat top)	$80,410	$0
Remove the gates on either end of the bridge	$200	$0
Repair and install new fencing in the immediate area of the bridge (about 300 linear feet)	$15,000	$0
Perform heavy cleaning and maintenance of existing sidewalk (about 2,400 linear feet)	$500	$0

Rehab and replace sections of existing sidewalk (about 100 linear feet)	$5,000	$0
Clear cut and remove the vegetation in the wooded areas in the immediate area of the bridge including the stairs leading down to Roberts Street	$12,000	$3,000
Install area lighting along the existing sidewalk (about 2,400 linear feet) and the stairs leading down to Roberts Street (25 fixtures)	$4,000	$4,500
Provide APD presence from 6:00 am until 9:00 pm	$54,500	$138,299
Totals =	$178,725	$145,799

The highest known initial cost is removing and installing a new fenced "cage" on the existing bridge. Costs are listed for two options; specifically, one option with a sloped top and the other option with a flat top. The Asheville Police Department prefers the option with the sloped top to discourage citizens from climbing on top of the "cage".

The impact to the Asheville Police Department is based on the number of personnel resources (officers) that it would take to provide for the safety of the area from 6:00 a.m. until 9:00 p.m. seven days per week. It is estimated that it would take three full-time officers to accomplish the subject task.

In addition, the Asheville Police Department has a significant safety concern for the citizens and officers regarding the immediate area. Much of the vegetation including trees, bushes, underbrush, and over-growth should be cleared for the safety of everyone that would use the bridge and travel under it. Currently, the area is a secluded place of concealment that creates the opportunity for crime.

Community Input:

Prior to the July 20th Public Safety Committee meeting, there were several avenues for residents and property/business owners in the neighborhoods adjacent to the pedestrian bridge to have input on whether or not the bridge should be reopened. Community members in the West End Clingman Avenue Neighborhood (WECAN)/River Arts District area were invited to attend a meeting of the WECAN Board or to submit comments to Pattiy Torno, the WECAN Board Chairperson. Notes from the meeting including comments from those who could not attend the Board meeting were shared with the Public Safety Committee. Ms. Torno summarized these comments at the Public Safety meeting. In addition, approximately ten residents from the WECAN/River Arts District area attended the meeting and spoke during the public comment period.

A representative from the Housing Authority of the City of Asheville, David Nash, was available at the meeting to answer questions about input from Hillcrest residents. Since the meeting the Housing Authority determined it needed to conduct a survey of Hillcrest Apartment residents in order to get a more accurate reading of the level of support for reopening the bridge. The survey was distributed to residents on Monday, August 16 and the majority wanted the bridge re-opened.

Feedback from community members in the WECAN/River Arts District area was mixed. Many felt the bridge should be open to reconnect Hillcrest residents with their WECAN/Arts District area neighbors. An equal number voiced concerned that opening the bridge would result in an increase in the existing criminal behavior in the area near the bridge. The public comment indicates that there is a high level of agreement among all perspectives that if the bridge is reopened major improvements will need to be undertaken in the area on the south side of the bridge. These improvements should be aimed at increasing public safety through improved maintenance of the area and the implementation of crime prevention strategies such as increased lighting and police presence.

Summary – Action Steps:

- Staff agrees that providing good pedestrian and bicycle access between West Asheville and downtown Asheville is important and it can be a strong argument for the separation of local and non-local traffic regarding the I-26 Connector project. Staff will discuss these accessibility issues in detail during the public comment period for the I-26 Connector project after the draft Environmental Impact Statement document is released later this year.

- Staff is prepared to provide additional information to City Council if needed.

He asked for direction to (1) keep the bridge closed – work with the NCDOT to "beef-up" the signing and repair and/or replace controlled-access fencing; or (2) open the bridge – ask the NCDOT to perform an in-depth inspection of the bridge to determine any additional costs.

Councilman Bothwell questioned some of the expenses, noting that some are potential expenses but not necessary expenses, e.g., the fencing because it should be replaced whether or not the bridge is re-opened.

Mr. Putnam said that they have tried to identify any and all things that should occur for the bridge to re-open. We have not gotten to the point of who is going to pay for what. He would work closely with the NCDOT and feels that we can make a strong argument on some of these items that the responsibility rests with NCDOT.

When Councilman Bothwell asked why the cage needed to be replaced, Mr. Putnam said that we are faced with a very old structure and it has been shut down for 16 years. All the galvanized posts holding the cage in place were originally imbedded into the concrete and over years water has collected and the posts have rusted.

Regarding rehabbing the sidewalk, Councilman Bothwell found that approximately 5 feet of the sidewalk isn't wheelchair accessible, noting that there are broken sidewalks all over town. He felt the $5,000 estimate for rehab and replacement of sections of existing sidewalk is not a contingency for opening or closing the bridge. It's just another sidewalk that needs work. He doesn't feel that should be attributed to re-opening the bridge.

Regarding the installation of area lighting, Councilman Bothwell felt it would be nice to have that lighting but the sidewalk has been in use for many years without lighting. Again, this is a nice thing, but many of the expenses don't have any direct bearing on whether we re-open the bridge or not.

In response to Councilwoman Manheimer, Mr. Putnam said that the bridge was constructed in 1943 and closed in 1994. Regarding fatalities on the roadway similar to the three mentioned above, she asked how many other fatalities have been reported on that stretch of road. Mr. Putnam responded that he worked with the NCDOT and their records go back for 20 years only. Only the three mentioned above were fatalities close to the pedestrian bridge.

In response to Councilman Smith, Police Chief Bill Hogan said that the police presence recommendation came from captains and lieutenants in the Department who were probably officers and sergeants at the time that this bridge was opened and had some horrific experiences in terms of crime, everything from serious assaults, rape, armed robberies, in addition to the drugs, prostitution, gambling, etc. Their goal is to make the citizens the safest we can possibly make them. The ultimate solution is to staff it when people would be coming across the bridge and entering into Hillcrest Apartments. There are other things they can do on a lesser degree.

Councilman Smith said that the area underneath the bridge is also a gathering place for people up to no good, and also considered a drop spot for bodies. There are already several

things in that area that need to be addressed, so regardless of how we move forward on this issue, we need to address those.

Councilman Smith questioned on how the Police Department presence would affect the area underneath the bridge, the staircase, etc. to make it safe. Police Chief Hogan said if the City wanted to open the bridge tomorrow after the inspections clear, we could not staff it with three additional people for about one year. They would have to do other things. The first logical thing is they would ask their beat patrol officers to keep an eye on it, noting that they have other neighborhoods they have to police. That would not be a dedicated presence in the area. The second thing would be to have the Drug Suppression Unit spend as much time there as possible. When the bridge was opened, day in and day out there was criminal activity of a serious nature. That is why the recommendation is to staff it with dedicated officers for the safety of the community. We have the Crime Prevention through Environmental Design (CPTED) program, which is the trees and lighting – things that make it safer by increasing the visibility so that people can't jump out on you. The bridge created a natural escape route and many of the apartments on the back end were probably a less desirable place to live because of that traffic. Those apartments became abandoned and that is where a lot of people would go in and hang out. We would also start with a Neighborhood Watch Program where residents would call the police when they see suspicious circumstances. He didn't know what the resources are of the Housing Authority but they might add another guard. Again, we are looking for the safest alternative knowing the past history of that foot bridge.

Mayor Bellamy noted that Police Chief Hogan outlined the problems associated outside the gates when the bridge was open, but asked what was it like inside Hillcrest when the pedestrian bridge was open. Executive Director Gene Bell responded that the crime was horrific and the bridge was contributing to that crime. What's important to note is that the reason the bridge was closed was the Housing Authority surveyed the residents and the majority asked the bridge to be closed. They contacted the City and the NCDOT and the bridge was closed. We then put a gate on the Hillcrest side at first, but people were passing the drugs through the fence, so they installed a gate on the other side of the bridge too. After the Housing Authority surveyed the residents on August 16, 2010, the majority wanted the bridge to re-open, so they support the residents to re-open the bridge. The bridge was closed because it was a major vehicle for crime activity. Since the bridge was closed in 1994, they have seen a dramatic change for the better.

If the bridge is re-opened, Mayor Bellamy requested that a survey be conducted of the residents in Hillcrest again in one year on whether the residents continue to want the bridge opened or they want it closed. Even though we want to have police presence from 6 a.m. to 9 p.m., the reality is that 9:01 p.m. when the officer patrols the other areas at 9:02 p.m. we will have people up to no good. Her concern is we will open the bridge and the residents will like it for a little while, but there are some realities we will have to face. No amount of police presence will protect the residents of Hillcrest Apartments and the West End/Clingman Avenue area 24 hours a day. She felt there will be an increase of traffic of the kind the residents will not want on both sides. If the bridge is re-opened, she felt it was imperative that the survey be taken again in a year.

Mr. Bell committed to do the survey again in a year. He felt that another factor to add value to the information if the bridge is re-opened is to look at the statistics from the time we open the bridge 12 months out vs. the 12 months prior to the bridge being re-opened. That would give us a good comparison.

Mayor Bellamy also asked for a matrix of what we will study, as she felt it was important to look at not only the dollars, but the number of officers needed to patrol, the maintenance of the undergrowth, etc. The City has done a lot to clean up public housing and she didn't think this was in the residents' best interest long-term.

Mr. Bell said that the 12-month report should consist of not only the Housing Authority and the Police Chief statistics, but input from Asheville United Christian Church and others in the immediate area.

When Councilman Russell asked if there are interim steps that can be done for perhaps a 12-month trial of the bridge re-opening or if there are some things that can be put on hold, Mr. Putnam said that he would be glad to work with the NCDOT on that. He noted that when the NCDOT does the in depth inspection, they could unveil some other things that need to be done. If we are only going to do a year pilot of re-opening the bridge, he felt we could get their cooperation in working that out. NCDOT, as well as the City, wants to be sure that if they re-open it, it's safe structurally.

Councilman Russell moved to (1) re-open the pedestrian bridge for a 12-month basis with Mr. Putnam working with the NCDOT to control costs as much as possible; and (2) obtain feedback in 12-months from the Hillcrest Apartment residents and others in the immediate area. This motion was seconded by Councilman Bothwell.

The father of the boy who was filled on June 16, 2010, crossing I-240 to Hillcrest Apartments felt that people should have safe access to the pedestrian bridge. He supported opening the pedestrian bridge for a 12-month trial period.

Mr. Whit Rylee, resident on Roberts Street, supported re-opening the pedestrian bridge and cleaning up (not clear-cutting) the wooded area.

The Pastor of Asheville United Christian Church recalled instances violence, gang fights, vandalism, gun shots, and other criminal activity when the bridge was open. He felt that whether the bridge is re-opened or not, the woods and underneath the bridge needs to be cleaned up. The Police Department has done a wonderful job of cleaning up this area and he didn't want to see that disappear with the re-opening of the walkway. If the bridge is re-opened, he feared there will be more violence, rapes and killings.

Rev. Christopher Chiaronmonte felt Hillcrest Apartments should handle the security with the Police Department teaching them what to do.

A Leicester resident who routinely drives on I-240 near the bridge said that many times she almost hit someone crossing I-240. She felt this is about lives and safety and urged Council to make this area pedestrian friendly.

Mayor Bellamy asked that if the motion passes to re-open the bridge, that the woods, underneath the bridge, sidewalks, etc. be cleaned prior to re-opening the bridge.

Mr. Putnam said that the first step would be the NCDOT inspection process will be approximately 60 days to initiate the request and for them to report back to the City. Assuming that everything is a go and there are no other additional costs to worry about, then we can proceed to re-open the bridge. However, in that 60-day window, he will be working closely with the local NCDOT people to put things in order, e.g., the clearing. He believes that the NCDOT has a contractor for clearing and repair of the fencing. Some things can be worked on simultaneously and not wait until the final word on the bridge inspection.

Councilman Russell moved to amend his motion that the clearing begin before the bridge is re-opened for safe passage. Councilman Bothwell agreed to this amendment.

Mayor Bellamy also suggested the City use the CPTED principle of putting eyes on places that can harbor illegal activities. She felt that once we clean out the area, we should make a pedestrian and bicycle friendly path to encourage more pedestrian traffic so illegal activities diminish.

Councilman Smith felt that the CPTED principle is a good idea and to clean up and light underneath the bridge is important. As we go toward the riverfront redevelopment, this is an important part of our addressing the whole transformation of the River District. Once we make this area safe, then we have created a cornerstone in that area. He supported a community watch on both sides of the bridge to take ownership of what goes on in that area.

Councilman Davis agreed this area needs to be cleaned up, but he didn't think re-opening the bridge was the right solution. We have gone a long way to make it safe for the Hillcrest residents. It's not as safe as it could be, but it's better than it was before the closing of the pedestrian bridge. He felt that we are running a terrible risk of going back to the illegal activity in that area if we don't put adequate funds in for the police presence, cleaning up of the woods, lighting, etc., and that he felt we will uncover more expenses than anticipated. He felt the budget implication will require some study because we don't want to do it half-way. He doesn't want to see a body on the interstate, but no one should see their child being sold narcotics, and other illegal activities that can take lives just as readily as a speeding car on the interstate. He wants people to be able to have safe access across the interest, but feels this is a mistake to re-open the bridge at this time.

Councilwoman Manheimer supported re-opening the bridge because it will be reviewed in one year. She recalled a time when she delivered Meals on Wheels in the Hillcrest neighborhood in 1993-94 and she would hate to see those conditions exist again. She would defer to those residents in the Hillcrest community who by majority requested the bridge to be re-opened, but wondered how many of those residents lived there when the bridge was open 16 years ago. She was concerned that we now have an entrance that is staffed and a way to monitor who is going in and out of the community and without a security presence, we are changing that dynamic in this neighborhood.

Mayor Bellamy felt that even though the pedestrian bridge is opened, we will still have people utilizing the paths. She would support the motion to re-open the bridge because we received comments from the West End/Clingman Avenue neighborhood as well as the Hillcrest neighborhood requesting the bridge be re-opened. She asked that this issue be revisited one year.

Vice-Mayor Newman agreed that we need to take steps to get the area prepared before the re-opening happens. He understood that we are giving clear direction that we want $138,000 of additional police protection to keep this community safe if we re-open the bridge. He felt this is money well invested even if we don't re-open the bridge. He was, however, concerned about the sequence of hiring additional officers for that dedicated purpose. He suggested the Public Safety Committee continue to look at this to make sure we are doing everything we need to do from the day it's opened to make it as safe as we can. If there are additional things that the City Manager or Police Chief want to bring to us to make sure that's happening on the front end, he wants to make sure we hear and support that.

When Councilman Smith asked if we are asking that this issue be revisited one year from today or one year from when the bridge is re-opened, Police Chief Hogan said that he will report back to Council 6-months and then 12-months after the bridge is re-opened.

Mayor Bellamy said she has already been lobbied about the west Asheville bridge over I-240 at Pisgah View. The residents who have contacted her said they do not want that opened and she would not be supportive of opening that bridge.

The amended motion made by Councilman Russell and seconded by Councilman Bothwell carried on a 6-1 vote, with Councilman Davis voting "no."

When Mayor Bellamy said that since the NCDOT is looking at the possible realignment of the River District and the whole corridor, she wondered if they could look at what might be available for the Hillcrest area. Councilman Davis responded that the Asheville Area Riverfront Redevelopment Commission will be taking a field trip to look at the entire corridor; however, the realignment is not part of their prospective.

Mayor Bellamy suggested sending the appropriate group a letter asking to see how this area is configured and to see if there are any possibilities of joint partnership. Councilman Davis responded that this may be something the Asheville Area Riverfront Redevelopment Commission may want to do.

After a short discussion initiated by Mayor Bellamy, it was the consensus of Council to have Mayor Bellamy send a letter to the NCDOT to see if they can partner with the City in working to connect the Hillcrest community with the rest of the City of Asheville.

C. RESOLUTION NO. 10-194 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Newman said that term of Ron Storto, as a member of the Buncombe County Tourism Development Authority, expires on August 30, 2010.

When Councilwoman Manheimer said that the law firm that she works for represents the Tourism Development Authority, City Attorney Oast said that he did not see a conflict of interest in her voting in this matter.

At the recommendation of the Boards & Commissions Committee, Councilman Russell moved to reappoint Mr. Storto, as a member of the Buncombe County Tourism Development Authority (as the owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units), to serve an additional three year term, term to expire August 30, 2013, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 189

VI. NEW BUSINESS:

A. ORDINANCE NO. 3893 - ORDINANCE AMENDING THE ESTABLISHING OF THE PUBLIC ART BOARD

RESOLUTION NO. 10-195 - RESOLUTION ADOPTING THE PUBLIC ART POLICY AND IMPLEMENTATION GUIDELINES

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of adoption of (1) an ordinance amending the establishment of the Public Art Board; and (2) a resolution adopting the Public Art Policy and Implementation Guidelines.

Ordinance No. 2609 was passed on September 14, 1999 establishing a public art board and a public art policy for the City of Asheville. The proposed updates to the ordinance and policy reflect advancements and best practices in the field of public art and changes within the Parks, Recreation and Cultural Arts Department structure.

The goal for updating the ordinance and policy is to provide more opportunities for public art throughout Asheville as outlined in numerous master plans including the Parks, Recreation, Cultural Arts and Greenways Master Plan and the Downtown Master Plan.

Members of the Public Art Board and staff worked closely with Janet Kagan, a public art consultant who worked on the Parks, Recreation, Cultural Arts, and Greenways Master Plan, to update the public art ordinance and policy, both of which were originally written and approved in September, 1999.

Updates to the ordinance include:

- Broadens the definition of public art to include temporary works of art and does not exclude performing arts;
- Adjusts the board size from seven members to nine and requires a majority of arts professionals;
- Adjusts the Purposes, Responsibilities, and Powers so that it does not overlap or interfere with City staff responsibilities (i.e. "Facilitate public art in buildings and spaces" replaces "Provides public art in buildings and spaces").

Updates to the policy include:

- Includes implementation guidelines for public art;
- Defines the roles of staff and community;
- Provides direction on artists selection, acquisitions, and deaccessioning;
- Provides a glossary of terms.

The updated public art ordinance and policy was approved by the Public Art Board at their monthly meeting in February 25, 2010.

The updated public art ordinance and policy was reviewed by the Boards and Commissions Committee at their meeting on August 10, 2010.

The Public Art Board held two community meetings on July 30, 2010, for public input about the updated public art ordinance and policy. The updated ordinance and policy were posted on the City of Asheville's website for public input and comment.

The updated public art ordinance and policy complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it 1) enables sustainable funding for permanent and temporary public art, 2) maintains and enhances Asheville as an arts destination, and 3) develops and expands the city's public art collection.

Pros:

- Follows best practices in public art;
- Allows for more public art opportunities throughout Asheville;
- Achieves goals of the Parks, Recreation, Cultural Arts and Greenways Master Plan.

Con:

- None.

Approval of the updated public art ordinance and policy has no direct fiscal impact to the City.

City staff recommends City Council adopt (1) an ordinance amending the establishment of the Public Art Board; and (2) a resolution adopting the Public Art Policy and Implementation Guidelines.

In response to Mayor Bellamy, Ms. Ruggiero explained the process for obtaining public art and the site selection process.

Mayor Bellamy recommended the Public Art Board work with the Civic Center Commission for a possible site inside the Civic Center lobby.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3893. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 - PAGE 282

Councilman Smith moved for the adoption of Resolution No. 10-196. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 190

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Daniel Wallace, resident of Battery Park Apartments, urged Council not to change handicapped parking.

Rev. Christopher Chiaronmonte spoke about his fast in protest of the cruel and inhumane treatment of the poor and homeless.

Mayor Bellamy urged citizens to be careful of children walking, biking and riding the school bus since school has started.

Mayor Bellamy said that she has been invited to represent the City of Asheville to the Expo 2010 Shanghai UN Millennium Development Goals Urban Construction Forum in Langfang, China.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:49 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 31, 2010 – 6:30 p.m.
Groce United Methodist Church – Asbury Hall

Community Meeting – East Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Jan B. Davis

Mayor Bellamy opened the meeting and welcomed the audience. She then introduced City Council members and explained the questions and answer process.

Mr. Chris Pelly, representing the East Asheville Sidewalk Initiative, showed City Council a video in which they expressed their desire to have sidewalks installed in east Asheville for safety reasons. The video showed that east Asheville has 7% of sidewalks, while north Asheville has 42%, west Asheville has 28% and south Asheville has 23% of sidewalks.

Director of Transportation Ken Putnam provided information on the prioritization process criteria used for sidewalks, completed projects over the last five years; comprehensive transportation planning, sidewalk funding and maintenance issue, current and potential projects in east Asheville; potential projects in other areas of the City; and action steps which include (1) continue the documentation process; continue implementing the Pedestrian Plan; (3) formalizing the prioritization process; (4) scoring the top 50 potential projects; (5) pilot projects and link to website; (6) continue working towards integrating all master plans; (7) implementing parking strategies (on-street and off-street); (8) provide bicycle awareness (signs and pavement markings); (9) installation of bicycle lanes; (10) improve bus stops (concrete pads, benches, shelters); (11) provide ADA compliance; (12) connect greenways; and (13) promote multi-modal aspects on major street projects (NCDOT).

Director of Administrative Services Lauren Bradley explained the City's strategic goals, financial realities and upcoming capital projects in east Asheville.

Mayor Bellamy then opened up the meeting for questions and answers explaining that all answered questions would be delegated to City staff for response and posting on the City's website.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 8:08 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – September 14, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Manheimer gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF DR. JACK TEAGUE

Mayor Bellamy recognized Dr. Jack Teague for his efforts in spearheading the Missions of Mercy free dental clinic, sponsored by the N.C. Dental Society, held in Asheville on August 13-14, 2010.

Dr. Teague gave a brief synopsis of the results of the free clinic. He said that they treated 755 patients with a dentistry value of $416,000; extracted 1,004 teeth, 226 of which were surgical extractions; 136 cleanings; 909 fillings; 18 root canals; and 38 partial appliances. He thanked the approximately 250 community volunteers and 50 dentists (2 endodontists and 4 oral surgeons).

B. PROCLAMATION PROCLAIMING SEPTEMBER 27, 2010, AS "FAMILY DAY – A DAY TO EAT DINNER WITH OUR CHILDREN"

Mayor Bellamy read the proclamation proclaiming September 27, 2010, as "Family Day – A Day to Eat Dinner with Our Children" in the City of Asheville. She presented the proclamation to Mr. Paul Vest, President and CEO of the YMCA, who thanked City Council for their support.

II. CONSENT AGENDA:

Mayor Bellamy said that Consent Agenda item "E" will be removed from the agenda for consideration at this meeting for a future public hearing.

Councilman Smith asked that Consent Agenda item "H" be removed for discussion and a separate vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON AUGUST 24, 2010, AND THE COMMUNITY MEETING HELD ON AUGUST 31, 2010

B. ORDINANCE NO. 3894 - BUDGET AMENDMENT TO APPROPRIATE REVENUE AND BUDGET EXPENDITURES ASSOCIATED WITH THE INGLES, SCHENCK PARKWAY, FARLEIGH STREET, DEERFIELD,

MOUNTAINBROOK, WATERS ROAD, ROCKING PORCH ROAD, KEASLER/SUNNYCREST, UPPER SONDLEY, TUNNEL ROAD, WILLOW WINDS, AND AIRPORT ROAD ANNEXATION AREAS

Summary: The consideration of a budget amendment in the General Fund in the amount of $166,757, and a budget amendment in the General Capital Projects Fund in the amount of $50,000 to appropriate revenue and budget expenditures associated with the Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road annexation areas.

In May 2010, City Council approved the annexation of the areas listed above. Under state law, property owners are allowed sixty days to file legal challenges to any annexation. The period for filing legal challenges has now passed, and there were no challenges filed for these annexations. As a result, these areas will become part of the City of Asheville on September 30, 2010. Therefore, the City needs to amend the current year budget to reflect expenses associated with serving these areas between September 30, 2010 and June 30, 2011.

The cost of providing services to these areas for the remainder of FY 2009-10 will be $163,875. Included in this amount is $82,150 to hire and equip two additional police officers to accommodate the anticipated increase in demand for police services and $50,000 for initial expenses associated with installation of sewer lines in the Airport Road area. The full cost of the sewer installation project for Airport Road will be $180,000. The remaining $130,000 needed to complete construction of this project will be included in the FY 2011-12 capital improvement budget which will be presented to Council next spring.

The City will receive nine months of property tax and fee revenue from the newly annexed areas in FY 2009-10. In total, these two areas will generate estimated revenue of $166,757 in FY 2009-10. As noted above, the total operating and capital costs for FY 2009-10 are $163,875. Therefore, total revenue in FY 2009-10 will exceed expenses by $2,882. This amount will be budgeted in a contingency account and flow into fund balance at year end.

This action complies with the City Council Strategic Operating Plan to operate the City of Asheville's organization to the highest fiscal responsibility.

Pro:

- Provides budget authorization for the City to incur the costs associated with the newly annexed areas from September 30, 2010 to June 30, 2011.

Con:

- None.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the Ingles, Schenck Parkway, Farleigh Street, Deerfield, Mountainbrook, Waters Road, Rocking Porch Road, Keasler/Sunnycrest, Upper Sondley, Tunnel Road, Willow Winds, and Airport Road annexation areas.

ORDINANCE BOOK NO. 26 – PAGE 285

C. ORDINANCE NO. 3895 - BUDGET AMENDMENT FOR MISCELLANEOUS CONTRIBUTIONS TO BE USED FOR PARKS AND FACILITIES IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of $11,761, for miscellaneous contributions to be used for parks and facilities improvements.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received miscellaneous contributions totaling $11,761 to support improvements to parks and facilities. The funds will be used to help support facility improvements such as swimming pools and tennis courts.

This action complies with City Council's Strategic Operating Plan in that it supports making smart investments that accomplishes lasting and tangible returns by investing in ongoing capital improvements to the city's park system. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides capital investment in replacing aging infrastructure in the city's park system.

Pros:

- Investment to maintain and care for city-owned park assets.
- Provide quality service for capital improvements in the city's parks system.
- Fulfill commitment for improvements to park system.

Con:

- None

The city's Fiscal Year 2010/11 capital budget for Parks, Recreation & Cultural Arts will increase by $11,761. This increase is funded by $11,761 in miscellaneous contributions. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to adopt a budget amendment authorizing the City Manager to increase the capital budget for Park, Recreation & Cultural Arts by $11,761.

ORDINANCE BOOK NO. 26 – PAGE 287

D. RESOLUTION NO. 10-196- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER FOR HUNTLEY CONSTRUCTION COMPANY FOR THE REYNOLDS MOBILE HOME PARK WATER SYSTEM REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a change order increasing Huntley Construction Company's construction contract to $172,293.52 for the Reynolds Mobile Home Park Water System Replacement project.

Huntley Construction Company was originally hired by the City through a competitive bidding process to provide the construction for the Reynolds Mobile Home Park Water System Replacement project in the amount of $167,496.00. Change Order # 1 in the amount of $4,797.52 will allow Huntley Construction Company to add a section of 8-inch water line from the mobile home park entrance to two apartment buildings across the parking lot; one (1) new fire hydrant, eight (8) new connections to existing water meters, and three (3) connections on the new water line.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval of the change order will allow the City to complete the project in the current fiscal year in order to expedite receipt of N.C. Dept. of Environment & Natural Resources (NCDENR) grant funds.

Con:

- Failure to award the change order will delay completion of the project and subsequently, state reimbursement.

The funds needed for this change order are available in the capital project. The additional funds needed are fully reimbursable by the NCDENR grant. A detailed project budget is summarized below:

Total Project Budget:	**$420,420.00**
Easement Recording Fee:	$ 20.00
NCDENR Administrative Fee:	$ 5,317.00
Engineering Contract:	$ 68,450.00
Construction Contract:	$167,496.00
Expenses To-Date:	$241,283.00
Change Order (Increase):	$ 4,797.52
Total Expenses With Change:	$246,080.52
Remaining Project Balance:	$174,339.48

City staff recommends City Council approval of the City Manager to sign a change order increasing Huntley Construction Company's construction contract to $172,293.52 for the Reynolds Mobile Home Park Water System Replacement project.

RESOLUTION BOOK NO. 33 – PAGE 201

E. ORDINANCE REPEALING THE DESIGNATION OF RICHMOND HILL HOUSE AS A LOCAL HISTORIC LANDMARK

This item was removed from consideration at this meeting to be considered at a later date.

F. RESOLUTION NO. 10-197 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MICHELIN NORTH AMERICA INC. FOR THE LEASE OF TIRES TO THE ASHEVILLE TRANSIT SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Michelin North America, Inc. for the lease of tires to the Asheville Transit System.

The City of Asheville released a RFP for transit bus tire lease on August 3, 2010. The city received three bids, Michelin North America, Inc., Bridgestone Americas Tire Operations, LLC. and The Goodyear Tire and Rubber Company. The only responsive bid was from one bid that fulfilled the bid requirements, Michelin North America, Inc. After a thorough review, City staff is recommending signing a contract for three years with Michelin North America, Inc.

The Asheville Transit System has been leasing tires for the buses since 2000. The cost for leasing the tires is about $4,700 per month and is based on actual mileage per tire *(6 tires per bus)*. The rate per mile in a three year period is as follows:

	Year 1	Year 2	Year 3
30570R225	$.00818	$.00867	$.00919
31580R225	$.00728	$00.772	$.00818

The Asheville Transit System uses about 15 tires per month and if the City bought them, it would cost about $400 per tire or $6,000 per month plus the cost of shipping. In addition, the City would have to pay a disposal fee to get rid of the old tires. The total cost of the project for three years is approximately $170,000.

The subject lease is part of the current operational budget and is recorded as an operational expense.

This action complies with the City Council FY 2009-10 Strategic Operating Plan within the Fiscal Responsibility Focus area by operating the transit system to the highest level of fiscal responsibility.

The Transit Commission supports the subject project.

Pros

- Leasing the tires generates savings thereby using resources and staff in a more efficient way.
- The company provides technical assistance and equipment.
- The contract is based on tires per mile and the price is "locked" for three years.
- The company takes care of tire disposal.

Con

- The total cost of the project is $170,000.

The total fiscal impact for the subject project is $170,000 which is currently budgeted in the Asheville Transit operational budget.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into a contract with Michelin North America, Inc. for the lease of tires to the Asheville Transit System.

RESOLUTION BOOK NO. 33 – PAGE 202

G. RESOLUTION NO. 10-198 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE HERSEY METERS AGREEMENT TO ALLOW FOR THE COLLECTION OF GLOBAL POSITIONING SYSTEM DATA FOR COMMERCIAL AND RESIDENTIAL WATER METER LOCATIONS

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment to the Hersey Meters agreement to allow for the collection of global positioning system (GPS) data for approximately 56,000 commercial and residential water meter locations at a cost not to exceed $112,000.00.

On February 9, 2010, City Council authorized the City Manager to execute an agreement with Hersey Meters (recently renamed Mueller Systems) to install Automated Meter Reading (AMR) devices on all water meters in the water system. Water Resources would like to increase the existing agreement to allow for the collection of GPS locations for approximately 56,000 commercial and residential meter locations as part of the AMR project. Hersey Meters is already deployed, on-site, and capable of integrating the GPS data collection portion at a greatly reduced rate. The cost to collect GPS coordinates for all 56,000 meters in the water system is $2.00 per meter for an amount not to exceed $112,000.00.

This project is part of City Council's strategic plan to improve city infrastructure.

Pros:

- Allows the department to adjust the driving route to improve meter reading efficiency, ensure that all meters are read before leaving the route, and reduce carbon emissions.
- Meter locations in the GIS system will be accurate, providing better customer service by allowing staff to locate meters quicker in order to perform needed maintenance and repairs.

- Helps keep an accurate inventory of all water meters in the water system.
- Reduces safety risks to Water Resources staff traveling in remote, wooded areas.

Con:
- If not approved, Water Resources staff will not have accurate locations for water meters, which may delay needed maintenance and repair due to dense foliage and overgrowth.

The cost to collect the GPS locations is $2.00 per point for 56,000 water meters for a cost not to exceed $112,000.00. Funds are available in the AMR capital projects budget. The available funds after the contract amendment or change order will be used to continue the installation of AMR devices and purchase of water meters needed for the project.

Project Budget:	**$4,490,576.00**
Hersey Meters AMR Contract:	$1,790,000.00
Water Meter Purchases:	$ 732,879.40
Change Order Increase:	$ 112,000.00
Subtotal:	$2,634,879.40
Available Funds After Change:	$1,855,696.60

The consideration of a resolution authorizing the City Manager to execute an amendment to the Hersey Meters agreement to allow for the collection of global positioning system (GPS) data for approximately 56,000 commercial and residential water meter locations at a cost not to exceed $112,000.00.

RESOLUTION BOOK NO. 33 – PAGE 203

H. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO APPLY FOR A US DEPT. OF HOMELAND SECURITY FISCAL YEAR 2010 STAFFING FOR ADEQUATE FIRE & EMERGENCY RESPONSE GRANT TO OBTAIN FUNDING FOR SIX ADDITIONAL FIREFIGHTER POSITIONS

This item was removed from the Consent Agenda for discussion and an individual vote.

I. RESOLUTION NO. 10-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH OTIS ELEVATOR TO PROVIDE ELEVATOR MAINTENANCE AND REPAIR SERVICE FOR MULTIPLE MUNICIPAL BUILDINGS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Otis Elevator to provide elevator maintenance and repair service for multiple municipal buildings.

The service contract with Otis Elevator, located at 203 Elk park Drive, Asheville, NC, is in the third year of a five year renewal period that began in 2007. The service contract is a predictive, preventative maintenance system for the elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Asheville Fire Station 11. The total contract amount is $69,283.56 renewable with a CPI adjustment.

This contract supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pro:
- Provides a contract to maintain and provide repair service to the elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Fire Station 11.

Cons:

- Maintenance cost to the elevators at City Hall will continue to increase due to the age of the elevators increasing the annual service contract.
- Some repair costs may still be incurred for repairs beyond the scope of this contract.

The $69,283.56 for contracted elevator services is budgeted in the City's Fiscal Year 2010-11 operating budget for facilities maintenance.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Otis Elevator to provide elevator maintenance and repair services for multiple municipal buildings in the amount of $69,283.56

RESOLUTION BOOK NO. 33 – PAGE 205

J. RESULTS OF THE SEPTEMBER 8, 2010, CIVIL SERVICE BOARD EMPLOYEE ELECTION

Summary: One copy of the results of the Civil Service Board employee election held on September 8, 2010, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. Secretary to the Civil Service Board Jessica Dunlap and City Clerk Burleson provided the following certified certificate on September 8, 2010: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 8, 2010, noting the name of each person voted for and the number of votes cast for each person as follows: Charlie Hume - 102; and Anthony Alan Coxie - 118.

K. RESOLUTION NO. 10-201 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A FEDERAL TRANSIT ADMINISTRATION JOB ACCESS AND REVERSE COMMUNITY PROGRAM GRANT TO FUND THE BLACK MOUNTAIN ROUTE

Summary: The consideration of a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) Job Access and Reverse Commute (JARC) Program grant to fund the Black Mountain route and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

Since inception in 2002 the Black Mountain route was funded using Intercity funds, 45% Federal, 45% State and the remaining 10% had come from the Town of Black Mountain, Buncombe County, and from the route' farebox revenue. In December 2008 The North Carolina Department of Transportation (NCDOT) informed the City that the Intercity funding was going to be discontinued effective November 1, 2009 because the assessment of the route determined that they were not compliant with the requirements of Intercity Circular Section 5311 (f).

After negotiations with the NCDOT, it was agreed that they would continue funding the route until December 31, 2010, to give the city the opportunity to find another funding source. This is the last year NCDOT would fund the route.

After exploring all the options available, the JARC funding is the only funding source in the short-term we can apply for, and if awarded will allow city staff to pursue other funding sources for the upcoming years. The JARC program was established to address the unique transportation challenges faced by welfare recipients and low-income persons seeking to obtain and maintain employment. Eligible activities are capital, planning and operating expenses for projects that transport low income individuals to and from jobs and activities related to employment, and for reverse commute projects.

This route is proposed as a partnership between Warren Wilson College and the City. As proposed in the Transit Master Plan, this route will be combined with the current route 29 that serves the college and will operate as a regular route with frequent stops. The proposed route will operate five times a day, Monday through Saturday, along US 70 (Tunnel Road) between downtown Asheville and Black Mountain. Mountain Mobility is also applying for the JARC funding to fund the Black Mountain portion of the route. The service will continue connecting with the local Mountain Mobility deviated route service.

This route's ridership grew considerably since 2007. However, during FY2010 ridership decreased significantly due to the changes the city had to make to comply with the Intercity regulations. The new route will reverse some of these changes to be able to recover ridership, charging the same fares than the other routes in the system and increasing the number of stops along the route.

Route 28		
Year	Total Ridership	Change
FY2010	33,240	-40%
FY2009	55,038	44%
FY2008	38,216	9%
FY2007	35,140	78%
FY2006	19,727	

The total cost of providing this service is $201,552; 50% or $100,776 will be paid by the grant and the other 50% by the combined contribution of Warren Wilson College (14% or $56,576) and the City of Asheville to the route (36% or $144,976). The city is planning to apply for a two year period, for a total of $403,104.

The application deadline is September 20, 2010.

This action complies with the current City Council's Strategic Operating Plan by helping to fully leverage funding for transportation improvements, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to achieve short-term and long-term energy goals and reducing city carbon emissions through transit. This action also complies with operational improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- Increased mobility for the citizens of Asheville both within and outside the city.
- This is a step toward retaining the service and funding.

Cons:

- The City is required to fund 50% ($201,552) of the subject project cost; funding will be allocated from the Warren Wilson College and City of Asheville contribution to current route 29.

The total two-year cost of the subject project is about $403,104. The City is required to fund 50% ($201,552) of the subject project cost with the remaining 50% funded by the JARC grant. The City's required funding will be allocated from the Warren Wilson College and the City of Asheville's contribution to current route 29. The two-year amount from Warren Wilson College

will total $56,576; therefore the City's two-year cost is $144,976 or $72,488 per year. The City's first year funding is already included in the Transit Fund budget for this year, and second year funding will be requested in the Transit Fund budget for next fiscal year.

City staff recommends City Council adopt a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) Job Access and Reverse Commute Program grant to fund the Black Mountain route and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

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L. MOTION SUPPORTING THE CITY OF ASHEVILLE JOINING IN THE LET'S MOVE CITIES AND TOWNS INITIATIVE AIMED AT SOLVING CHILDHOOD OBESITY WITHIN A GENERATION

M. RESOLUTION NO. 10-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FROM JULY 1, 2010, THROUGH JUNE 30, 2011

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Asheville Humane Society (AHS) for animal shelter services within territorial limits of the City of Asheville.

Historically, Buncombe County has required the City of Asheville pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. The Asheville Humane Society (AHS) has told City staff that the cost for the shelter to the City for FY 2010-2011 will be $11,116.88 per month for a FY year total of $133,402.56. This is a five percent (5%) increase from last year's contract amount. This agreement for the shelter services for the term of July 1, 2010 through June 30, 2011.

Over the past year, Buncombe County has appropriated $4.5 million for a new animal shelter that is now on-line and operated by AHS. In addition to this one-time capital construction cost, Buncombe County also allocated $35,000 for initial start-up costs, along with an operational base contract of $550,000 for shelter care, $89,000 for all building operations and equipment, $100,000 for spay/neuter programming for adopted animals, and $25,000 for specialty care and rabies control. Lastly, the County also provided $36,000 in contract performance incentives.

The City of Asheville continuing its animal shelter contract through the Asheville Humane Society ties directly back through the City Council's Strategic Operating Plan, specifically the focus area of safe by actively enforcing animal control laws. In addition, this city/county/non-profit collaborative effort should continue to provide opportunities to hold sheltering costs down through economies of scale.

Pros:

- This contract has allowed the City to continue to partner with Buncombe County and the AHS for animal sheltering services.
- Without this partnership, the City would be forced to identify alternative sheltering options.

Con:

- Contracted sheltering costs, when compared to other municipalities in North Carolina, may reveal higher than average sheltering costs.

This cost is included in the Asheville Police Department's budget. Increase of 5% from last year's shelter contract from $127,050.00 to $133,402.56.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Asheville Humane Society for Animal Shelter Services for the term of July 1, 2010, through June 30, 2011. In addition, staff recommends that city staff work with county officials over the next six months to examine operational costs for sheltering throughout Buncombe County, to include all other Buncombe County municipalities who use Asheville Humane Society's sheltering services. Any recommendations for contract amendments would occur during the FY 11-12 budget process.

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N. RESOLUTION NO. 10-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN FOR PHYSICIAN SERVICES PROVIDED THROUGH THE CITY'S HEALTH SERVICES DIVISION

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for physician services provided through the City's Health Services Division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services Division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2010-11. By offering city employees clinic hours and complimentary health services for non-critical issues, Heath Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits
- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This is a one year $100,000 contract, and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

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When Mayor Bellamy asked for public comments on any item on the Consent Agenda, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

H. RESOLUTION NO. 10-199 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO APPLY FOR A US DEPT. OF HOMELAND SECURITY FISCAL YEAR 2010 STAFFING FOR ADEQUATE FIRE & EMERGENCY RESPONSE GRANT TO OBTAIN FUNDING FOR SIX ADDITIONAL FIREFIGHTER POSITIONS

Summary: The consideration of a resolution authorizing the City of Asheville to apply for a grant in the amount of $540,000.00 from the US Department of Homeland Security to obtain funding for 6 additional firefighter positions.

The Department of Homeland Security has recently issued guidance for the FY 2010 Staffing for Adequate Fire and Emergency Response (SAFER) program. This is a grant opportunity for fire departments to add additional firefighters. The grant is a 3 year matching grant. In years 1 and 2, the grant covers 100% of the cost for the additional firefighter's salaries and benefits. The matching portion for the grant occurs in year 3, which is the full cost of these firefighter's salaries and benefits. This could be a good opportunity for our city to add needed personnel and have their cost completely absorbed by this grant for two years.

We currently operate 4 firefighter companies on 8 of our 17 fire companies (47%). One of our companies operates with two firefighters (Haw Creek). This grant could assist with increasing additional fire companies to four firefighter staffing which helps accomplish the following strategic priorities:

- Increased firefighter safety
  - Studies performed in Providence, RI, and Austin, TX, have shown that four firefighter companies reduce firefighter injuries and reduce the physiological effects of firefighting activities on firefighters.
  - Increased efficiency translates into increased firefighter safety during fire emergencies. Tasks that are performed more quickly reduce the exposure time for firefighters as well as mitigate emergencies earlier. In summary, a small fire is safer to firefighters than a large fire.
- Increased efficiency
  - We have conducted critical task analyses of our 3 firefighter and 4 firefighter companies. These analyses of actual fireground activities showed that 4 firefighter companies perform up to 41% more efficient during fire emergencies and up to 92% more efficient during medical emergencies.
- Increased service delivery
  - Increased efficiency translates into increased service delivery for citizens during fire and medical emergencies. Performing tasks quicker provides better service to citizens. Fire and medical emergencies have been shown to significantly worsen as time progresses. Mitigating emergencies earlier lessens the impact on citizens.
  - Earlier incident mitigation places fire companies in service and available to respond to other citizen needs earlier. The increased efficiency of 4 firefighter companies increases unit reliability and lessens the amount of time that citizens are receiving help from fire stations further away.
  - Additional firefighters are the one area that increases our ISO rating performance the most and moves us closer to an ISO 2.

We recommend applying for 6 firefighter positions for the following reasons:

- The grant program guidance indicates that a much higher priority for awards will be given to applicants who are increasing staffing to comply with the OSHA 2 in/2out standard. The strongest application we can compile would be to address our 2 firefighter company at Haw Creek to four firefighter staffing. This is the only area that we currently are not meeting the OSHA standard. This is also our only stand alone company that does not operate with 4 firefighters.
- We feel that a grant that asks for less or more would not be competitive.

Due to the timing of this notification, the Public Safety Committee has not reviewed this request; however, this is the same action that was reviewed last year in which the Public Safety Committee recommended approval; however, the grant was not awarded.

This action complies with the Strategic Operating Plan by increasing safety, efficiency, and service delivery; therefore this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- Firefighter safety, efficiency, and service delivery will be increased.
- Hiring 6 new firefighters will help reduce overtime. The firefighters obtained from this grant could be placed on shift without a requirement to be minimally staffed positions. These positions will fully meet the requirements and intent of the grant as more of our companies will be fully staffed more frequently.
- The grant covers 100% of the cost for these firefighters for two years.

Con:

- We would assume the full cost of these employees in year three (FY 13/14)

We would receive $270,000 each year for two years. In year three, we would have to absorb the $270,000 annually.

City staff recommends that City Council authorize the City of Asheville to apply for a grant in the amount of $540,000.00 from the US Department of Homeland Security to obtain funding for 6 additional firefighter positions.

Assistant Fire Chief David McFee responded to various questions from Council, some being, but are not limited to: how will we program the $270,000 into to years three and on as we go into long-term budget planning; what is the staffing needed for the Haw Creek Station; why did the City not receive the grant last year; and is the grantor looking for public safety priorities that relate to homeland security.

Vice-Mayor Newman noted that we are making an open-ended commitment of adding these positions to the full-time payroll in year three and didn't want grant opportunities to make these decisions for us. When he asked how much flexibility we have in making keeping these employees on when the grant runs out, City Manager Jackson said that a good faith effort would need to be made to continue the funding of the positions.

Mayor Bellamy said that there are always retirements and a constant need for hiring. She believed that even with the addition of six individuals over this time period, she felt we could use them as we continue to increase the corporate boundaries of the City of Asheville. This ensures our ability to do that in an effective and safe way, especially when the first two years will be paid for with grant funds.

Councilman Davis moved to adopt Resolution No. 10-199. This motion was seconded by Councilman Russell and carried unanimously.

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III. PRESENTATIONS & REPORTS:

A. BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY UPDATE ON WAYFINDING SIGNS

Councilwoman Manheimer noted that her firm does represent the TDA; however, since this is an informational update only, she did not have a conflict of interest.

Mr. Kelly Miller, Executive Director of the Buncombe County Tourism Development Authority (TDA), and Ms. Marla Tambellini, Director of Marketing and Public Relations, briefly updated City Council on the peeling wayfinding signs and the solutions associated with the peeling signs, noting that this is a top priority of the TDA.

B. METROPOLITAN SEWERAGE DISTRICT UPDATE

Mr. Tom Hartye, Executive Director of the Metropolitan Sewerage District (MSD), expressed Chairman Steve Aceto's regrets for not being able to attend this meeting. Mr. Hartye then thanked City Council representatives for their service on the MSD Board. He said that MSD's mission/objectives include environmental stewardship, fiscal management, customer service, and continual improvement.

Regarding environmental stewardship, (1) MSD met all legal and permit requirements and received good regulatory reports for Plant Discharge and air permits, the collection system permit, the pretreatment program, and the ISO program; (2) Annual System Performance Report on website with summary mailed to customers; (3) Rehab and replace 50,000 feet of sewer per year; (4) cleaned over 1 million feet per year of sewer line last year; (5) $10 Million Microscreen project will increase quality of treatment plant effluent; (6) Industry awards for treatment, innovation and management; and (7) Significant reductions in overflows. He then showed a chart showing significant progress over the past 11 years of the sanitary sewer overflows.

Regarding fiscal management, (1) Kept within operating budget (which was set at less than last fiscal year) – we were under our operating budget by 6%; (2) Issued $17 Million in bonds for Capital Improvement Program funding: issued $17.2 Million at a fixed rate of 4.13% and refunded $13.4 Million for a present worth savings of over $1 Million; and (3) Utilize financial forecast model/business plan (a) keep rate increases small and consistent; (b) use equal measures of bond and pay-as-go financing for Capital Improvement Program; and (c) keep Capital Improvement Plan on track for the future. He then showed a chart of Fiscal Year 2011 budget expenditures of $45,420,400 for construction projects; debt service; operations & maintenance; and capital equipment. He then showed a chart of Fiscal Year budgeted revenues of $45,420,400 of interest & miscellaneous income; domestic user fees; bond & pay as go; industrial user fees; and facility & tap fees.

Regarding continual improvement, (1) Capital Improvement Program (CIP) of approximately $15 Million per year for next 10 years; (2) Have constructed $249 Million since consolidation in 1991; (3) 99% of CIP is replacement and rehabilitation of existing sewers and plant equipment; and (4) Replacements are upsized according to the Master Plan to handle future growth.

Mr. Hartye showed a chart of the Capital Improvement Program for 10 years, for a total of $148.0 Million. Said Program included interceptors/wet weather rehab; collection rehabilitation; treatment plant / P.S.; and reimbursements.

Regarding customer service, (1) MSD has a service area of approximately 180 square miles; (2) MSD achieved an average response time to customer calls at 30 minutes during the

day and 39 minutes at night; and (3) MSD partners with member agencies to save money and to limit disturbance to the public.

He then outlined all the City of Asheville and MSD partnering projects as of August 2010.

Regarding planning initiatives, (1) MSD has agreed to take over Avery Creek District sewer lines for ownership and maintenance; (2) Updating agreement with Cane Creek District for future service pursuant to both Master Planning efforts; and (3) Utilizing Master Plan to formulate expansion policies and priorities.

Mr. Hartye responded to various questions/comments from Council, some being, but are not limited to: will the Microscreening project affect the smell from the river; after treatment of the water is it drinking water clean; explanation about the bidding process for contracts and whether local contractors are being awarded those contracts; and explanation of MSD's affordable housing policy.

On behalf of City Council, Mayor Bellamy thanked Mr. Hartye and the Board of Directors for their efforts on this very important Board.

C. GREENWAY COMMISSION UPDATE

Mr. Marc Hunt, Greenway Commission Chairman, provided Council with several maps showing completed greenway segments, the Greenways Master Plan recommendation map, and transportation routes. He explained how greenways are important for health and wellness; redevelopment, economic development and tourism; connecting the community; and environmental protection. He explained how the Greenway Commission collaborates with many organizations, some being, but are not limited to: Buncombe County, Asheville Parks & Greenways Foundation, Asheville Parks, Recreation & Cultural Arts; the Trust for Public Land; Mountain Housing Opportunities; City of Asheville Transit Commission; Asheville Design Center; Quality Forward; and RiverLink.

On behalf of City Council, Mayor Bellamy thanked Mr. Hunt and the Committee for their efforts on this very important Committee.

D. SPORTS COMMISSION UPDATE

Mayor Bellamy said that this update will be given at a later date.

E. QUARTERLY STRATEGIC OPERATING PLAN

Finance Committee Update

Councilman Russell, Chairman of the Finance Committee, said that the purpose of this memorandum is to provide the City Council an update on progress and achievements made by the Finance Committee during the fourth quarter of fiscal year 2009-2010.

Beginning in February 2010, the Finance Committee allocated time at each monthly meeting to focus on items of importance to the annual budget process. The committee spent considerable time reviewing fees and charges and the city's healthcare program while receiving ongoing updates about the overall budget process. Although the FY 2010-11 budget process was challenging due to impacts of the global recession, we were pleased to take part in a process that resulted in the adoption of a budget that included no property tax increase, no staff layoffs, and minimal impacts to city services.

As a result of our consideration of the city's health care program, the committee recommended that City Council form a Blue Ribbon Health Care Task Force made up of local

human resource professionals. The purpose of the task force is to review and benchmark major components of the city's health care program to best practices found in Asheville and throughout North Carolina. City Council recently approved the membership of this group, and we are looking forward to a report back from the task force in the third quarter of this fiscal year.

The Finance Committee also considered an economic incentive proposal submitted by the developers of the Montford Commons project. I believe the committee's work helped refine the proposal that was ultimately considered by the full City Council.

As you know, the city's FY 2011-12 capital planning process is already underway, and the Finance Committee is looking forward to a productive and effective budget process for the coming fiscal year. The committee recently recommended the concept of a capital planning retreat, which has been since scheduled by the Council for October 8. Based on the vision and course Council charts at the retreat, the committee will stand ready to help provide policy guidance to both the capital planning and budget process.

Planning & Economic Development Committee

Councilman Davis, Chairman of the Planning & Economic Development Committee, updated Council on some major accomplishments during the 4th quarter of the Committee as follows: (1) Sidewalk Cleaning: Flow chart produced for determining responsibility for sidewalk cleaning, as a guide in the rewrite of the sidewalk cleaning ordinance; forwarded to City Council; (2) 51 Biltmore Avenue, Downtown Development Agreement: Reviewed 51 Biltmore Avenue Downtown Development Agreement and forwarded to City Council; (3) Development Incentive Process: Staff directed to draft guidelines to be used by Council for assessing transformational projects when evaluating requests for Economic Development Incentives; (4) UDO Streamlining Process: Planning staff has almost completed Phase I of five phases in the UDO Streamlining Process; (5) Grove Arcade, COPS Payment: Reviewed options for restructuring of the Grove Arcade Public Market Foundation's Certificates of Participation payment, and forwarded to City Council; and (6) Eminent Domain for Public Infrastructure: Staff directed to develop procedures for obtaining private property for public use that would mirror procedures already in place by the MSD.

Quarterly Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February 2009 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurement through the Fiscal Year 2009-10. Similar to the previous quarter, this update will be presented in the form of a video. In addition, as a subset to this presentation, staff provided the Economic Development Key Indicator Report

He then showed Council a video showing the staff's progress on the key strategic areas for the fourth quarter. The video will be available on the City's website.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

Mayor Bellamy noted that Asheville's unemployment rate which is 7.4% is down from last year at this time at 7.8%. Also, the home sales are increasing for our community. Last year it was 217 and this year it's 260. We are seeing some improvement in our local economy.

Vice-Mayor Newman noted that our energy reduction achievements are good and for the next fiscal year we have increased our goal to reduce our carbon footprint from 2% to 4%. He was excited about what that energy reduction footprint will look like in the next 4-5 years and felt we need a good plan on how we can achieve those goals.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE SHILOH COMMUNITY PLAN 2025

RESOLUTION NO. 10-204 - RESOLUTION ADOPTING THE SHILOH COMMUNITY PLAN 2025

Mayor Bellamy opened the public hearing at 6:29 p.m.

Urban Planner Julia Fields said that this is the consideration of a resolution adopting the Shiloh Community Plan 2025. This public hearing was advertised on September 3 and 10, 2010.

In late 2003, the Shiloh Community Association, Neighborhood Housing Services of Asheville, and the City of Asheville came together to organize a community planning process, apply for funding for facilitation, and organize a task force to lead the effort to develop a plan for Shiloh. The Shiloh Community Task Force began meeting in 2004 and over the past several years has continued to meet to address pressing community concerns and to work on the development of the plan.

She explained that there was a collaborative effort of the Shiloh Community Association, Neighborhood Housing Services and the City of Asheville to develop a set of objectives to enhance the development and quality of life in Shiloh for years to come. The Plan pulled in a broad base of involvement and support, linked the plan's recommendations to the Asheville City Development Plan 2025, found ways to ensure the preservation of Shiloh's historical identity while acknowledging the reality of change, and increased awareness of the Shiloh community along with establishing consensus on improvements in the neighborhood.

Using maps, she showed the plan area and then the core implementation area. The plan as drafted is divided into three major sections. The first section provides an introduction to the plan and details how the plan was developed and how it is proposed to be used. The second section provides background on the Shiloh community including a detailed history prepared by resident Anita White-Carter, along with demographic and land use statistics. In Chapter IV, the vision, goals, strategies and implementation measures to carry out the plan are presented. An implementation matrix completes the plan.

A few of the plan's quality of life goals and strategies include: (1) celebrate, promote and showcase community spirit, citizen participation and neighborhood history (1) strengthen the neighborhood association; (b) promote Shiloh throughout Asheville and Buncombe County; and (3) complete a detailed history of the Shiloh neighborhood; (2)establish a community resource, recreation, and education center (a) develop a plan and program concept for a resource center; (b) initiate programming as work is completed on the development of a resource center; (c) examine community partnerships as part of the development of the resource centers; and (d) utilize the new pavilion as a way to initiate interest in the idea of a resource center; (3) work to improve the livability of our neighborhood – particularly housing and safety (a) work to ensure a safe Shiloh; (b) improve pedestrian accessibility throughout the neighborhood; (c) improve the overall appearance and beauty of the Shiloh community; and (d) utilize the new pavilion as a way to initiate interest in the idea of a resource center; (4) improve the infrastructure in the community (a) work with City of Asheville and utility service providers to access the infrastructure issues in the neighborhood; and (b) work with the Transportation Department to determine if additional traffic calming measures are warranted; (5) provide assistance for affordable housing and home

improvement (a) provide assistance to residents to enable them to remain in their homes; (b) explore opportunities to develop new affordable housing; (c) provide information on home improvement assistance; and (d) coordinate efforts to remove dilapidated and abandoned manufactured homes; (6) maintain and develop opportunities for green space (a) retain and develop the green space along the creek; (b) create additional green space and tree canopy in area; and (c) improve recreation opportunities at Recreation Center; (7) protect, enhance and complement the existing character of Shiloh (a) create a Shiloh Overlay District in the core area; (b) target areas for redevelopment and infill complementing existing development (c) restrict commercial incursion; define appropriate areas for commercial development; and (d) examine National Register District; and (8) create neighborhood gateways/identity (a) create a primary gateway into the community along Shiloh Road; (b) create smaller gateways into the community – West Chapel and Caribou Roads; and (c) explore ways to obtain approval and funding for customized street signs within the Shiloh community.

She then explained the implementation plan for each implementation measure, along with the suggested timeframes and principal responsible parties.

Some of the major recommendations in the plan include:

- Establishing a community resource, recreation, and education center.
- Working with Asheville Police Department on several initiatives to ensure a safe Shiloh.
- Creating a Shiloh Overlay District for new construction in the community core area.
- Creating neighborhood gateways.

The Asheville City Plan 2025, called for a neighborhood plan for the Shiloh Community. If adopted by Council, the policies and implementation measures found in this plan should be used to guide action in the community. Many of the community goals will need to be spearheaded by the Community Association. This plan should also be used as guidance for issues such as rezoning, housing initiatives and other relevant programs in the Shiloh neighborhood.

The Asheville Planning and Zoning Commission, at their meeting on July 22, 2010, reviewed and unanimously recommended the plan to Council. A few changes to the plan recommended by the commission and by the community have been made since that time.

This plan, while not specifically supporting a goal in the Council's Strategic Plan, was clearly called for in the Asheville City Plan 2025.

Pros:

- Puts forward a strategic plan for an important Asheville neighborhood.
- Plan was created with considerable community input.
- Sets an ambitious agenda.

Cons:

- Some may see plan as controlling and unchangeable.
- Sets an ambitious agenda.

The plan is a guide for future efforts in the Shiloh community. No specific program requiring funding will be undertaken without additional action.

Staff recommends the Asheville City Council review the draft plan, make any amendments, and adopt the Shiloh Community Plan 2025.

When Mayor Bellamy noted that if Council approves the plan, they will be approving the implementation schedule as well, Councilman Bothwell confirmed that this is a commitment of the spirit of implementation with funding to be decided in future budgets.

Ms. Norma Baynes, Shiloh resident and liaison for the Shiloh Community Association, briefly explained the path leading to development of this plan. She supported the plan and looked forward to continuing the partnership with the City and other organizations to implement the plan.

Ms. Marilyn Bass, Shiloh community outreach individual, reiterated Ms. Baynes comments and felt no plan is good unless it's implemented. She said we will need to continue this mutually beneficial partnership hopefully with some resources from the City, understanding the City's budgetary constraints. .

In response to Councilman Russell concern about the implementation expense, Ms. Fields said that all along City staff and the Community Association have been cognizant of the City's budgetary constraints and made it very clear that anything with City funds (except City staff) would have to come back to City Council. She said that many goals will rest heavily on the Community Association.

Mayor Bellamy said that the character of Shiloh will be preserved in this plan and as redevelopment occurs, it will be done in tandem to the existing fabric of the neighborhood. She felt that one thing missing in Shiloh is a lead agency to help them and she hoped that Mountain Housing Opportunities can partner with Shiloh to work together. It's also the responsibility of Council to make sure that the goals in the plan are a priority. It is incumbent upon us to implement the plan as we do all our master plans, understanding that the success of the plan will not happen overnight.

Mayor Bellamy closed the public hearing at 6:45 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-204. This motion was seconded by Councilman Smith and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE THE SIZE OF THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION FROM 14 TO 12 MEMBERS

ORDINANCE NO. 3896- ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE THE SIZE OF THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION FROM 14 TO 12 MEMBERS

Mayor Bellamy opened the public hearing at 6:53 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance to reduce the size of the Asheville-Buncombe Historic Resources Commission (HRC) from 14 members to 12. This public hearing was advertised on September 3 and 10, 2010.

The HRC is a joint commission of the City of Asheville and Buncombe County organized pursuant to Part 3C of N.C.G.S. Chapter 160A. The HRC currently consists of 14 members, with

each governing body having seven appointments. A proposal has been made to reduce the HRC membership to 12, with each governing body appointing six members.

The proposal under consideration is for each appointing body to reduce its appointees by one member. In order for the City to reduce its appointments, an amendment to City Code Sec. 7-3-4(b)(1) is required. Corresponding amendments to Sec. 38-27 of Buncombe County's Ordinance were adopted by the Buncombe County Commissioners on August 17. Because the HRC and its functions are in the UDO, the proposed amendment should be treated as an amendment to the zoning ordinance, and a public hearing is required. Because there are some vacancies on the HRC, there is no need to need to phase-in or removal of members. This amendment will be effective for the October meeting.

This proposed amendment and the reasons for it have been discussed with the HRC, which does not oppose it. The Council's Boards and Commissions Committee (August 10) and the Planning and Zoning Commission (September 1) both unanimously approved this proposal.

Pros:

- Reduces membership of HRC to more manageable size.
- Reduces potential for quorum problems/minority decisions.

Con:

- None noted.

Slight reduction in administrative costs.

This action complies with City Council's Strategic Operating Plan in that it (1) Promotes intergovernmental cooperation; and (2) Promotes density and infill development (Smart Growth Plan).

Adoption of this ordinance is recommended.

Mayor Bellamy closed the public hearing at 6:54 p.m.

Councilwoman Manheimer, liaison to the HRC, said that she worked with the HRC in coming up with the number of 12 after looking at other cities across the state. She said that the membership size will again be re-evaluated in the future.

When Mayor Bellamy asked why the membership was an even number, City Attorney Oast said that since the City and County have equal number members there is no way there can be an odd number.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3896. This motion was seconded by Councilman Bothwell and carried unanimously.

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Due to the anticipated length of the public hearings regarding telecommunication towers, Mayor Bellamy said that the two public hearings will be held after the closed session in order to not break up the public hearing discussion.

CLOSED SESSION

At 7:15 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Market Center, LLC, and City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:40 p.m. Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

ORDINANCE NO. 3897 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

Mayor Bellamy opened the public hearing at 7:42 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regulating telecommunication towers to be more consistent with changes in the federal and state laws. This public hearing was advertised on September 3 and 10, 2010.

Telecommunication towers and concealed telecommunication support structures are allowed as a conditional uses in most commercial zoning districts. They are prohibited in residential districts unless located on publicly-owned property supporting a non-residential use, such as schools or fire stations, where they are allowed as conditional uses.

The federal Telecommunications Act was adopted in 1996. This law essentially required local jurisdictions to permit telecommunications facilities, but gave deference to local zoning regulations. However telecommunications towers were not originally included in the first UDO adopted in 1997. At the time, wireless telecommunications was a new and burgeoning industry, and the City hired a consultant to draft and explain the new standards, which were added in 1999. The standards have changed little over the years, despite changes in the federal and state laws and available technology. While these standards largely remain relevant and appropriate, there were a few areas that required updating in order to remain consistent with the changes in the laws. Moreover, in 2007, a State law was enacted to help implement the federal law, and to provide for some consistency across local jurisdictions with respect to zoning decisions involving telecommunications towers.

The proposed UDO text amendment proposes several changes to the conditional use standards for telecommunications towers.

The changes proposed are generally designed to remove some historic barriers to towers that have, through new technology, become less objectionable. Proposed amendments include:

1. Some definitions are amended and some new ones are added to conform to State law.

2. An expedited procedure for collocated facilities is added in order to comply with State law.

3. The requirement for facilities in residential districts to be located only on publicly owned property is removed in order to comply with a prohibition in the State law. Location on publicly-owned property is encouraged, and facilities are still prohibited from locating on property that is in use for residential purposes.

4. Some other non-substantive changes are made in order to use the new terminology

Facilities locating in residential areas are still required to obtain a conditional use permit, which requires submission of a detailed application and a public hearing. The applicant will still be required to demonstrate that there is no better alternative available and that the tower proposed is the least intrusive means for the service providers to provide their service or to close gaps in their services. Therefore, those properties continue to have the safeguards afforded by this process. Council can still impose appropriate conditions on the siting of these towers in order to mitigate their impacts.

The City Council Strategic Operating Plan outlines several goals aimed at improving sustainable growth and development opportunities while ensuring that the City's regulatory environment effectively protect the citizens health, safety and welfare. Wireless telecommunications are a key element to sustainable growth and development and should be supported to the extent that it does not compromise other strategic goals.

At its meeting on August 19, the Planning and Zoning Commission unanimously recommended in favor of this text amendment.

Pro:

- Expands opportunity for a utility, enabling providers to meet the growing demand and provide improved service without undue impact on residential areas.

- Is consistent with state and federal laws

Con:

- Expands the places where telecommunication towers may be located, most notably in residential areas, which has potential for conflict with the surrounding community.

Staff recommends adoption of the ordinance proposed.

Mr. Damien Hoffman, resident in the Hills of Beaverdam Homeowners Association, said that allowing telecommunication towers in residential zones is a sustentative change to the law. He opposed the "shock clock" clause in the ordinance to force City Council to decide within 45 days whether the telecommunication tower will be approved or not. The 45 day time period disallows citizens the time to do the research to oppose these types of activities on their land or in their neighborhoods. He noted that in 2006, City Council was presented with an application for an amendment to change the ordinance in an R-16 zone. This time an application is back to allow them in all residential areas.

Mr. Andy Gladstone, resident in the Hills of Beaverdam, spoke against this amendment and urged City Council to look at this amendment in the context of what it will be doing to the neighborhoods.

Ms. Ellen Bluestone, resident on Crescent Lane, spoke against the amendment. She understands that this wording amendment is necessary to make the application for the telecommunication tower for the proposed site at Lincoln Memorial Cemetery a viable application. She discouraged the wording amendment and suggested a buffer zone be established between children and telecommunication towers.

Ms. Patsy Brison, attorney representing US Cellular Corporation NC RS-4 Inc., said that the zoning map shows a number of residential areas that may be located in valleys or in ridges where it is difficult to have cell service provided. The proposed amendment would create still the same amount of protections through the conditional use process. Using a zoning map, she showed the parts in Asheville that are most residentially zoned. In those areas because of our ridge and mountainous terrain there are some physical restrictions on sending signals and locating towers and antenna. In order to provide that service and to comply with the federal law which prohibits City Council from prohibiting providing service it's necessary to open up more areas to provide that. She urged City Council to adopt the proposed amendment.

Mayor Bellamy closed the public hearing at 7:56 p.m.

In response to Councilwoman Manheimer, City Attorney Oast said that the 45-day time period is not for the location of a new tower, but for co-location of an antenna on an existing tower. He noted that the 45-day time period is required by state law. He also noted that there are certain restrictions on antenna co-locations.

When Councilwoman Manheimer asked if the City currently allows free-standing cells towers to be located in residential districts at all, City Attorney Oast said that they are allowed in residential districts on public property not used for residential purposes.

In response to Councilwoman Manheimer, City Attorney Oast said that someone could put an antenna in a church located in a residential district.

Councilwoman Manheimer acknowledged that there are changes in the proposed amendment that are necessary to bring us into compliance with state and federal laws. However, if we were to delete the following proposed language and continue to disallow monopoles and lattice towers in residential districts, would we still be in compliance: "Section 7-16-2 (d) (3) (a) Use Districts ... "In addition, telecommunication towers shall be allowed as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; provided: (i) said use is not otherwise non-conforming; (ii) the property is not subdivided for the purpose of accommodating a telecommunication tower and, (iii) the application meets the standards set forth in subsections 7-16-2 (c) and (d) of this chapter."

City Attorney Oast said that to delete the language outlined above by Councilwoman Manheimer, we would be in compliance with state law. He said the potential problem is whether the City has to allow monopole cell towers in residential districts. If the effect of not allowing them in residential districts would be to make the service unavailable, then we would not be in compliance. However, it was his opinion that the courts would say that federal law preempts state law or local zoning ordinances in that case.

Councilman Smith clarified that it would be possible to build cell towers elsewhere outside of residential areas and those towers can then service those residential areas. Then, those residential areas wouldn't have been prohibited from receiving service.

When Vice-Mayor Newman asked if it would be easy to provide a map to show where cell towers are located in the City, Assistant Planning & Development Director Shannon Tuch said that it's not difficult to demonstrate where the towers are located, but more of a challenge to

demonstrate their coverage area. What would be significantly more challenging would be to identify all of the locations where we have co-located antennas or concealed antennas.

Vice-Mayor Newman didn't feel that he has enough information of how successful or unsuccessful our current ordinances are in enabling the development of this infrastructure in our community. We are doing everything we can to restrict these developments in places that would be most appropriate – commercial corridors where they blend in. He noted that every cove is not going to have great reception, but we are trying to get as good of coverage as we can reasonably expect a city like Asheville to have.

Ms. Tuch said that co-location has been very successful in limiting the numbers of towers. In the last eight years we have had a lot of co-location applications. That technology has been very valuable. In addition, we co-locate on things other than existing towers, e.g., tall building, water towers, etc.

Vice-Mayor Newman clarified that the City's existing policy is if you are in a residentially zoned area, but it is publicly-owned property (like a city-owned community center), you can build a cell tower. Ms. Tuch responded that is correct, and also noted that a private company could lease space from the city or from the property owner.

Vice-Mayor Newman said that we have commercial corridors going to various parts in the community, but also have roads that were formerly rural and urbanized over time. He asked if it was Ms. Tuch's sense that those are the trickier spots because there is not much commercially zoned property. Ms. Tuch said that is the case and in addition to not having a lot of commercial uses in those areas, they tend to be less densely developed.

Planning & Development Director Judy Daniel said that another reason this is becoming an issue is because more people use cell phones and the cell phones are more complex. Because there are more and more people using the towers, the coverage gets smaller. That is exasperated in Asheville by the topography.

Mayor Bellamy asked if we can limit the areas of the City that would allow cell towers. City Attorney Oast said that we cannot limit them if the effect is to prohibit the service and the only way to know that is from information from the industry whether the service is available everywhere. There is a mandate to these providers and to local governments that regulate them to ensure that service is available, including filling in significant gaps in coverage.

When the Mayor asked if we can prohibit cell towers on school properties, City Attorney Oast said that there are not that many school properties in the City, so he thinks the effect of doing that would probably not prohibit the provision of service in the City.

Mayor Bellamy asked if we permitted a cell tower could we require that there be enough room on there for a public use facility. City Attorney Oast said that we could purchase space on someone else's tower and perhaps as a condition we could ask for some sort of public use space on that tower. In addition, Ms. Tuch said that it's not usual for us to recommend a condition that additional space for other providers be offered. She also noted that there is a provision in a different section in the City's Code that basically requires that when you have tall buildings or buildings of a certain kind of construction material that they have to be equipped with the infrastructure to accommodate internal and external communications and that the City has the rights to require an easement on the building in order to be able to locate a repeater or an antenna or whatever may be necessary.

When Mayor Bellamy asked if it was possible to include a reference to the provision explained by Ms. Tuch above as part of this ordinance, City Attorney Oast said that he would need to research that question but if it's possible he will bring it back to Council. As a general proposition, he thinks we can make it a condition of the erection of any tower.

Councilman Russell felt that if we ask for an amendment to be researched by our City Attorney that it be specific. He asked for clarification on whether the ordinance would be for public good or public safety (fire and emergency rescue). Mayor Bellamy said her thought would be for public good because conceivably if we were to actually provide services to some portions of our community who don't have access to the internet then it's for public good, not just for safety.

When Councilman Russell felt that discussion should be held at the Planning & Economic Development (PED) Committee level, Mayor Bellamy noted that this amendment didn't go through PED and this is the opportunity to discuss these things. Also, City Attorney Oast said that he would have to research it.

Councilman Bothwell said it seems to him that the technology is miniaturizing very quickly and some cities have wireless nodes on telephone poles through downtown. He wondered if towers themselves are headed out and therefore if we eliminated the paragraph outlined above by Councilwoman Manheimer we might not face any legal challenge because the point may be moot. City Attorney Oast said that in the course of the research he has done, that's true. You can do the same thing with more smaller towers that you can do with one big one. He also thinks that the technology has improved that towers are unobtrusive enough that they can be mounted on residential structures (similar to a television antenna).

Councilwoman Manheimer moved to (1) adopt Ordinance No. 3897, updating the standards regulating telecommunication towers, with the following amendments: (a) deletion of paragraph (f) which amends Section 7-16-2 (d) (3) (a); and (b) correct a typographical error that Section 7-16-2 (d) (4) (a) be lettered "(g)", not "(4)"; and (2) send the deleted paragraph (f) which amended Section 7-16-2 (d) (3) (a) to the Planning & Economic Development Committee (PED) for a better examination before a proposed zoning amendment is adopted that includes that language. This motion was seconded by Councilman Bothwell and carried unanimously.

City Attorney Oast said that the paragraph will be brought to the PED Committee just as soon as possible. Since the ordinance Council just adopted will have an effect on the pending conditional use permit application that follows, he requested for a brief recess.

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D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS US CELLULAR TELECOMMUNICATION TOWER, LOCATED AT 415 BEAVERDAM ROAD, FOR CONSTRUCTION OF AN 80' MONOPOLE TOWER

City Attorney Oast said that with the language amendment being sent to the Planning & Economic Development (PED) Committee and presumably coming back to City Council for consideration, the ordinance amendment is still in play. Therefore, the conditional use permit application is still pending but there is no basis to hear it at this meeting.

Councilman Russell moved to continue the public hearing to consider a conditional use permit for the project identified as US Cellular telecommunication tower located at 415 Beaverdam Road until October 26, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

Mayor Bellamy explained to the audience that the conditional use permit application for the telecommunication tower is still on the table. However, City Council has asked the City Council PED Committee to review the language which was deleted from the adopted ordinance regulating telecommunication towers at their next meeting. The PED Committee will report their recommendation at the October 26 Council meeting, after which time City Council will consider the conditional use permit application.

V. UNFINISHED BUSINESS:

A. MOTION APPROVING THE USE OF REVOLVING FACILITIES FUND OPTION FOR ENERGY EFFICIENCY & CONSERVATION BLOCK GRANT FUNDS

Energy Coordinator Maggie Ullman said that this is the consideration of three sustainability options to reprogram the remaining $250,000 of Energy Efficiency and Conservation Block Grant (EECBG) funding

The EECBG program was established by the Department of Energy in 2009 as part of the American Recovery and Reinvestment Act (ARRA). The high level goals of this program include:

- Reduce fossil fuel emissions
- Reduce the total energy use of the eligible entities
- Improve energy efficiency in the transportation, building, and other appropriate sectors
- Create and retain jobs

The City of Asheville was awarded $804,700 in June 2009 for this program; $554,700 is currently obligated for municipal facility retrofits and environmental sustainability education. On August 10th, 2010 Council asked staff to provide options for how to use the remaining $250,000 of this grant award. The first two program options are residential renewable and energy efficiency loan programs. The third option is a municipal renewable and energy efficiency bond program to support the annual 2% carbon footprint reduction policy.

Loan Loss Reserve: The City of Asheville would solicit services from a lending institution (bank, credit union, etc) to provide a loan product to residents. The City and the lending institution would collaboratively determine lending requirements. EECBG funding would be the Loan Loss Reserve providing security to the partner to then invest their own funds to be loaned out as the primary loan pool. Administration for the life of the loans would be conducted by the lending institution.

Internally Administered Revolving Loan Fund: The City of Asheville would design a revolving loan fund in house to offer loan products to residents. The City would determine lending requirements. EECBG funding would be the total pot available for lending. Administration for the life of the loans would be conducted by staff.

Revolving Facilities Fund: The EECBG funding would be used to leverage a $3-5M bond for retrofitting municipal facilities. Retrofits would be focused on energy efficiency strategies that would result in utility budget savings. These savings would support debt service repayment with interest and remain cash flow positive each year. Retrofits to be included in this bond include: LED streetlights, energy management control systems, solar photo voltaics, lighting upgrades, and any other eligible projects that have over lapping facilities maintenance needs and energy savings potential.

She then explained the program comparison matrix for how these actions would tie into the City Council Strategic Operating Plan.

The Sustainability Advisory Committee on Energy and the Environment (SACEE) conducted sub committee meetings to discuss this topic in the absence of time for the full committee to address the issue. The sub committee recommends council consider the Revolving Facilities Fund.

City staff recommends City Council review the options identified and direct staff.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Newman was disappointed that we don't have the legal authority to move forward on the community based financing initiative but hoped that those issues on the state and federal level around the Property Assessed Clean Energy model will be worked out. In the meantime, he spoke in support of the Revolving Facilities Fund. Asheville can lead by example in showing how an organization can save money by being more energy efficient and reducing our environmental footprint at the same time. He noted that if the City proceeds with the LED streetlight retrofit, it will save approximately $400,000 per year. If we do a ten year bond, not only will it fully pay for itself, it will generate approximately $100,000 of cash flow per year. He felt it would be great to hear from staff about their different strategies to achieve a 20% reduction in our energy consumption over the next five years.

Mayor Bellamy said that she had an opportunity to meet with two different companies who manage Revolving Facilities Funds. She was not sure if we would administer this in-house or contract it out, but felt that Council should have an opportunity to hear some in-depth presentations since this is a new endeavor.

Vice-Mayor Newman moved to support using the $250,000 EECGB funding for the Revolving Facilities Fund to help advance the City's goal of achieving a 4% per year energy savings for municipal facilities along with the associated ideas for issuing bonds to advance those goals as outlined by Ms. Ullman. This motion was seconded by Councilman Bothwell and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS FOR A WATER RATES AND FEES STUDY

ORDINANCE NO. 3898 - BUDGET AMENDMENT FOR AN AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS TO CONDUCT A WATER RATES AND FEES STUDY

Water Resources Director Steve Shoaf said that this is the consideration of resolution authorizing the City Manager to execute an agreement with Raftelis Financial Consultants, Inc., in an amount not to exceed $88,750 for the Water Rates and Fees Study; and adopt the associated budget amendment in the amount of $38,750.

Per City Council's direction, the Water Resources Department solicited proposals in July 2010 from consulting firms to conduct a Water Rates and Fees Study. Thirteen firms responded to the Request for Proposals (RFP), including:

1. Raftelis Financial Consultants, Inc. – Charlotte, NC
2. Municipal and Financial Services Group – Annapolis, MD
3. Lighthouse Utility Consulting – Ocala, FL
4. Utility Advisors' Network, Inc. – Orlando, FL
5. Burton & Associates, Inc. – St. Augustine, FL
6. TischlerBise – Bethesda, MD
7. ENTRIX, Inc. – Raleigh, NC
8. Black & Veatch Corporation – Overland Park, KS
9. Martin-McGill – Asheville, NC
10. Cavanaugh Associates – Asheville, NC
11. C.H. Guernsey & Company – Atlanta, GA
12. Burns & McDonnell – Kansas City, MO
13. Red Oak Consulting – White Plains, NY

A review team, comprised of staff from multiple City Departments, reviewed these proposals and selected the firm of Raftelis Financial Consultants, Inc. Subsequent to this selection, Water Resources staff met with Raftelis representatives and negotiated a Consulting Services Contract in the amount of $88,750.

This project is part of City Council's strategic plans to explore opportunities to ensure effectiveness and value for water fees charged and to operate the City of Asheville to the highest level of fiscal responsibility.

Pro:

- Approval of the bid award will allow the City to complete the project in time to recommend a water rate structure for future budget planning.

Con:

- Failure to award the bid to the recommended firm will delay completion of the project by the expected deadline.

Currently, $50,000 is earmarked for the study in the Water Resources Capital Improvement Project (CIP) budget. An additional $38,750 will be reallocated from another capital project. There have been enough cost savings in the Reynolds Mobile Home Park project to transfer $38,750 to the Water Rates and Fees Study. The total project budget for the study is $88,750.

In approving the Fiscal Year 2010-11 budget and related water fees and charges, Council set a goal to comprehensively evaluate water fee structures prior to setting rates in Fiscal Year 2011-12. Completing this study will accomplish the Council goal.

City staff recommends City Council authorize the City Manager to execute an agreement with Raftelis Financial Consultants, Inc., in an amount not to exceed $88,750, for the Water Rates and Fees Study; and adopt the associated budget amendment in the amount of $38,750.

Mr. Shoaf explained why he felt this study was necessary when Councilman Davis questioned the Brown and Caldwell study that was conducted several years ago that recommended a fee structure for a certain amount of increase each year.

In response to Councilwoman Manheimer, Mr. Shoaf said that the consultant will provide Council different alternatives for them to consider.

Rev. Christopher Chiaronmonte felt Council should use the $80,000 to put people in housing.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Davis moved for the adoption of Resolution No. 10-205. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no".

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Councilman Russell moved for the adoption of Ordinance No. 3898. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no".

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B. BOARDS & COMMISSIONS

River District Design Review Committee

The following candidates applied for the two positions on the River District Design Review Committee; however, none of the candidates meet the requirements of being property owners located within the River District: Philip Ellis, Michael McDonough and Stuart Smith.

Upon recommendation of the Boards & Commissions Committee, it was the consensus of Council to re-advertise for these positions.

RESOLUTION NO. 10-206 – RESOLUTION APPOINTING A REGULAR MEMBER TO THE BOARD OF ADJUSTMENT

The following candidates applied for a position on the Board of Adjustment, noting that current alternates of James Sheeler, Douglas Hattaway, Kristy Carter, and Phillip Hardin are interested in the regular vacancy: Diane Meek, Jeffory Quick, Eugene Britton, Bill Branyon, Richard Fort, Eric Rainey and Nelda Holder.

Vice-Mayor Newman said that the Boards & Commissions Committee recommend appointing Kristy Carter to the Regular position left by Lee McElrath and to re-advertise Ms. Carter's alternate seat in order to find diversity on the board.

Vice-Mayor Newman moved to appoint Kristy Carter (as a regular member) to fill the unexpired term of Mr. McElrath, term to expire January 21, 2011, and then a full three-year term, term to expire January 21, 2014, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Bothwell voting "no."

Councilman Bothwell felt there were good candidates who applied to the Board and felt we should interview those for the alternate seat.

Mayor Bellamy spoke in support of interviewing Richard Fort for the alternate seat; however, would support re-advertising for diversity make-up of the board.

Since there was no motion, due to the need for diversity on the board, the City Clerk was instructed to re-advertise for the alternate seat on the Board of Adjustment.

RESOLUTION BOOK NO. 33 – PAGE 211

RESOLUTION NO. 10-207 – RESOLUTION APPOINTING MEMBERS TO THE CITIZENS-POLICE ADVISORY COMMITTEE

The following candidates applied for positions on the Citizens/Police Advisory Committee: Curry First (Central area), Carol Rogoff Hallstrom (North area), and Allen Brailsford (west area).

Vice-Mayor Newman said that the Boards & Commissions Committee recommend appointing Carol Rogoff Hallstrom (as the north representative) and Allen Brailsford (west representative) to the Citizens-Police Advisory Committee.

When Councilman Bothwell stated that he would like to interview Curry First, it was noted that Mr. First resided in the central area and the vacancies were for the north and west areas.

Vice-Mayor Newman moved to appoint (1) Carol Rogoff Hallstrom (as the north representative) to fill the unexpired term of Angelica Wind, term to expire June 30, 2011, or until her successor has been appointed; and (2) Allen Brailsford (as the west representative) to fill the unexpired term of Cesar Romero, term to expire June 30, 2011, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 212

RESOLUTION NO. 10-208- RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

The following candidates applied for positions on the Public Art Board: Shad D. Marsh, Kathleen Lyons, Jeanna Maines, Jaan Ferree, William F. Meller and Mark Koven.

Vice-Mayor Newman said that the Boards & Commissions Committee recommend appointing Jaan Ferree (to fill the unexpired term of Dr. Barbara Cary) and Mark Koven (to one of the two new seats) to the Public Art Board and re-advertising for the other new seat. Councilman Smith noted that Professor Koven was a recommendation by the Public Art Board.

Vice-Mayor Newman moved to (1) appoint Jaan Ferree, to fill the unexpired term of Dr. Barbara Cary, term to expire June 30, 2011, or until her successor has been appointed; (2) appoint Mark Koven to serve a three-year term, term to expire June 30, 2014, or until his successor has been appointed; and (3) to re-advertise for the other new seat. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 213

RESOLUTION NO. 10-209 – RESOLUTION APPOINTING A MEMBER TO THE SOIL EROSION/STORMWATER REVIEW COMMITTEE

The following candidate applied for the positions on the Soil Erosion/Stormwater Review Committee: Pete Hildebrand.

Vice-Mayor Newman said that it was the recommendation of the Boards & Commissions Committee to appoint Pete Hildebrand and to re-advertise for the second seat of a City resident or an individual who resides in the extra-territorial jurisdiction area.

Vice-Mayor Newman moved to (1) appoint Pete Hildebrand to the City resident position for a three-year term, term to expire November 1, 2013, or until his successor has been appointed; and (2) re-advertise for the second seat of a City resident or an individual who resides in the extra-territorial jurisdiction area. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 214

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte asked Council to repeal the panhandling ordinance.

Councilman Bothwell suggested the City Manager investigate the necessity of sending out the non-negotiable checks for people who have direct deposit.

Councilman Davis invited the Council and public to the dedication of the Speedway Memorial on Thursday, September 23, 2010, at 6:00 p.m. at Carrier Park. Mayor Bellamy regretfully could not attend due to two previously scheduled events.

Councilman Smith was proud to acknowledge that Asheville City Schools came in second in SAT scores state-wide.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:56 p.m.

Magdalen Bourleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – September 28, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 15 – OCTOBER 15, 2010 AS "HISPANIC HERITAGE MONTH"

Mayor Bellamy proclaimed September 15 – October 15, 2010, as "Hispanic Heritage Month".

B. PROCLAMATION PROCLAIMING OCTOBER 3-9, 2010, AS "MENTAL ILLNESS AWARENESS WEEK"

Mayor Bellamy read the proclamation proclaiming October 3-9, 2010, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Mr. Jim Pitts, with the National Alliance on Mental Illness North Carolina, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER, 2010, AS "FIRE PREVENTION MONTH"

Vice-Mayor Newman read the proclamation proclaiming October, 2010, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Fire Chief Scott Burnett, who briefed City Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING OCTOBER, 2010, AS "BREAST CANCER AWARENESS MONTH"

Councilwoman Manheimer read the proclamation proclaiming October, 2010, as "Breast Cancer Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Earleen Bennett, representing Beauty Through Cancer, who thanked City Council for their support and briefed Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING OCTOBER 30, 2010, AS "KIDS VOTING DAY"

Councilman Davis read the proclamation proclaiming October 30, 2010, as "Kids Voting Day" in the City of Asheville. He presented the proclamation to Board Members Jewel Tavener and Kathi Ballard, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 2010

B. RESOLUTION NO. 10-210 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BLUE RIDGE PRIDE EVENT ON OCTOBER 2, 2010

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride on October 2, 2010.

Blue Ridge Pride, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

Blue Ridge Pride will be held on Saturday, October 2, 2010 from 12:00 p.m. – 8:00 p.m., within the boundaries of Lexington Avenue between the intersections of the I-240 overpass and Walnut Street, as per the event area limits referenced on the accompanying site map.

This action has no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Blue Ridge Pride, Inc.

Con:

- Potential for public safety issues

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride.

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C. RESOLUTION NO. 10-211 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO ADD (1) A CAPITAL IMPROVEMENT PROGRAM PLANNING RETREAT ON OCTOBER 8, 2010, AT 11:00 A.M. IN THE PISGAH B ROOM AT THE HILTON ASHEVILLE BILTMORE PARK, 42 TOWN SQUARE BOULEVARD, ASHEVILLE N.C.; AND (2) A CITY COUNCIL WORKSESSION ON OCTOBER 12, 2010, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM IN CITY HALL REGARDING UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN

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D. RESOLUTION NO. 10-212 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR TWO GRANTS FROM THE ENVIRONMENTAL PROTECTION AGENCY FOR CITY-WIDE BROWNFIELDS ASSESSMENT FUNDING

Summary: The consideration of a resolution authorizing the City of Asheville to apply for two $200,000 Brownfields Assessments grants – hazardous materials and petroleum, for a total amount of $400,000 - from the Environmental Protection Agency (EPA), to obtain funding for approximately ten Phase I or II environmental assessments on sites having known or perceived environmental contamination.

In 2007, Council approved a contract with Land of Sky Regional Council of Governments (LOSRC) to prepare and submit two Brownfields Assessment Grants applications to the EPA. When both applications were successful, Council approved a contract with LOSRC to administer the funds over a three year period as a sub-program within LOSRC's Regional Brownfields Initiative. The two grants are now closing out and LOSRC would like to submit new applications, requesting the same total funding amounts and the same term lengths, effectively renewing the three year program.

LOSRC has recommended that the new applications reflect a City-wide program area with an emphasis on the Riverfront District. This approach will continue to highlight the Riverfront as a priority area for infill development while allowing pursuit and support of infill opportunities anywhere within the City's jurisdiction. Changes to the City's program would include: 1)a significant reduction in the amount of funding used for management of the program by LOSRC - from $180,000 to $130,000 over 3 years and 2) inclusion of $30,000 over 3 years) in the program budget for City staff to perform any or all of the following activities: a) marketing and outreach of adopted Brownfields sites b) assistance to the Asheville Area Riverfront Redevelopment Commission to encourage infill development and c) coordination of the Brownfields program with Challenge Planning Grant activities (part of the Livable Communities Initiative, delineated in the HUD/DOT application the City submitted for East of the RiverWay district) if Challenge Planning grant is successful.

The Asheville Riverfront Redevelopment Commission is scheduled to review this request and the current Brownfields Assessment program on October 14, 2010. The Planning and Economic Development Committee of City Council heard an informal update on this consideration at their meeting on September 21, 2010.

This request complies with the City of Asheville's 2010- 2011 Strategic Plan through the following: (1) Affordable: Identifying resources for strategic initiatives; and (2) Job Growth and Community Development: Support small business through the reductions in taxes, fees, and regulations; partner in regional economic development strategies; promote sustainable, high-density, infill growth that makes efficient use of existing resources; support the riverfront redevelopment partnership.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the Riverfront District
- City maintains toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.

Con:

- External management of a City of Asheville initiative.

If the grant application is successful, the City would need to amend the budget to receive the grant funds; however since this initiative would be 100% funded with the EPA grant, there would be no impact to the City's General Fund budget.

Staff recommends Council authorize staff to apply for two $200,000 Brownfields Assessments grants – hazardous materials and petroleum, for a total amount of $400,000 - from

the Environmental Protection Agency (EPA), to obtain funding for approximately ten Phase I or II environmental assessments on sites having known or perceived environmental contamination.

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E. RESOLUTION NO. 10-213 - RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH COMMUNITY ACTION OPPORTUNITIES FOR THE REID ANNEX LOCATED AT THE W.C. REID CENTER FOR OPERATION OF THE HEAD START PROGRAM

Summary: The consideration of a lease with Community Action Opportunities (CAO) for the Reid Annex located at the W.C. Reid Center for operation of the Head Start Program.

CAO, a locally based non-profit organization, works with citizens who live on limited incomes, and with elected public officials and private sector representatives to confront and solve the problems that cause poverty. One of its services, the Head Start Program, provides comprehensive health, education, family support and services for children.

CAO has leased the Reid Annex for 11 years in which to operate the Head Start Program. The lease began in 1999 at which time the Reid Annex was in a significant state of disrepair. As part of the original lease agreement, CAO made the investment to complete a major building renovation and to design the building to meet the needs and requirements of the Head Start Program. In return, the city agreed to a multi-year lease agreement at $1.00 per year.

CAO is currently replacing the roof on the Reid Annex at its own expense, further demonstrating its investment to assist the city in maintaining the facility.

CAO wishes to renew the lease agreement for a period of two years beginning October 23, 2010 at $1.00 per year. At this time the city is limiting the agreement to a two-year period since the long-term future of the Reid Center property is not known at this time. The city will continue to operate the Reid Center as a recreation center until spring 2011 at which time it will move to the new center at Livingston Street Park. It is expected the city will continue to utilize the Reid Center gymnasium for one to two years until the gym at the Livingston Street Park center can be built. During the next six to nine months, the city will conduct community dialogue as part of the process to determine the future of the Reid Center.

A public notice to announce the lease agreement was posted in the Asheville Citizen-Times on September 17, 2010.

At its meeting on September 13, 2010, the Recreation Advisory Board recommended to City Council to enter into a two-year lease agreement with Community Action Opportunities for the Reid Center Annex located at the W.C. Reid Center for operation of the Head Start Program.

The action complies with the City Council Strategic Operating Plan in that it leverages partnerships that deliver capital improvements and infrastructure maintenance for public facilities.

Pro:
- Leverage facility maintenance and improvements through partnerships.

Con:
- None

There is no fiscal impact on the city's annual operating budget. Although it does not increase the city's capital improvement budget, it does enhance the city's resources to maintain and improve public facilities.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a two-year lease agreement with Community Action Opportunities for the Reid Center Annex located at the W.C. Reid Center for operation of the Head Start Program.

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F. RESOLUTION NO. 10-214 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR ANNUAL MAINTENANCE OF THE PARKING ACCESS AND REVENUE CONTROL SYSTEMS EQUIPMENT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Cincinnati Systems, Inc. for annual maintenance of the parking access and revenue control systems equipment.

The City of Asheville uses Amano brand parking access and revenue control systems equipment for the three City-owned parking garages and the employee parking lots on Valley and Marjorie streets. This equipment includes entry and exit gates, card readers, ticket dispensers, fee computers, pay-in-lane-machines, in-pavement sensors and detectors, and the software to operate the system. The equipment ranges from two years old to over six years old and all of it is out of the original warranty. These machines cycle tens of thousands of times a year and need regularly scheduled preventive and restorative maintenance. Much of the hardware and software is proprietary to Amano systems and is beyond the expertise of City staff to repair.

Cincinnati Systems is the local distributor for Amano brand equipment in this area. They provide maintenance and service beyond the capability of Parking Services' staff. The annual maintenance contract is $57,770.00 but does not include costs from vandalism. Staff is requesting authorization to sign a contract with Cincinnati Systems, Inc. for an amount not to exceed $60,000.00; $57,770.00 for the contract and $2,230.00 for contingencies. These funds are currently budgeted and do not require further budget action.

This action complies with the City Council's Strategic Operating Plan in the area of fiscal responsibility and the goal to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The company provides technical assistance and equipment.
- Maintenance contract will keep the equipment operating as efficiently as possible and minimize downtime.

Con:

- Total cost of the project is $60,000.00.

Funds were approved in the fiscal year 2010/2011 Operating Budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., in an amount not to exceed $60,000.00 for annual maintenance of parking access and revenue control systems equipment at City-owned garages and parking lots.

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G. RESOLUTION NO. 10-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A 4-YEAR LEASE AGREEMENT WITH JOHN DEERE LEASING FOR MOWING AND BALL FIELD MAINTENANCE EQUIPMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into a four-year lease agreement with John Deere Leasing for mowing and ball field maintenance equipment.

The city owns mowers, utility vehicles and ball field groomers located in the Park Maintenance Division of the Parks, Recreation & Cultural Arts Department. The equipment is over 10 years old, deteriorated and has out-lived its useful life. The annual cost to maintain the outdated and low performing equipment is over $8,000. Cost comparison over a four-year period to replace the equipment and annual maintenance is estimated at $170,000 to replace the equipment, or $42,500 per year. This does not include future cost to replace the equipment.

The four-year lease with John Deere Leasing includes two commercial mowers, two utility vehicles, three ball field groomers, and maintenance and equipment replacement will cost $122,488.58, or $30,622.14 per year. Over the four-year period, the equipment lease will be a savings of $47,512 in comparison to the city purchasing the equipment.

This action complies with the City's Strategic Operating Plan in that it supports making smart investments that accomplishes lasting and tangible returns by investing in quality equipment and maintenance for the City of Asheville parks system. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros:
- Investment to maintain and care for city-owned park facilities.
- Provide quality service for ongoing, core facility maintenance services.
- Fulfill commitment for maintenance of the park system.

Con:
- None

The four-year equipment lease, maintenance and equipment replacement cost will be $122,488.58 at $30,622.14 per year. To purchase and maintain the same equipment will cost approximately $170,000 at $42,000 per year, plus future cost to replace the equipment. The equipment lease represents a $47,512 reduced cost to the city's general fund. The $30,622.14 per year to support the lease agreement is budgeted in the FY 2010-2011 operating budget in the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a four-year lease agreement with John Deere Leasing for park maintenance equipment not to exceed $122,488.58.

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H. RESOLUTION NO. 10-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE PAYMENT OF EXCESS INSURANCE PREMIUMS FOR WORKERS COMPENSATION, LIABILITY AND PROPERTY INSURANCE PREMIUMS

Summary: The consideration of a resolution authorizing the City Manager to approve payment of excess insurance premiums for Workers Compensation, Liability and Property Insurance Premiums.

The City has operated a self-funded insurance program since 1993. The self-funded program has provided significant savings in the overall cost of risk for the City of Asheville. The Risk Management Division has the responsibility of providing the necessary insurance and reserves as prudent to meet losses resulting from claims, risks, and potential liabilities. In order to meet these objectives, it is necessary to protect City assets with the purchase of indemnification

policies. These policies protect the City from claims that exceed $450,000 for Workers Compensation and $500,000 for liability. Coverage is also purchased for property damage claims exceeding $25,000. These policies are not intended to act as primary insurance. Rather, the policies provide a stop loss for the City in cases when claims are presented which exceed the aforementioned amount.

This request ties into the goal of the strategic operating plan operate the City of Asheville at the highest levels of fiscal responsibility.

Pros:

- The program protects the City and the citizens of Asheville from losses exceeding $450,000 for workers compensation claims, $500,000 for liability claims, and $25,000 for direct damage to City property.
- The premium costs for the current year represent a $45,000 savings over last year's premiums.

Con:

- Without these policies, the City and the citizens of Asheville would be responsible for payment of any and all claims above the $450,000 retention for Workers Compensation and the $500,000 retention for liability claims as well as any and all property damage above $25,000 in any one occurrence.

The 2010 – 2011 premium cost for Workers Compensation is $146,686. The 2010 -2011 premium cost for the liability and property coverage is $828,210. These amounts are already included in the FY 2010-11 Insurance Fund budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to pay the proposed premiums.

RESOLUTION BOOK NO. 33 – PAGE 223

I. RESOLUTION NO. 10-217 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BRYANT'S LAND & DEVELOPMENT INDUSTRIES INC. FOR THE OLD TOLL ROAD RETAINING WALL PROJECT

ORDINANCE NO. 3899 - BUDGET AMENDMENT FOR THE OLD TOLL ROAD RETAINING WALL PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Bryant's Land & Development Industries, Inc. for the project known as Old Toll Road Retaining Wall; and (2) a budget amendment, in the amount of $360,000, from the Stormwater Fund reserves to fund the contract.

The Engineering Services Division of Public Works has opened bids to construct a new retaining wall on Old Toll Road near the intersection of Bent Tree Road. The wall and an attached drainage structure had failed, due to excessive stormwater water run off, and the age of the wall. The new wall and associated drainage infrastructure will incorporate modern design and construction methods that should solve the structural integrity of the wall, as well as the hydraulic concerns that were present before.

The initial low bid was rejected after the contractor rescinded their bid. They made a mistake in their interpretation of the plans and specifications, resulting in a bid that was substantially lower than the engineer's estimate, as well as all other bidders. The next lowest bidder was very comparable with the engineer's estimate, and was deemed a responsible bid.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will repair an existing stormwater and roadway failure.
- Provides long term investment in the City's infrastructure.
- Improves vehicular safety.
- Enhances stormwater infrastructure.

Cons:

- The City will be responsible for future maintenance of the project.
- Project management and contract administration will consume staff time.
- This section of roadway will be required to be closed for the duration of the construction project.
- Requires an appropriation from Stormwater Fund reserves.

The project budget totals $360,000. These funds will be allocated from the Stormwater Fund reserves, and would cover the cost of construction and construction administration. Stormwater Fund reserves currently total approximately $1.2 million; this appropriation will leave $850,000 available in reserves for emergencies and/or future capital needs.

City staff recommends City Council adopt (1) the resolution awarding the contract to Bryant's Land & Development Industries, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount; and (2) the associated budget amendment in the amount of $360,000.

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J. RESOLUTION NO. 10-218 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PERFORM ASPECTS OF A PROJECT RECENTLY AWARDED FOR PEDESTRIAN CROSSINGS AT FOUR INTERSECTIONS UNDER THE JOB ACCESS AND REVERSE COMMUTE PROGRAM

ORDINANCE NO. 3900 - BUDGET AMENDMENT FROM THE FEDERAL TRANSIT ADMINISTRATION JOB ACCESS AND REVERSE COMMUTE GRANT TO INSTALL PEDESTRIAN SIGNALS AT FOUR INTERSECTIONS

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to perform aspects of a project recently awarded for pedestrian crossings at four intersections under the Job Access and Reverse Commute Program; and (2) a budget amendment, in the amount of $99,920, to set up the project budget for the grant awarded.

On August 27, 2010 the Federal Transit Administration (FTA) awarded the city a grant for Job Access and Reverse Commute (JARC) funding to install pedestrian signals at four busy intersections: 1) Haywood Road and Louisiana Avenue, 2) Clingman Avenue and Hilliard Avenue, 3) Choctaw Street and McDowell Road, and 4) Biltmore Avenue and Southside/South Charlotte Street. The sidewalk at the intersections and connecting to the transit stops will be brought up to American's with Disabilities Act (ADA) compliance as a part of the project. The traffic engineering and signal work will be carried out by the NCDOT and/or it's contractors under a reimbursable agreement with the city, and the remaining work will be completed by city forces. The grant is for $99,920, 80% of the estimated $124,900 project cost. The local match of $24,980 is city's in-kind contribution, mainly salaries.

Improving pathways to and from bus stops, including pedestrian street crossing facilities, was the number three priority identified in the MPO's Coordinated Public Transportation/Human Services Transportation Plan (2008). The specific intersections were selected based on transit accessibility, the character of the intersection, proximity to places that people with low to moderate incomes live or work, and willingness of NCDOT to install pedestrian signals at the location. Our FTA regional representative has cited the project as an innovative use of the grant program to solve the challenge of the first mile and last mile of travel for transit users.

This project supports the strategic operating plan's safe, affordable, fiscal responsibility, and green & sustainable focus areas by making the intersections safer for pedestrians, leveraging outside funds, and making transit use easier for travelers.

Pros:

- Improves safety and comfort of pedestrians crossing at four busy intersections
- Adds $99,920 in federal funding to the city's budget
- Helps further develop a cooperative relationship with NCDOT

Con:

- The city must provide $24,980 as the match for the project, approved in the grant as in-kind contribution, specifically salaries.

This will bring $124,900 in new capital investment to Asheville's pedestrian network. The required 20% matching funds will come from amounts already included in the City's adopted budget. The signals will be maintained by NCDOT, so there is no increase in ongoing city costs. This grant does not affect the city's regular FTA transit system funding.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to perform aspects of a project recently awarded for pedestrian crossings at four intersections under the Job Access and Reverse Commute Program; and (2) a budget amendment, in the amount of $99,920, to set up the project budget for the grant awarded.

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K. ORDINANCE NO. 3901 - BUDGET AMENDMENT FOR NORTHWOOD ROADWAY IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of $225,000, for Northwood Street roadway improvements from the five percent Water Department Sullivan Act Funds.

In Fiscal Year (FY) 2009-10, the City received authorization from the State General Assembly to begin transferring up to 5% of Water Fund revenues to the general capital improvement program (CIP) to fund water-related infrastructure projects. The City transferred the full 5% in FY 2009-10, which provided $1,657,481 in funding. During this year's budget process, Council directed staff to transfer 1% of Water Fund in FY 2010-11. This 1% transfer will provide an additional $341,000, which will bring the total amount of Sullivan Act funds transferred over to the general CIP to $1,998,481. The table below summarizes the Sullivan Act funding and the projects that Council has approved to date.

Revenue:	
FY 2009-10 Water Fund Transfer	$1,657,481
FY 2010-11 Water Fund Transfer	$341,000

Total Revenue	$1,998,481
Approved Projects:	
Dogwood Grove	$87,440
Azalea Road	$1,710,000
Ridge Avenue	$110,000
Total Projects	$1,907,440
Balance	$91,041

The Water Department has started construction on a waterline replacement project on Northwood Street this year in which Sullivan Act funds can be used for infrastructure improvements. In the initial five-year CIP submitted to Council during the budget process, staff had anticipated using Sullivan Act funds for the Northwood project in a future budget year. Staff is now requesting to move the Northwood project forward into this fiscal year.

Based on the current schedule for the Azalea Road project, staff anticipates paying for the design of that project in the current fiscal year, but the construction is not anticipated to occur until FY 2011-12. As a result, the entire $1.7 million budget for Azalea Road improvements will not be spent in FY 2010-11. This request is to move $225,000 (the cost of the Northwood Street project) to this fiscal year and move funds for the Azalea Road project in the same amount to FY 2011-12, simply switching the funding years but not the funding amounts of the projects. This change will not impact the schedule or the funding for the Azalea Road project.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will allow Public Works to make improvements to the Northwood Street after the waterline is replaced and prior to resurfacing the street.
- Provides long term investment in the City's infrastructure.

Con:

- Project will cause longer construction delays to residents.

This budget amendment is a request to move $225,000 from the Azalea Road project to set up the project budget for the Northwood Street project. Complete funding for the Azalea Road project will be restored in FY 2011-12. This amendment has no other fiscal impact.

City staff recommends City Council adopt the budget amendment for Northwood Street roadway improvements in the amount of $225,000 from the five percent Water Department Sullivan Act Funds.

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L. RESOLUTION NO. 10-220 – RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 26, 2010, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I

Summary: The consideration of a resolution setting a public hearing on October 26, 2010, to consider an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I.

At it's meeting on August 24, 2010, City Council directed City staff to draft an economic incentive grant between the City of Asheville and Frontier Syndicate, LLC for the Montford Commons Development Project, Phase I.

Pursuant to N.C. Gen. Stat. sec. 158-7.1, a public hearing is part of the process for City Council consideration of these grants. It has also been a standard practice for Council. Moreover, Council's direction on August 24 included a request for participation by the County (to be made by Frontier), but the County has not yet acted on this. That information will be needed before the agreement can be drafted.

Staff recommends City Council adopt a resolution setting a public hearing on October 26, 2010, to consider an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. NOISE ORDINANCE APPEALS BOARD UPDATE

Mr. James Fink, Chairman of the Noise Ordinance Appeals Board, briefly updated City Council on the activities and mission of the Board

On behalf of City Council, Mayor Bellamy thanked Mr. Fink and the entire Board for their hard work and efforts on this Board.

B. ASHEVILLE-BUNCOMBE-HENDERSON REGIONAL FEASIBILITY (TRANSIT) STUDY

Director of Transportation Ken Putnam said that this is the discussion of the Asheville-Buncombe-Henderson Regional Feasibility (Transit) Study contracted by the North Carolina Department of Transportation (NCDOT).

In November 2009, the N.C. Dept. of Transportation Public Transit Division (NCDOT-PTD) contracted with HDR Engineering of the Carolinas (HDR) and its partners to conduct the Regional Feasibility Study for public transportation in the City of Asheville, Buncombe County and Henderson County. This presentation highlights the findings and recommendations of that plan.

The purpose of this study was to conduct an organizational review of the transit systems in Buncombe and Henderson County to determine the feasibility of establishing a closer working relationship. The work of the study was guided by a steering committee comprised of representatives of the major stakeholders.

The report describes three alternative ways that services can be tied together and make specific recommendations for each one:

- Cooperation – working together in a loose association; focusing primarily on information sharing; separate identities and control remain in place.
- Coordination – group has formal arrangements to make decisions, take action, and manage resources; agencies remain separate organizations.
- Consolidation – one agency provides service through purchase of service agreements or other arrangements.

From the riders prospective these recommendations promote seamless transitions to and from work and services, through scheduling, routing and fare integration and more sophisticated technologies. From the City's prospective the recommendations will reflect in greater staff specialization and a more efficient use of existing resources and funding.

This report will be submitted to Council for approval at a later date.

The Transit Commission had a representative in the steering committee and has received monthly updates during the process.

This action supports the City Council's fiscal responsibility and green and sustainable focus areas. Specific tasks are to "fully leverage funding from the State and other funding sources for regional transportation improvements" and "operate the City of Asheville to the highest levels of fiscal responsibility".

Pros:

- It explores the options to provide a regional service establishing a closer working relationship.
- It does not commit the City of Asheville to any specific action.

Con:

- None

City staff recommends City Council receive the report and refer to the Transit Commission for review and comment.

Mr. Robert Bush from HDR Engineering reviewed the following Study background: (1) Part of NCDOT planning process; (2) Guided by steering committee; (3) Examined feasibility of closer ties among Asheville, Buncombe, and Henderson transit services; (4) Recommended phased approach; and (5) Requesting your approval tonight.

Advantages of regionalization: (1) Better service for passengers (a) 12,000 daily commuters across county line; (b) Daily commutes from Enka, Black Mountain, Weaverville; and (c) More reflective of actual travel; (2) Increased profile for transit (a) Greater awareness through larger system; and (b) Regional fares and service coordination; (3) Supports more technologies (a) Regional fareboxes, scheduling, dispatching; and (4) Permits staff specialization (a) Grant writing, marketing, safety & training, planning.

Short-term concepts: (1) Set the stage for later phases; (2) Within staff authority (mostly); (3) Timeframe: 1-2 years (a) Could be faster with strong local support.

Short-term recommendations: (1) Establish Regional Transit Council (staff & citizens); (2) Joint marketing; (3) Coordinate routes & schedules; (4) Adopt common fare structure (requires approval); and (5) Adopt common policies & procedures.

Mid-term concept: (1) Requires action by elected bodies; (2) Longer lead time facilities; and (3) Timeframe: 2-4 years.

Mid-term recommendations: (1) Operating environment (a) Merge demand-response scheduling systems; and (b) Harmonize operating contracts; (2) Capital & technology (a) Joint vehicle & service procurements; (b) Common fareboxes and (c) New transfer facilities; (3) Commuter services; and (4) Funding (a) Single grants administrator.

Long-term concept: (1) Regional services (a) In one or two counties; (2) New organization (a) Outside of either county or city; (3) Requires new funding (a) County $7 vehicle registration; (b) Bi-county $8 vehicle registration; and (c) ¼ cent sales tax (requires vote); and (4) Timeframe: 4+ years (a) At least 1 year past end of mid-term.

Long-term recommendations: (1) Organization (a) New transit authority under Article 25; (b) Interlocal agreement between Asheville & Buncombe; and (c) Henderson can join at outset or later; (2) Authority staffing (a) Hire new general manager at earliest possible time; (b) Proportional board representation; (c) Transfer existing staff to new organization; and (d) No union issues anticipated; (3) Construct new operating facility in Buncombe (a) Needed by 2016; and (b) Will require union determination; and (4) Create new identity (a) Rebranding of service.

Today's action include (1) Approval of Feasibility Plan; and (2) Agreement to implement recommendations (a) Subject to available funding; and (b) Phased implementation proceeds only when earlier phases are successfully implemented.

Councilman Davis was discouraged to see the comments from the other stakeholders regarding a possible joint venture. He felt that comments showed a reluctance to be a part of the Asheville system. He was still bothered that Weaverville didn't want to participate with the bus service to Weaverville. Asheville seems to carry the ball but no one wants to play. He hoped our Transit Commission could review the study carefully. He wanted Council to know that his support for accepting the report at this meeting should not be construed as his supporting the recommended funding mechanisms, which he does not.

Councilman Smith, liaison to the Transit Commission, said that he would relay Councilman Davis' concerns to the Transit Commission.

It was the consensus of Council to accept the Asheville-Buncombe-Henderson Regional Feasibility (Transit) Study and refer it to the Transit Commission for review and comment.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF DAVIDSON DRIVE

RESOLUTION NO. 10-219 - RESOLUTION TO PERMANENT CLOSE A PORTION OF DAVIDSON DRIVE

Mayor Bellamy opened the public hearing at 5:36 p.m.

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close a portion of Davidson Drive.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owner, Buncombe County has requested the City of Asheville to permanently close a portion of Davidson Drive.

The Greenway Commission approved the proposed closure at their meeting of August 12, 2010.

The closing is subject to three utility easements as follows: (1) retention by the Metropolitan Sewage District of Buncombe County, its successors and assigns, of a 20 foot wide permanent easement, for the operation and maintenance of a public sewer line, lying 10 feet on each side of said sewer line located and existing within the portion of Davidson Drive proposed to be permanently closed; (2) retention by the City of Asheville Water Resources Department its successors and assigns, of a 20-foot wide permanent easement for the operation and maintenance of a water line lying 10 feet on each side of the center line of said water line located within the portion of Davidson Drive proposed to be permanently closed; and (3) retention by the Charter Communications its successors and assigns, of a 20-foot wide permanent easement for the operation and maintenance of a communication cable lying 10 feet on each side of the center line of said water line located within the portion of Davidson Drive proposed to be permanently closed.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of Davidson Drive.

Mayor Bellamy closed the public hearing at 5:38 p.m.

City Attorney Oast said that City Council voted previously on a conditional zoning permit application for Buncombe County and Council's vote on that conditional zoning should not be regarded as binding Council on this vote.

When Mayor Bellamy asked for a motion to recuse her from voting on this item due to her lack of objectivity on this street closing, City Attorney Oast said that this is a legislative decision, not quasi-judicial, and not subject to the same requirements as to absolute objectivity. The key consideration is that Council understands that their previous vote on the conditional zoning does not bind them to a particular vote on this street closing.

In response to Councilman Bothwell, Mr. Keith Hargrove, architect for the project, explained that two levels of parking will be built, but the parking will only serve the court system.

In response to Councilwoman Manheimer, Mr. Foster said that City staff has talked with Buncombe County and the N.C. Dept. of Transportation about the possibility of an additional entrance at the end of Valley Street onto Charlotte Street. We also provided some rough estimation of what it would cost to make that connection. On a parallel track, Director of Transportation Ken Putnam is working with another group who wants to re-name and re-establish Valley Street as the major connector in that area and maybe include that connection,

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 10-219. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 226

B. PUBLIC HEARING TO REPEAL ORDINANCE NO. 1240 DESIGNATING THE RICHMOND HILL HOUSE AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3902- ORDINANCE TO REPEAL ORDINANCE NO. 1240 DESIGNATING THE RICHMOND HILL HOUSE AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 5:42 p.m.

Development Review Specialist Cristin Moody said that this is the consideration of an ordinance to repeal Ordinance No. 1240 designating the Richmond Hill House as a local historic landmark. This public hearing was advertised on September 17 and 24, 2010.

Ms. Moody said that the Richmond Hill House was originally located at 45 Richmond Hill Drive in Asheville. The house was moved to 87 Richmond Hill Drive in 1984, where it stood until it was destroyed by fire on March 19, 2009. What was left of the historic structure after the fire was deemed unsalvageable by the Historic Resources Commission and approved for demolition. Only a portion of the building, a rear addition that was built in 2000, still remains in place and the site is extremely deteriorated.

Richmond Hill House was built in 1890 for Richmond Pearson and his family. It was a large, rambling, two-story frame mansion in the Queen Anne Style and had been saved from demolition by the Preservation Society of Asheville & Buncombe County in the early 1980s. As a prominent and historic mansion, it was added to the National Register of Historic Places in 1977, and designated as a local historic landmark on September 10, 1981.

Due to the unfortunate circumstances of this historic house having been severely damaged by fire and subsequently demolished, the historical significance and integrity has been permanently and irretrievably lost.

The ordinance is to repeal Ordinance No. 1240, passed on September 10, 1981, which designated this property as a local landmark.

As a consequence of this action, the property will no longer be subject to review and approval by the Historic Resources Commission for alterations and additions. Furthermore, this de-designation will result in the owner being ineligible for the 50% historic landmark tax deferral in the future. The amount of the deferral, as of 2008 was approximately $6,350, as applied to only the historic portion of the property. The City will not see an immediate increase in tax revenue from the property, however, since the value has significantly decreased due to the loss of the historic Inn.

Pros:

- The property will be brought into compliance with current circumstances and applicable laws regarding local historic landmarks.
- The owner will be free to modify the property without obtaining a Certificate of Appropriateness from the Historic Resources Commission.
- The property will cease to be eligible for the 50% local landmark tax deferral.

Con:

- This comes as the result of an unfortunate loss of a significant historic resource that was an irreplaceable symbol of our unique cultural heritage.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance repealing the designation of Richmond Hill House as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Bellamy closed the public hearing at 5:43 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3902. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 302

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR CALEDONIA APARTMENTS LOCATED ON CALEDONIA ROAD FOR CONSTRUCTION OF 100 APARTMENT UNITS CONTAINED IN TWO BUILDINGS AND A REQUEST TO MODIFY OPEN SPACE STANDARDS

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

When City Attorney Oast asked if any Council members had any special knowledge of this matter other than familiarity with the site, Councilman Bothwell said that he made a site visit and met with a number of the neighbors who talked about the site. However, he felt that he could consider this issue with an open mind without pre-judgment and would make his decision based solely on what is before Council at this hearing.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:43 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as Caledonia Apartments located on Caledonia Road for construction of 100 apartment units contained in two buildings and a request to modify open space standards (Location Map and Aerial Map – City Exhibit 3).

She said that applicant is proposing to construct 100-residential units to be housed in two adjacent buildings for a residential density of approximately 15.5 units per acre. The buildings have a combined gross floor area of 160,444 square feet and contain a mix of units (8 studios; 44 1-bedroom; 44 2-bedroom and 4 3-bedroom units) (Site Plan –City Exhibit 3). The units will be Energy Star rated for environmental efficiency.

There is a considerable slope to the site, resulting in a building height of 19' 11½" from Caledonia Road (just over 49' to the top of the highest architectural element). Because the grade of the site slopes approximately 40 to 50 feet from the street edge to the back face of the buildings, the structures will appear to be two stories from Finalee Avenue and Caledonia Road while all four stories and the underground parking would be visible from the rear.

There are two vehicular access points proposed – one from Finalee Avenue and one on Caledonia Road. Parking is provided primarily beneath the structures and on exposed (interconnected) surface lots in the center and at either end of the project site. A total of 153 parking spaces are shown on plans (57 uncovered, 96 covered), including 6 accessible spaces and bike parking. There are two pedestrian access bridges shown on the plan, one to the front of each building from the roadway.

Landscaping is required on the site and includes street trees along Finalee and Caledonia, building impact landscaping, street buffer, parking lot landscaping and a Type 'B' property line buffer along the RS-8 zoned parcels adjacent to the west. The site is heavily vegetated and much of that existing vegetation will remain and will be applied to the required tree save area. The applicant is deliberately trying to keep the site as undisturbed as possible – with only 2.2 acres to be graded.

Sidewalks do not currently exist along Caledonia Road, which is identified by the City as a needed pedestrian linkage. The applicant is proposing to install sidewalk along the northern side of Caledonia, where the topography lends itself better to pedestrian accessibility, and will work with staff to determine the exact sidewalk placement location. Sidewalks are not required along Finalee Avenue, however there may be existing sidewalk buried underground along the project's frontage but the condition is unknown.

The applicant is proposing a modular construction type and anticipates completion of construction within one-year of starting, in a single-phase. Staging of materials will be on the applicants own parcel(s) along Swannanoa River Road. The developer has indicated that they plan to temporarily widen the hairpin curve at Caledonia and Pickwick to accommodate construction traffic.

Open Space standards require that 15% of the lot area be designated (0.97 acres), however the code also stipulates that only 50% of designated open space may exceed 25% grade. In this situation, the existing grade of the project area is over 25% (most of the project area is over 40% slope). The applicant is proposing to leave approximately almost four acres undisturbed; however that entire area exceeds the allowable slopes for open space designation. The applicant is requesting relief from due to existing conditions (Pedestrian View Renderings – City Exhibit 3) (Slope Map – City Exhibit 4)

This project was approved with conditions by the Technical Review Committee (TRC) on August 16, 2010. On September 1st, the Planning & Zoning Commission recommended approval of this project, including the relief to open space, by a unanimous vote (6-0). The Commissioners recognized the valid concerns of the neighbors but ultimately decided that the proposal meets multiple City goals, is an appropriate use for the site and appreciated the site design which leaves significant acreage undisturbed – preferring to recommend that City Council grant the open space relief rather than encourage the developer to greatly disturb the site by artificially creating "flat" open space areas.

There has been significant public comment received, at the TRC and P&Z meetings as well as outside of the public forum both with staff and at a neighborhood meeting. Primary concerns focus on:

- Traffic and traffic-related issues on Finalee and Caledonia, such as narrow pavement width (18' on Finalee and Caledonia), blind curves, steep streets, limited sidewalks and existing congestion;
- Difficulty when attempting to leave the Kenilworth neighborhood onto Biltmore Avenue or Swannanoa River Road due to traffic congestion;
- Concern that potential future development in the area on the remaining land could have a collective negative traffic impact and no Traffic Impact Study is technically required;
- The ability for large construction vehicles and modular unit delivery trucks to safely and efficiently access the site, especially given the sharp, narrow Caledonia roadway – as well as the ability for moving trucks to access the site once construction is complete;
- The steepness of the designated open space on the site (see *modification request* above)
- Potential for erosion on the steep slope during and after the construction process;
- How views of this vegetated bank from Biltmore Village will be altered;
- A request for increased articulation on the proposed roof design to appear more like the Kenilworth Inn with living space under the roof;
- Concern about impacts from potential use as high-turnover vacation rentals (would be allowed in Institutional zoning).

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with health safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The project site has a change in elevation of approximately 160 feet from Caledonia Road to the southern boundary (towards Swannanoa River Road) and has an existing grade over 30% with areas over 40%. To accommodate the steep site, the applicant has located the development footprint closest to Caledonia and Finalee Avenue, running along with the elevation change instead of against it. Additionally, the building footprint and area of disturbance is minimized by placing parking beneath the structures which lessens the physical and visual impact to the site. Only 2.2 acres of the 6.45 acre project site will be disturbed (leaving approximately 4 acres untouched) and landscaping around the building site along with the dedicated tree save area will help retain the natural, wooded areas of the location.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed residential use is not expected to injure the value of adjoining or abutting property. The area is almost exclusively residential and there is an established multi-family use across Caledonia to the north (Kenilworth Inn Apartments). Neighborhood concern has been expressed regarding the negative impacts of traffic congestion on narrow roadways, which is seen as an existing issue that may be increased from this

development; however a Traffic Impact Study was not required and it is the determination of the Transportation Department that the existing infrastructure can support the additional traffic generated from this project..

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
This parcel is zoned Institutional and therefore a variety of non-residential uses would be permitted but the proposed use as multi-family residential aligns with the residential uses in the area. The neighborhood is comprised primarily of single-family detached structures but the presence of the Kenilworth Inn Apartments building across the street creates an established precedent for a larger-scale, higher density, multi-family structure. Additionally, the slope on the site is such that the structures will appear as two-stories from the street level, minimizing the scale and bulk. The design proposes a limited footprint to preserve and retain significant vegetation on the site, retaining the natural feel of this southern end of the Kenilworth neighborhood. The architect has drawn from the historic Kenilworth Inn for design elements and materials such as stucco, cedar shakes, stone and steep pitched rooflines. The proposal is in harmony with the scale, bulk, coverage, density and character of the area in which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The Asheville City Development Plan 2025 encourages higher-density infill development in areas where infrastructure can support the development and specifically in existing neighborhoods near downtown, such as this location in the Kenilworth neighborhood. The Plan also states that new development should promote a sustainable land development pattern and reduce impervious surfaces to reduce environmental impacts - this proposal minimizes land disturbance on the site by placing parking beneath the structures, retains vegetation and preserves the most steeply sloped areas. Transportation objectives in the Plan recognize the need to locate buildings close to transit and suggest a minimal density necessary to support transit – this site is proximate to two bus routes and proposes just under 16 units per acre, which is ideal for transit support. Additionally, the Plan stresses the benefit of neighborhood meetings – the applicant initiated meetings with the neighborhood prior to the City review process to keep open communication and address concerns.

This project aligns with City Council's goal of affordability by offering a mix of unit sizes and types, including smaller studio units, which will fit the housing needs of a variety of Asheville residents. In terms of green & sustainable, the project will meet Energy Star ratings, will be installing rainwater collection devices and has been sited in a way to minimize land disturbing activity as much as possible and retain acres of existing vegetation and natural features.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposed development is located near major road facilities as well as proximate to several transit lines (Rtes. 4 & 8). In addition, the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The UDO requires a traffic impact study for a proposed development that will generate at least 100 new vehicle trips in the peak hour as determined by the ITE Trip Generation Manual. The proposed Caledonia Apartments project will have 100 apartment units. The ITE Trip Generation Manual contains two possible categories that are applicable to this development – 'Mid-Rise Apartments' and 'Apartments'. The 'Mid-Rise Apartments' category is a closer fit based on the size of the development, but has a smaller data set. The 'Apartment' category has a larger data set, but includes a wider range of development sizes with an average number of 230 units. Neither of these categories project a volume that meets the City's threshold (Mid-Rise Apartment – 42 peak hour trips; Apartment – 75 peak hour trips).

If a development does not trigger a traffic impact study by city ordinance, then it is implied that the generated traffic will not cause an adverse effect to the existing level of service.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal minimizes site disturbance with the parking situated beneath the building footprint and leaves almost 4 acres of the 6.45 acre parcel in its current natural, vegetated state.
- A mix of unit sizes is included from studios to 3-bedrooms, providing a variety of residential options at a range of price points.
- Because of the natural slope on the site, the building will appear much smaller scale from the street and pedestrian level.
- Sidewalk will be installed along one side of Caledonia Road, which is identified as a 'needed linkage.'

Cons:

- Although there is a considerable amount of undisturbed land left as open space, the existing grade of that area is over 40% which may inhibit usability and requires a modification from City Council.
- There are long-standing traffic-related concerns in the Kenilworth neighborhood and additional residential units will add to volumes.

Staff recommends approval of the project, finding that the proposal will be compatible with the neighborhood in a positive way and provides a variety of housing options in an infill location. Staff is supportive of the request for relief with meeting the open space requirement due to the topographical challenges inherent to the site.

Mr. Clay Mooney, landscape architect for the project, said the project consists of two separate buildings with 100 units and ranges in mix from studios to 3-bedroom units. The developer feels there is a distinct need for rental properties located within the I-40 to I-240 envelope that encompasses most of Asheville. The last project constructed in this envelope was the Woodbury Apartment project in 1995. We feel the project meets or exceeds many of the goals of the City Plan 2025. We acknowledge this is a steep site, but we have dealt with those issues in a creative and responsible way. Regarding the impervious area, with the institutional zoning designation 80% impervious area is allowed; however, they are only providing 20% impervious area. He used a site plan (City Exhibit 3) to illustrate the parking beneath the building. The disturbed area is only 34% (2.2 acres) of the entire site (6.54 acres). Using an aerial map (Developer Exhibit 1), he showed how the footprint of the Biltmore Gardens Apartments (6.29 acres with 73% disturbed area) compared to their proposed development (6.45 acres with 34% disturbed area). Regarding stormwater, their stormwater detention requirements are significantly reduced because of the amount of their impervious area. He explained the concept of their design for handing stormwater using an aerial map (Developer Exhibit 2), noting that they will meet all the requirements of the City regarding stormwater. Regarding the tree save area, they

are proposing 44% (2.83 acres) which greatly exceed the City's requirements of 30% (1.94 acres). They meet all the City's requirements, except for the City's open space requirement. The site is very steep and they can come within 3500 sq. ft. of meeting the open space requirements by clearing and disturbing an area, but the developer felt that in light of the slopes and also just clearing land to construct something a little less steep was contrary to the intent of the open space ordinance. Therefore, they respectfully request Council grant their modification to the open space requirements. Regarding traffic, the City's Traffic Engineer said the project did not meet the threshold to require a Traffic Impact Study. They are proud of this project and request Council approve the conditional use permit.

The following individuals spoke against the conditional use permit for the Caledonia Apartments, for various reasons, some being, but are not limited to: this project will be the 4th major Kenilworth development project to come before the City in the last 5 years and the three earlier approvals now stand in various stages of development purgatory; the prior development approvals collectively represents a 40% increase in housing units in the Kenilworth neighborhood; new development reviews should not only be judged on the merits of the proposal, but should take into account the latent population and traffic growth associated with the prior approvals; project approval will exasperate existing pedestrian safety and traffic issues; the applicant arranged one meeting with the neighborhood which was a presentation of the applicant's proposed plan; process flawed in that it appears to want public input but then disregards it; neighborhood wants their concerns reviewed; 4 acres of the 6.45 parcel is un-walkable as there are no trails, the terrain is too steep for most people, snakes will be forced to move and the site is full of poison ivy; when trees are cut they will leave unprotected soil that will be washed down to Biltmore Village; because the developer owns two extra parcels of land, he could use it for open space requirements but instead he plans to build another 100 units resulting in a possibility of at least 600 more people with 1200 cars in the future; constructing a 30' tall segmental block wall on a 40% slope is going to take a serious structural feat; the retaining wall required to be built to support the parking and building is not compatible with the natural or topographic features; the project does not fall under the steep slope ordinance (above 2220' in elevation and having an existing grade of 15% or more), but this project sits at 2116' and has an average slope of 40%; allowing this project to move forward will not preserve the scenic views and vistas of Asheville but would spoil the prominent vista from historic Biltmore Village; existing steep, substandard road with many blind curves; developer should have designed his project in a way that accommodated the open space requirements – include additional land in this project sufficient to satisfy statutory open space requirements; traffic safety concerns related to motorized vehicles, bicycles and pedestrians – roadway improvements along Caledonia Road; buildings are too large to reflect neighborhood character – should explore additional articulation of façade and roof to be more compatible with scale and character of neighborhood; proximity of staging site to construction site is a concern due to difficult travel path, traffic congestion and construction personnel parking; concerns regarding move in/move out and service vehicles on-site loading head clearances – increase head clearance in parking and drive under building to accommodate move in/move out vehicles on-site; existing traffic issues in Kenilworth include only one traffic light, steep roads, narrow roads, dangerous curves, non-existent or missing sidewalks, blind corner at Kenilwood and Finalee, and choke points; footprint of building spans more than 960 feet from one side to the other and with one inch of rain many tens of thousands of gallons of water will leave through only 3 outlets; there have been big landslides on slopes with less severe grade than this; since geotechnical studies had not been preformed at the time the project was reviewed by the Technical Review Committee, how did they know the site was suitable for such a project; what is the potential need for blasting or pile driving; most trees on the site are about 60 feet tall, not 104 feet tall; the building will appear as 4 stores (not 2 stories) from street level and will be more massive when coming up either of the two access roads; the proposed development will detract from the charm and intrigue that the Kenilworth Inn creates; concern of negative impact on nearby property values; to allow this development will destroy the aesthetic value; not all open green space should be built on; area mainly consists of single-family homes and this large development of modular, manufactured construction is not in harmony with the neighborhood; petition against development for following reasons (1) Not an affordable housing project; (2)

public traffic and pedestrian safety issues; (3) disproportionate amount of density on three streets in south Kenilworth (Kenilwood, Finalee, Caledonia); (4) runoff from impervious surfaces; (5) many stalled developments around Asheville; and (6) requires an exception to city's open space requirements; only one (No. 6) of the seven conditional use standards have been met; and perhaps institutional zoning is not the correct zoning designation for the area:

Ms. Teddy Jordan, President of the Kenilworth Residents Association
Mr. Peter Loewer, resident on Lakewood Drive (Neighborhood Exhibit 1)
Mr. Peter Stebbing, resident on Finalee Avenue (Neighborhood Exhibit 2)
Ms. Jennifer MacDonald, resident on Caledonia Road
Mr. Terry Meek, resident on Pickwick Road (Neighborhood Exhibit 3)
Mr. David Evers, resident on Finalee Avenue (Neighborhood Exhibit 4)
Ms. Miller Graves, resident on Caledonia Road (Neighborhood Exhibit 5)
Mr. Don Jeffries, Arden resident (Neighborhood Exhibit 6)
Mr. Cliff Yudell, resident on Forest Hill Drive
Ms. Valerie Hoh, resident on Finalee Avenue
Ms. Mary Evers, resident on Finale Avenue (Neighborhood Exhibit 7)
Ms. Angela Maddix, resident on Kenilworth Road (Neighborhood Exhibit 8)
Ms. Ann McLellan, resident of Duke Street (Neighborhood Exhibit 9)
Mr. Bill McClement, resident on Forest Hill Drive
Ms. Roberta Newman, resident on Chiles Avenue

For rebuttal, Mr. Mooney said that they are proposing a sidewalk on Caledonia but on the opposite side of the project. A geotechnical report has since been received. Borings were from 29' to 34' at which point they were terminated because construction would not necessitate excavation below that level. In the report, it states that we can expect excavations to be accomplished by heavy construction equipment, but that blasting would probably not be necessary. Some materials may be hard, but new mattock devices would probably be sufficient to remove that material. He stressed that if the project is approved, they must submit plans to the Technical Review Committee again for final plan approvals or they cannot receive any permits.

Mr. Frank Howington, developer, said that he had no plans to build anything else on the rest of the property. He wants to provide housing for the City of Asheville. Every apartment building in the envelope of I-240 – I-40 down to Biltmore Park is 100% leased. Even if they started the project tomorrow, it would not be on-line for 12-14 months. This project fits well in the institutional zoning. He said that they would do a tutorial revival construction that will complement the Kenilworth Apartments.

When Mayor Bellamy asked if Ms. Jordan, representing the Kenilworth Residents Association, would like to make any rebuttal comments, she declined.

Mayor Bellamy closed the public hearing at 7:17 p.m.

Vice-Mayor Newman moved to deny the Conditional Use Permit for the proposed master plan for the project identified as Caledonia Apartments as it is not compatible with the scale and character of the neighborhood and it is not in compliance with the open space requirements. This motion was seconded by Councilman Bothwell.

Councilman Russell said we must all realize that when we move into a neighborhood that abuts commercial industrial or institutional zoning that the character of the area is going to change over time. However, there are seven standards that must all be met for approval of a conditional use permit. He did not feel that Condition Nos. 1, 2 and 4 have not been met.

Councilman Bothwell felt the project did not meet four of the seven conditions required for approval.

Mr. Mooney said that they do believe this is a worthwhile project for this area, but in light of the comments, he requested that they be allowed to withdraw the project and work with City staff and the neighbors to come up with other options for the project. He also requested any suggestions Council may have to make this a more palatable project.

Mayor Bellamy explained that if the project is not withdrawn then the developer cannot bring back substantially the same project to Council for one year.

Upon inquiry of Vice-Mayor Newman, City Attorney Oast said that if the developer submitted a new application for a substantially different project, the time limitation would not apply and he could bring the substantially different project back to Council within the one year.

In response to Councilwoman Manheimer, Mr. Mooney said that his request is to withdraw the project. City Attorney Oast said that if the application has been withdrawn, there is nothing to vote on.

At 7:40 p.m. in order to give the City Attorney time to research the question of whether the application can be withdrawn after a motion is made and seconded but not voted on, Mayor Bellamy announced a short recess.

Mayor Bellamy explained that City Attorney Oast has advised Council that it is at Council's discretion as to whether they allow the developer to withdraw the motion before a vote or to proceed with the motion. She explained that normally before a motion is made Council comments on the project; however, a motion was immediately made and the developer did not have the opportunity to hear Council comments prior to their motion.

Vice-Mayor Newman felt either way it was pretty clear that a project would need to be substantially different in order to gain City Council support. His preference would be to follow through on the motion and invite the developer to bring forward a new proposal in the future that addresses concerns heard at this meeting. He said that Council does recognize the substantial shortage of mid-range and affordably-priced housing in the City of Asheville. Council will be considering a new policy to provide substantial new incentives (on a case-by-case basis) to encourage that type of infill development in the City.

City Attorney Oast said that if a new project is brought forward and is not identical or substantially similar to the one acted on, the ordinance imposes no delay.

Councilmen Bothwell and Smith agreed to proceed with the motion.

Councilwoman Manheimer felt we might want to examine our Comprehensive Plan regarding urban infill on certain slopes that have certain criteria like roads and other infrastructure issues and to also re-examine our slope development ordinance as it pertains to properties under the 2220' threshold. Regarding this project, she felt it would have to be substantially different being sensitive to the already imposed limitations on the neighborhood. She also felt we need to consider its impact on the overall beauty of that area of the City, e.g., Biltmore Village. Regarding comments about City staff, she felt the City was lucky to have talented, hard-driven staff and she felt they always have the best intentions. Technically speaking the project met all City requirements, except for the density. She felt that staff looked at this project and knew that Council wanted density and urban infill with a trade0off of land conservation, so it was with that good intention that City staff brought this forward to Council.

The motion made by Vice-Mayor Newman to deny the Conditional Use Permit for the proposed master plan for the project identified as Caledonia Apartments and seconded by Councilman Bothwell and carried unanimously.

V. UNFINISHED BUSINESS:

A. DISCUSSION OF ADOPTING A TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution adopting a Transformational Development Projects Incentive Policy.

At the August 24 meeting the City Council directed the staff to prepare a proposal for a new Council policy that would support development meeting thresholds that support major elements of the Council's Strategic Plan. These major elements include easy access (walkability and transit) to major employment centers and areas proposed for redevelopment, that offer jobs as well as affordable and workforce housing elements. The staff had already received direction from the Planning and Economic Development Committee for such a "Transformational Development" policy, and the additional request from the Council that would support "workforce" housing elements was added to that request.

The purpose of the policy would be (1) encourage infill development projects; (2) located in urbanized employment centers of the City; or (3) currently underutilized area in close proximity to major transit lines.

The Planning and Economic Development Committee discussed the proposed policy elements at their meeting last week. The document reflects their comments with one exception. The Committee recommends the following changes to the proposed policy:

1. To ensure flexibility in consideration of projects the policy intent was modified to state:

   "This policy is intended to provide incentives to encourage infill development projects that are located in urbanized employment centers of the City *or* that are currently underutilized but are in close proximity to major transit lines. ("or" added)

2. Item #3 in the required elements was modified to more clearly articulate the intended relationship between support for a project, financial need, and important public benefits (*changes in italics*):

   "Demonstrate that *but for* the requested support it would not be able to *provide the public benefits desired by the City."*

3. Item #4 in the required elements was modified to substitute language from the State law authorizing development financing, NCGS 158-7.2, for "redevelopment area. NCGS 158-7.2 (c) defines "development financing district as an area "comprised of property that is one or more of the following:

   (1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.

   (2) Appropriate for rehabilitation or conservation activities.

   (3) Appropriate for the economic development of the community."

4. Item #6 in the preferred elements was moved from the required elements; as the Committee felt that it imposed too strict a standard for businesses. Also, the language regarding required pay levels was changed from a percentage requirement to a more general requirement:

   "Demonstrate that 70% of all permanent jobs created will, for the life of the incentive, pay ~~at or above 110% of~~ competitive salaries for similar jobs in Buncombe County.

This will be verified in an annual report to be submitted to the City Manager for the life of the incentive.

On one issue, the Committee was divided. Item #1 in the required elements states that a "*percentage of affordable and/or workforce level housing units*" must be included if housing is provided as a part of the project. Concern was expressed that this statement should perhaps state a specific percentage requirement as is stated in #4 of the preferred elements. Although that preference was not unanimously supported, the Committee requested that the alternate language be presented to the Council for your consideration. The modified #1 in the required elements would be:

"Demonstrate how it fulfills important public purposes that should include creating jobs, installing desired public infrastructure, using a substantial level of green building techniques, and if housing is included providing a minimum of 10% affordable housing or 25% workforce level housing units."

The strategic plan goals that are most closely aligned with this proposal are within the (1) Affordable Goal in that it expands opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development; and (2) Job Growth and Community Development Goal in that is will support diversified job growth and small business development; and will promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- Adds a tool to achieve the Council goal for expanding opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development
- Adds a tool to achieve the Council goal for supporting diversified job growth and small business development; and promotes sustainable, high-density, infill growth that makes efficient use of existing resources

Con: None noted

The proposed policy elements are intended to achieve these stated goals of the Council. No new incentives are offered, but the existing incentives for affordable housing and development that creates jobs are extended to allow consideration of projects offering substantial levels of workforce housing. There are three parts to the policy described below: elements that must be included before the Council would consider support for a project, elements that are preferred, and the types of assistance the Council can consider extending. A basic tenant of the policy is that meeting the thresholds for Council consideration is not a guarantee that such assistance would be offered – that would remain at the discretion of the Council. The elements provide a threshold for consideration only.

The threshold requirements (1) meet public purposes (a) create jobs; (b) desired public infrastructure; (c) using substantial level of green building techniques; and (d) provide a percentage of affordable and/or workforce housing; (2) directly address Council's annual strategic goals; (3) the proposal would have to show, but for the requested support it would not be able to provide the public benefits desired by the City; (4) be located in "redevelopment" areas; or in areas designated by Council as priority redevelopment areas (in or within ¼ mile of designated urbanized employment centers) or voluntary annexation areas; (5) floor area ratio exceeding 1.0; (6) located on an area of land larger than 1 acres; (7) greater than 3:1 private investment to public assistance; and (8) minimum 20% equity.

Preferred elements (that the developer would have to document that they meet the majority of these elements) include: (1) if it included housing, would have to have a minimum of

20% square feet of non-residential (job creation) uses; (2) pedestrian or open space amenities as noted in the master plan for the location; (3) meet an outside agency certification "green" or "sustainable" standard (such as LEED standard); (4) if housing in the project, the housing element of the project must include a minimum of 10% defined "affordable" housing or a minimum of 40% workforce housing units; (5) residential units must be the primary residence of the occupants; and (6) 70% of all permanent jobs created will, for the life of the incentive, pay competitive salaries for similar jobs in Buncombe County.

Eligible areas (1) urbanized employment centers annually designated by Council (2) areas current designed by City Council as priority redevelopment areas (a) under utilized areas of the downtown Central Business District; and (b) River Arts District; and (3) recommended initial designated urbanized employment centers.

Using a map, he said it indicates, according to the proposal, what the recommended areas for designation would be: downtown Central Business District; French Broad River corridor from the I-240 bridge to the I-240 on-ramp at Amboy Road; Swannanoa River corridor from the French Broad River to Biltmore Village; Mission Hospital Complex/A-B Tech Campus area; East Riverside area along Clingman Avenue and Depot Street; Biltmore Village; West Haywood corridor (in West Asheville) from its intersection with Beverly Drive in the east to its intersection with Patton Avenue to the west; Merrimon Avenue from I-240 to Beaver Lake; Broadway Avenue from I-240 to its intersection with Hillside Drive; Patton Avenue from the French Broad River in the east to the intersection with Haywood Road in the west; Biltmore Avenue from the edge of the downtown Central Business District to its intersection with I-40 south of Biltmore Village; Tunnel Road from the Beaucatcher Tunnel to the intersection with South Tunnel Road; and East Tunnel Road from I-240 to the intersection with the Blue Ridge Parkway.

He said if the policy is approved the following assistance will be available at the discretion of the Council: (1) affordable housing elements are eligible for use of the Asheville Housing Trust Fund; (2) 50% fee rebate for the following fees and charges: zoning permit fees, building permit fees, driveway permit fees, grading permit fees, plan review fees and water service connection fees; and (3) economic incentive grant agreement (a) an amount equivalent to City property taxes (in excess of currently assessed taxes); and (b) annually applied for the first 5 years of its operation after construction is complete.

If support is given, the City will not receive standard development permitting fees (that fund staff time required for reviews), but all required reviews will be needed. If support is given, the City will not receive additional taxes for the improved property for the length of the incentive authorized; although City services will need to be provided to the property.

City staff recommends approval of the new Council policy, with any amendment determined by the Council.

Mr. Staudinger responded to various questions/comments from Council, some being, but are not limited to: how can we confirm that "but for the requested support it would not be able to provide the public benefits desired by the City"; since there was discussion about using this policy on a purely residential development, does staff feel comfortable from a legal standpoint; does the policy adoption require a public hearing; do we have the internal experience to verify that developers have achieved their green and sustainable points since we are not requiring them to be formally certified; and if a developer does the majority of the preferred elements and chooses not to do any green building, can they still get the incentives.

Councilman Bothwell often expressed his skepticism about incentives for any developers because we tend to pick and choose winners. The only justification that he can find is to get a real social benefit, therefore, he suggested the housing element of the project must include a minimum of 30% defined "affordable" housing units and a minimum of 60% "workforce" housing units.

Vice-Mayor Newman would like to see the policy as simple, predictable and accountable as possible. He would be generally in favor of ratcheting up some of the standards we are asking people to hit, but in return for not making it so subjective for Council.

Councilman Smith suggested the following amendment to threshold No. 1: ""Demonstrate how it fulfills important public purposes that should include creating jobs, installing desired public infrastructure, using a substantial level of green building techniques, and if housing is included providing a minimum of 10% affordable housing or 25% workforce level housing units." From a financial standpoint, perhaps within the Central Business District (CBD) itself, that those affordable housing requirements would look more like 8%, whereas, those areas outside the CBD would have the hard 10% affordable and 25% workforce. Also in the preferred elements, he recommended that the affordable housing must exceed 10% and that the workforce housing must exceed 25%.

In response to Councilman Davis, Mr. Staudinger explained that that the section entitled "If the City Council extends support, the following assistance will be available at the discretion of Council" was added to just show that there are other incentives (existing programs) that can be available.

Mayor Bellamy felt it was confusing to include that in the policy because the first two points regarding the Housing Trust Fund and 50% fee rebates have already been discussed and voted on.

Mayor Bellamy felt it would be appropriate to talk to HUD representatives to make sure that the policy we put in place will not disqualify projects from consideration from our partners in the community that use HUD funding.

Councilman Russell felt that the transformational projects can happen in areas other than those eligible areas (e.g., Shiloh). Also, he felt that requiring the project be located on an area of land larger than 1 acre is too large.

In response to Councilman Russell, Director of Economic Development Sam Powers said that staff will look at how we could incorporate the areas of the Urban Progress Zones.

Mayor Bellamy explained why she did not support the title of the policy being "transformational" projects policy and incentives. She felt that since we want to encourage a multi-modal system, we should include all major corridors – all of Hendersonville Road, Merrimon Avenue, Tunnel Road and Patton Avenue. She expressed concern about No. 1 of the preferred elements, in that we are asking a proposed developer that comes in with a residential project that he must include a minimum of 20% square feet of mixed use, even though it does not meet Council's goals of green, affordable, etc. Also in the preferred elements, she asked (1) that a map of designated urbanized employment centers be a part of the policy; (2) the policy be made clear to show that as along as the LEED standards have been achieved in the building, no actual LEED certification is required (due to cost of actual certification); (3) how long the project needed to comply with the minimum of 10% affordable units and minimum of 40% workforce housing units; and (4) is it realistic that residential units must be the primary residence of the occupants.

Vice-Mayor Newman said that he had several comments which he would put them in writing and circulate them to Council and staff.

In the threshold requirements, Councilwoman Manheimer (1) supported the expanded "redevelopment" areas; and (2) supported the one acre threshold is too large in the CDB and suggested .25 in the CBD and one acre outside the CBD. Regarding the preferred elements, she (2) wondered how a developer would view the preferred element requiring a certain percentage of affordable housing, because she wants this policy to function as an incentive; and (2) supported

requiring the minimum of 10% affordable housing units and a minimum of 40% workforce housing units outside the CBD, but inside the CBD require some percentage because of the cost of land within the CDB is cost prohibitive.

Vice-Mayor Newman felt that if a project has some residential in it then some of it should be affordable or workforce and there should be a greenbuilding requirement. In fact, he felt that a greenbuilding requirement should be for any project in the City, especially if you are asking public support of the project. He would be open for the Healthy Built Homes standards.

Councilman Smith said that he supported (1) the Healthy Built Home standard certification or the elements therein; (2) the expanded "redevelopment" areas; and (3) the one acre threshold in the CDB be reduced to.25 in the CBD and ½ acre outside the CBD. He wanted to make it clear that if a developer accesses the Affordable Housing Trust Fund monies they understand that the affordability requirements would go beyond the five years because of the Trust Fund requirements.

City Manager Jackson suggested Council either call him or send him with any additional comments they would like reviewed for incorporation in to the policy.

It was the consensus of Council that this item be continued to allow City staff the opportunity to review Council's comments for perhaps a revised policy.

Upon inquiry of Councilman Davis, City Manager Jackson agreed to send this policy to the non-profit and for-profit development community for their input. He would send it to the affordable housing community, green building community, Council of Independent Business Owners, Chamber of Commerce, etc. He said that the policy is crafted in such a way that it does not impact the project on the table (Montford Commons).

VI. NEW BUSINESS:

A. MOTION TO ALLOW DEVELOPMENT PERMIT EXTENSION FOR ANOTHER YEAR TO DECEMBER 31, 2011

City Attorney Oast said that this is the consideration of Permit Extension Act "opt-out" provision.

In 2009, the N.C. General Assembly adopted the "Permit Extension Act of 2009." The effect of this law was to suspend the running of expiration periods for certain government-issued development permits. Most of the listed permits were State-issued, such as environmental permits, but the Act also covered some permits typically issued by local governments, such as conditional use permits, plat approvals, site plan approvals, and certificates of appropriateness. This law was a reaction to the economic situation and its impact on the building and financing industry.

The suspension period, which is applicable to all permits encompassed by this law, is retroactive to January 1, 2008, and runs through December 31, 2010 - - three years.

In 2010, the General Assembly amended the Permit Extension Act to extend the period of suspension for an additional year, to December 31, 2011. That new law, however, provided that local governments may by resolution "opt-out" of the additional one-year extension.

Provided that a local government does not opt-out of the additional one-year extension, the Act establishes some additional requirements that are intended to protect the City from the consequences of abandoned projects, such as maintaining performance guarantees and completing infrastructure. The previous law was silent as to these additional protections and there has been some disagreement between local governments and developers on these issues.

The new law makes it clear that certain development regulations continue to apply, and that permits may be revoked for non-compliance.

This extension is an "opt-out" extension; if Council wishes for the City's development permits to be extended for one year, no action is required. This extension, or the "opt-out," would apply to all permits; the City may not "opt-out" as to some but not all.

This is consistent with the Strategic Operating Plan goals of streamlining the development process. It is also consistent of several actions taken by Council in the last several years to provide some relief to developers, and the establishment of the development permitting center.

Pros:

- Extends development permits without having to consider individual projects.
- Provides some relief to finance and development industry in difficult times.
- Provides extra protection regarding abandoned/stalled projects.

Cons:

- Slight revenue loss from permit renewals.
- Staff will need to monitor dormant sites.

Slight revenue loss is anticipated but the size of the loss is difficult to estimate since we don't know which projects might reapply if their permits were to expire.

Do not opt-out; allow the additional extension to apply to the City of Asheville (and extraterritorial jurisdiction). No action or resolution is needed.

City Attorney Oast noted that the Planning & Economic Development Committee asked that staff provide a list of permits that the permit extensions would apply to; however, due to the amount of projects, the list is still being developed.

Mayor Bellamy noted that the developers have already spent money and time on these projects in addition to being approved though a public hearing process.

City Attorney Oast reiterated that the extension would apply to all permits and the City cannot not "opt-out" individual projects.

When Mayor Bellamy asked for public comments, none were received.

Councilmen Bothwell and Smith felt it would be appropriate to see the list of projects that the permit extensions would apply since a decision does not need to be made until December 31, 2010.

Councilman Davis moved to allow the development permit extension for another year, to December 31, 2011. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilman Bothwell and Smith voting "no."

City Attorney Oast said that he will provide the list of projects to Council and after reviewing the list if City Council would like to opt-out of the additional one-year extension, they could adopt a resolution prior to December 31, 2010.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy recognized Councilman Davis for his efforts in bringing the Speedway Memorial to fruition on September 23, 2010, at Carrier Park. Councilman Davis thanked various members of the community for their donations and support, along with City staff, for their hard work on an important part of the racing community that needed to be recognized.

Councilman Bothwell thanked Councilman Davis and Economic Development Director/Interim Civic Center Director for their efforts in bringing events to the Civic Center, e.g., Elton John Concert and the Moogfest.

The following claims were received by the City of Asheville during the period of September 1-16, 2010: Phil Clark (Streets), Carol O'Neal (Streets), Lisa Lail (Streets), Ravencroft (Water), Mariya Fesiuk (Parks & Recreation), Anna Marie Smith (Police) and Edie Dooley (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with the following Complain on September 23, 2010, which is generally described as follows: Erie Insurance Group, as Subrogee of David Hirschman and Wendy Peterson v. City of Asheville. The nature of the proceeding is an insurance subrogation claim alleges damage to structure due to ruptured waterline. This matter will be handled by outside counsel.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:47 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Friday – October 8, 2010 - 11:00 a.m.
Asheville Hilton Biltmore Park
Pisgah B Room

City Council Capital Improvement Plan Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Bellamy convened the meeting and welcomed City Council, staff and the audience to the Capital Improvement Program (CIP) Worksession. She explained that Council will be provided a foundation of capital planning information to prepare for the upcoming budget process. At Council's retreat in January and then throughout the budget planning process, City Council will delve deeper into the capital needs as well as the operational needs.

Assistant City Manager Jeff Richardson explained that capital planning is contingent on financial forecasts and the overall budget process. Staff is working on a sustainability revolve fund for city facilities; these investments are not included in the CIP snap-shots. He said that this discussion focuses on the general capital budget and does not include in-depth information on enterprise capital budgets (water, civic center, transit, etc.).

Mr. Richardson explained that a CIP is (1) a statement of the City's policy regarding long-range development; (2) presents a long-term funding strategy and associated schedule to meet highest priority capital projects: (3) typically spans five years; and (4) captures any projects that involve needed repairs or improvements to our existing infrastructure (streets, parks, city facilities, etc.) and the acquisition or construction of new infrastructure (fire stations, traffic signals, sidewalks, etc.) with an estimated cost of $50,000 or more. He then explained how capital programs are funded and how local governments issue debt. Financing modes consist of General Obligation Bonds, Certificates of Participation, Limited Obligation Bonds, Special Obligation Bonds, Revenue Bonds, Special Assessment Revenue Bonds and Tax Increment Financing Bonds.

Budget Manager Tony McDowell identified best practices financial policies and annual CIP processes. He then reviewed Asheville's history and benchmarks, along with referenda history, referenda comparison, and other debt issuances. Using charts, he explained the debt capacity comparison.

Mr. Richardson then said that Asheville's growth rate was the slowest among the 15 largest cities in North Carolina over the last ten years. Among all cities in North Carolina with populations above 50,000, Asheville has the highest daytime to nighttime ratio (a) more than 40,000 people commute into Asheville for employment; and (b) 61% of people who work in Asheville live outside the city limits. This daytime population to nighttime ratio does not take into account tourism, recreation and other services like healthcare (approximately 1.5 million room nights in Buncombe County during 2009). The City's share of sales tax has declined from 23.5% in 1990 to 19.60% in 2010. Asheville takes more calls for emergency services per capita than 17 cities involved in the UNC School of Government benchmarking project (178 calls per 1,000 people). Charlotte receives 126 calls per 1,000 people. Asheville would need to add 51,000 more residents to bring call volume more in line with the State per capita average. The operational budget has grown to keep up with the demands of growing population outside our jurisdiction lines. While public safety staffing has grown by 17% over the last 10 years, our staffing to call volume ration remains at or below the State average.

Capital milestones include (1) automated garbage collection program; (2) $40+ Million in water system improvements through revenue bond; (3) Asheville has taken advantage of significant grant opportunities; (4) two new fire stations; (5) Livingston Street Center; and (6) Sullivan Act capital allocation.

Mr. McDowell then provided Council with three hypothetical CIP snap-shots along with associated outcomes and metrics for a five-year CIP, an additional $1 Million and an additional $4 Million.

City Manager Jackson provided Council with the CIP scenario comparison chart.

When Mr. Richardson suggested we create a staff facilitated budget worksession for citizens and then provide that information to Council to assist them in setting their strategic goals, Mayor Bellamy felt that we have already received citizen input via the master plans.

Staff responded to various City Council questions regarding the three hypothetical CIP snap-shots.

In summary, the following action steps will be provided to Council: obtain information from HUB about their project and inform Council about the possibility of enhancing matrix and reporting of master plan progress (for Council's January retreat); analysis of measuring impact of Asheville being a regional center as a result of the big disparity of daytime and nighttime population; analysis of the costs associated with the increased public safety on I-240/I-40/I-26; how would a Business Improvement District impact the City's CIP; analysis of annual debt service payments under all three hypothetical scenarios; how do the Transit Master Plan goals reflect in the CIP scenarios; update on status of existing capital projects, in particular 51 Biltmore Avenue and Haywood Street projects/properties, for possible re-programming of revenue; schedule review of Livingston Street Development Plan, phasing, partnership and funding options; and develop a specific 5-year CIP plan and also a 5-20 year general schedule of public improvements.

After each Council member offered their opinions on the CIP, it was the majority consensus of Council that Council favored something more a little more than scenario 2 (additional $1 Million).

Mayor Bellamy adjourned the meeting at 1:43 p.m.

Magdalen Burleson
City Clerk

Mayor

Tuesday – October 12, 2010 – 3:00 p.m.
Worksession
1st Floor North Conference Room

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Unified Development Ordinance amendments according to the recommendations of the Downtown Master Plan.

Urban Planner Alan Glines said that this is the consideration of an amendment to Chapter 7 of the Code of Ordinances to amend the Central Business District (Section 7-8-18).

Two years ago City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by City Council in May 2009. The Council directed the staff to work with stakeholder groups to prepare the changes to the UDO necessary to implement the plan recommendations, and other implementation strategies.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to determine the best way to implement the recommendations in the plan. After over 20 meetings they concluded their work, and their final proposals for the Central Business District were presented to the Downtown Commission. At their June 2010 meeting, the Commission voted to approve the changes as recommended by the Committee. The Planning and Zoning Commission, after a series of meetings to review the proposals, voted on September 1, 2010, to approve the wording amendment. Other stakeholder groups continue to work on implementation elements that do not require UDO changes.

The proposed UDO text amendment replaces the current development standards for the Central Business District (CBD) with new text and maps that reflect the goals of the Asheville Downtown Master Plan. Changes to the UDO are directly related to *Strategy 4: Shape building form to promote quality of place* and *Strategy 5: Update downtown design guidelines* from the master plan.

The master plan introduces regulations that are form-based rather than use-based. They focus on the basic building design elements to strengthen compatibility, ensure pedestrian orientation, and enhance the character of the skyline. The existing ordinance provides minimal direction to ensure that new building construction is compatible with neighboring properties and with downtown in general. The plan introduces concepts for the CBD that include new definitions for how height is measured, building height maximums based on location in downtown, a context transition edge adjacent to residentially zoned properties, shadow protections for certain parks, a street wall requirement, and building step-backs. The plan also provides new development requirements for the portions of new structures that exceed 75 feet in height including a maximum floor plate, and a limit on the longest dimension of the tower portion of a building. All structures will be required to include a building cap, a primary entrance along a frontage line, and requirements for windows and other openings at the ground level and upper stories.

The charge of the Council to the Urban Design Action Committee was to study how each master plan concept would work and realistically function in downtown, and to avoid any "unintended consequences" from implementation. With that charge, some changes are proposed that slightly modify the master plan recommendation while maintaining the goals of the plan. The changes recommended for the master plan are summarized below:

Front Setback – The master plan suggested averaging front setbacks based on street context. The Committee instead recommends retaining current requirements in the CBD for zero-foot setback from the right-of-way-line with limited exceptions to emphasize urban form in new construction and not allow master plan suggested setback averaging because many areas in downtown currently have a suburban form.

Measurement of Building Height – The Committee found that there are practical difficulties with the master plan recommendation to re-measure/re-assess the height of a building based on the grade change across the site and instead recommended establishing a single height reference point at the primary pedestrian entrance.

Height Zone Locations – The Committee suggested adjustments to the height zone maps to reduce the locations of the tallest height zones based on compatibility with the traditional downtown core. Specifically, this reduction is in three locations – surrounding the Grove Arcade and areas below Hilliard Avenue along Church Street and Biltmore Avenue.

Applicability – The Committee recommends applying the master plan requirements and standards only to areas zoned Central Business District and not to other zoning districts surrounding downtown, as is shown on several maps within the plan. This will simplify implementation and aligns with community expectations to focus on downtown regulations.

Context Transition Edge – The Committee recommends that the Context Transition Edge be adjusted to apply only to the CBD areas most sensitive to changes in height (immediately adjacent to residentially-zoned properties) and limiting the application of the height buffer to 100 feet wide (instead of 300-400 feet wide as proposed in the plan).

Shadow Restrictions – Due to continuing concern about the impact of shadow requirements on building near very small parks, the staff proposed adjusting the building shadow limitations for parks and open spaces to only apply to larger park areas and exclude small pocket parks, private parks and plaza spaces, with definitions created for these uses. Additionally, the Committee recommended removing the shadow limitations on historic structures because other protections could be developed for them involving input from preservation professionals.

Street Wall – Because of its complexity, the committee recommends maintaining the street wall concept but reworking it to simplify understanding and provide some additional options that more completely reflect the historic fabric of downtown.

Air Rights – The Committee, reflecting a staff recommendation, recommend removing the air rights option for side step-backs for upper stories of buildings because of legal concerns.

Building Cap – The Committee included clarification of the building cap requirements to measurable standards. Originally the master plan provided a number of subjective design recommendations that will be more appropriate in the Downtown Design Guidelines rather than placed in this ordinance.

Key Pedestrian Streets – The Committee suggested some modifications of the Key Pedestrian Streets map and requiring the primary pedestrian entrance to be placed on these streets if the option is available.

Tower Floorplate – The plan recommended limiting the allowable floorplate dimension for towers over 75'. The Committee agreed with this recommendation but suggested increasing the allowable square footage to 8,000 square feet or 40% of lot area as a more practical number.

The new amendment will include a type of form code that is similar in look to the other ordinances in the UDO but which introduces building envelope concepts and appropriate illustrations to convey the new standards. Maps will also be a part of the ordinance to easily identify boundaries for specific requirements in the ordinance.

Mr. Glines then went into a little more detail regarding a few new concepts and then reviewed some maps that moderated the height of a structure. He points he reviewed are as follows:

(1) Key Pedestrian Streets – the existing concept in the UDO for downtown has been expanded;
(2) Height is defined differently in the CBD measure from the primary pedestrian entrance to the highest occupied floor, the remaining occupied area, attic, rooftop features will be required to occupy no more than 50 additional feet;
(3) Primary pedestrian entrance will be accessed from a key pedestrian street if one is along the site;
(4) Traditional Downtown Core – defined by a map and corresponding to the historic core of downtown;
(5) Context transition edge – moderates the heights of buildings when they are adjacent to and impacting residential zones;
(6) Height zone map recommended for downtown – some adjustments were made upon recommendation of the Downtown Commission to remove the taller height zones east of O.Henry and east of Church Street and a small area along Biltmore Avenue;
(7) Some limitations on public parks and plaza spaces, providing new definitions for these but excluding pocket parks and private park type spaces.
(8) The street wall is a new concept that was developed to preserve the experience along the street for pedestrian, coinciding with the traditional building principle of taller structures for providing a base, middle and cap. The street wall is the base portion of the building. A step back along the front or side is expected and in a few circumstances other alternatives could be provided. For example, in the traditional downtown core, the street wall will be between 2 and 4 stories. In the areas outside the core, it will follow a 1:1 relationship with the width of the right-of-way. This concept was given a lot of consideration by the Urban Design Action Committee to make it effective, but also to simplify it. Associated with the street wall is a step back from front or side by 10 feet or in certain circumstances a clear change of materials could also be sufficient to illustrate the point of the street wall. He used maps to illustrate the street wall concept.
(9) 75-foot height delineation. Specific requirements for projects that are high-rise structures in the NC State Building Code. Using drawings, he described how above 75-feet several things will happen.
(10) Tower size is limited to 40% of the lot area or 8,000 square feet which is smaller.
(11) No dimension in the tower portion of a building can be longer than 145-feet and this is in relation to the longest side of the Flat Iron Building.
(12) External Vista Points – He showed images of proposed building project areas from each location surrounding downtown as a tool to evaluate the structure in the skyline.

3. Public view corridors – If a project lies within a public view corridor a photo image from the vantage point will be required and if possible the building oriented to least disrupt the long view shed.

He said that a few additional items that all projects must provide include: a building cap regardless of scale of building, some termination of the building is required, and a roof feature or cornice line is required. He said that the primary pedestrian entrance along a frontage line is to be placed along a key pedestrian street if one is available to the site. Regarding fenestration required, more along the street and a limited amount along upper facades. This has been reviewed with a few additional scenarios.

West Asheville UDO Changes to CBD Zone

A related amendment has been finalized that proposes wording changes that will apply to the west Asheville CBD areas. There are two CBD sections along Haywood Road that cover about 60 parcels totaling approximately 18 acres. The proposed changes recommend a substantial height reduction for west Asheville, as there appears to be a general belief that very tall buildings are not appropriate along Haywood Road, and should be limited to the downtown CBD. Landscape buffer options are also proposed for the west Asheville CBD areas based on the scale of a specific development adjacent to residential areas. If these buffer options are adopted, these could provide a useful alternative for other areas in the city where commercial zones are directly adjacent to residential zones. These changes were worked out with the west Asheville property owners and interested residents at a series of meetings. Since they have met with property owners and some property owners along the corridor, they would like to propose that the height be capped at 75 feet to the highest floor level with 30 additional feet for the final living space and roof top features. In the current code for the CBD, there is no buffer required between a project site and neighboring residential zones. Along Haywood Road there are residential neighbors surrounding the CBD (and really all along Haywood Road) and some limited buffer would be helpful to reduce the impacts of the CBD areas. We would like to propose several options that would be available to a developer according to the scale of the proposed project. Based on the master plan proposal to buffer the height but allow a 2-story structure, a limited planting strip would be provided along that property edge. For a medium scale project, perhaps at 4 stories, a 15-foot planted buffer would be provided; and finally if a full size buffer was provided according to the table in Article 11, then there would be no requirement to buffer the height of the project. So, 75-feet could be developed. This proposal was reviewed with the group who thought this could be a reasonable compromise. Also the same information was presented to the Coalition of Asheville Neighborhoods and they felt this was workable and the idea of buffers size based on the scale of the commercial development could work along other corridors. We also expect to start a corridor study for Haywood Road and bring back that to City Council late next year.

There are also three other isolated Central Business District-zoned parcels in Biltmore Park in south Asheville. In the past the area for rezoning when development plans have been proposed, Urban Village has been the most frequently used zoning district. They would also be affected by the height limit of 75 feet like in the west Asheville districts. There are no development plans for these parcels and future development will likely require rezoning as a part of a new development plan, so there is no plan for modifying them, although they will be affected by the changes to the CBD district.

The Urban Design Action Committee identified a number of items that they felt should receive additional attention but which were beyond the specific scope of their work, and not essential for the implementation of the majority of the master plan recommendations. They asked that this list be presented as unfinished items that may be studied by the Downtown Commission or other appropriate groups:

1. View Corridors to be reviewed again for specific locations

2. External Vista Points ("Vista Trail") development providing vistas into downtown
3. Expansion of the CBD along Ashland and Biltmore Avenues
4. Incentives or trade-offs for new parks, green features, etc.
5. Shadow Impacts on sunlight-dependant historic resources or sunlight-dependant "green" features
6. Transfer of Development Right possibilities
7. Protection for historic structures

The Planning and Zoning Commission considered the following clarifications based on public comments received during the review and recommended their inclusion into the proposal:

1. The ordinance will apply to all new construction and/or changes that modify the exterior walls and/or roof of an existing building. There was additional clarification that the ordinance will not apply to routine maintenance, repair or replacement of the same or similar materials on existing buildings.
2. Requests for variances will rest with the official or agency responsible for project approval and with all variance requests, the Downtown Commission will provide a recommendation as a part of the process.
3. The descriptions of several sections were edited to clarify the meaning and requirements.

The wording amendment being considered is in direct support of the Asheville Downtown Master Plan adopted by City Council on May 26, 2010 (Resolution 09-102) The wording amendment represents the implementation of Strategies 4 and 5 focusing on the character and scale of the built environment. Some minor changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved. The adoption of the wording amendment is also in alignment with the goals of the Strategic Plan 2010-11 which emphasize fiscal responsibility by implementing an approved master plan. The plan has represented a strong partnership with supporters and stakeholders of downtown who were heavily involved in developing the strategies in the master plan and continue to meet to implement the plan.

Pros:

1. Implements a community developed master plan.
2. Provides a recommended form-code framework for designing new structures.
3. Assures adequate air and light at the sidewalk level and promotes compatibility with the existing historic context.
4. Encourages views between tall buildings and enhances the skyline vistas of downtown.
5. Improves the compatibility for the two areas of Central Business District zoned property located along Haywood Road in west Asheville with the single-family neighborhoods that adjoin that property.

Cons:

1. The code is more complex and may be difficult to explain and understand for the layman.
2. Developable area per lot is reduced above the height of 75 feet (may be considered a pro).
3. As with any change to the UDO regulations, the impact of the new ordinance may not be fully understood until new developments are proposed.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment at their meeting on 9-1-10. The wording amendment was reviewed with the Commission over four meetings to carefully consider the details of the ordinance. The Commission recommended some clarifications to the ordinance which have already been reviewed in this staff report and are part of the proposed ordinance being considered by City Council.

The Urban Design Action Committee endorsed the wording amendment and sent it forward to the Downtown Commission for consideration. The Downtown Commission after adjustments to the height map voted to approve the amendment on June 10, 2010 and recommend it moving forward to the Planning and Zoning Commission.

This proposal has also been shared with interested stakeholders along Haywood Road and with Biltmore Farms and new concepts for landscape property-line buffers were reviewed with the Coalition of Asheville Neighborhoods (CAN).

The Planning and Development Department staff recommends approval of this wording amendment.

Throughout Mr. Glines' presentation, he responded to various questions/comments raised by the Council. Council requested (1) more input from builders or architects on the building step-backs, so building do not look like pyramids; and that (2) Mr. Glines contact the Bowers, Ellis & Watson, the architecture firm that is a major property owner along the Patton Avenue corridor into downtown, to discuss the street wall concept due of the width of the road on Patton Avenue.

Unified Development Ordinance Amendments regarding Review Process Elements

Urban Planner Julia Fields said that this is the consideration of an amendment to Chapter 7 of the Code of Ordinances which would alter the review process for development occurring in the Central Business District.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to evaluate the processes for the review of downtown projects. The proposals on processes have been on a different track from those for design standards. All ordinances are being presented to the Asheville City Council at the same time.

The ordinance presented details the necessary changes to the Unified Development Ordinance (UDO) concerning processes for development occurring on parcels zoned Central Business District (CBD) and located within the boundaries of the Design Review Overlay District.

This proposed UDO text amendment adds a new section to Article V ("Development Review Procedures") to outline the procedures for reviewing projects proposed on parcels zoned CBD and located within the boundaries of the Design Review Overlay District (CBD/DDR). Changes that are recommended reflect the goals of the Asheville Downtown Master Plan (DTMP) and the recommendations of the Urban Design Action Committee. These changes are directly related to Strategy 6 of the plan: *Make downtown project review, transparent, predictable, and inclusive of community input.*

The new section in Article V sets forth the procedures for Level I, II and III project review in the CBD/DDR: These procedures differ from the procedures in other parts of the City's jurisdiction as follows:

- The project level thresholds for development review in the CBD/DDR are different. Level III review will apply to those projects above 175,000 square feet or above the Intermediate Height Zone (145 feet). Level II review will apply to those projects between 20,000 and 175,000 square feet in size and up to the Intermediate Height Zone. All other projects are subject to Level I review.
- The order and format of the review process is different in the CBD/DDR except for Level I projects which are handled at staff level. Level III projects that are in the traditional downtown core go to the Technical Review Committee (TRC), the Downtown

Commission (DTC), the Planning and Zoning Commission (P and Z) and to Asheville City Council through a conditional zoning process. Level III projects outside of the core follow the same review process except Council is only considering these projects for compliance with applicable standards and regulations. Level II projects go to the TRC, DTC, and P and Z for approval.

- Early developer sponsored meetings are required for the Level II and Level III projects. Such meetings are strongly recommended for Level I projects.
- All meetings where project proposals in the CBD/DDR are reviewed shall provide notification through publication in a newspaper, mailed notice and posted notice.
- Level II project approvals are valid for two (2) years.
- Large phased developments must submit a master plan.
- Variance requests for projects proposed in the CBD/DDR shall be granted by the Planning and Zoning Commission (acting as the Board of Adjustment) with a recommendation from the Downtown Commission except for landscaping requests. Alternative landscaping requests must be reviewed and approved by the Asheville Tree Commission. Planning and Development Department staff may flex up to 10% on standards concerning openings and expanses of wall.
- Appeals from decisions of the Planning and Development Department or the Downtown Commission shall be heard by the Planning and Zoning Commission (acting as the Board of Adjustment). Appeals from the decisions of the Planning and Zoning Commission shall be heard by the Asheville City Council.

At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council.

This wording amendment reflects proposals set forth in the Asheville Downtown Master Plan adopted by the Asheville City Council on May 26, 2009. Specifically, it implements elements of Strategy 6 of the plan. Some changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved.

Pros:

- Implements a community developed master plan.
- Sets forth a process that provides greater certainty to developers on projects in the CBD/DDR.
- Provides for a more transparent review process for projects in the CBD/DDR.

Cons:

- Some may be concerned over the elimination of City Council discretionary approval for all but the largest of projects.
- Some may be concerned that the requirement for developer sponsored meetings for Level II and Level III projects is burdensome.
- Some may feel that City Council review of Level II projects outside of the traditional downtown core (only reviewing for compliance with standards) is an unnecessary step as this review has already been conducted by the Planning and Zoning Commission.

Additional cost associated with notification of property owners for projects being considered by the Asheville Downtown Commission. First class postage for property owners within 200 feet is the proposed requirement. Actual amount will be dependent on the number of Level II and Level III projects proposed and the number of property owners to be notified.

City staff recommends approval of this wording amendment. At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council.

There was considerable discussion throughout Ms. Fields' presentation with each Council member ultimately outlining their view on the proposed amendments. Ms. Fields responded to various questions/comments raised by the Council, some being, but are not limited to: what is the appeal process from the Tree Commission; who can appeal decisions; request for pictures to show what a 175,000 building would look like, or any comparable building in Asheville; what is the additional time for projects to be reviewed by City Council outside the core area; is it possible to put some Council goals (e.g., affordable residential component – if in project - and green elements) in the ordinance and if a developer includes those components (and meets all other criteria) then there is a high degree of predictability that the project can be approved without moving forward to City Council; will a slender building still require a step-back; and how do other cities handle conditional zonings or conditional use permits for buildings of 175,000 square feet in their downtown area; the public process has proved useful to City Council in the past.

It was the consensus of Council to not schedule a public hearing before City Council on these amendments on October 26, 2010, but instead continue this worksession until November 9, 2010, and set the City Council public hearing on November 23.

At 4:32 p.m., Mayor Bellamy recessed the worksession to go into the formal meeting.

Tuesday – October 12, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Ms. Laura Degroat and representatives from Girl Scout Troop 30017, 30513, 30502 and 30585 from the Carolinas Peaks to Piedmont Council led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF GIRL SCOUT TROOPS 30017, 30513, 30502 and 30585 FROM THE CAROLINAS PEAKS TO PIEDMONT COUNCIL

Mayor Bellamy recognized representatives from Girl Scout Troops 30017, 30513, 30502 and 30585, Lora Degroat, Kendra McIntosh, Katherine Podraza, Julianne Moore, Natalie Benson-Greer, Kaylee Hutsell, and Georgia Foster from the Carolinas Peaks to Piedmont Council for painting fire hydrants.

She thanked them for their volunteer efforts with the City of Asheville. In particular I want to recognize Lora Degroat who worked with Chief Barry Hendren of Asheville Fire and Rescue to develop the Fire Hydrant Painting project. Lora led the effort to make a great idea a reality in our community by choosing this project for her Girl Scout Silver Medal project. As a part of her project she designed a brochure and worked with city staff to produce a Public Service

Announcement. These materials will be used to recruit volunteers to partner with the city to help maintain the more than 3,600 fire hydrant in the city limits.

In addition, these Girl Scouts and other members of their Troops held 2 workdays this fall and painted 25 hydrants and will hold other work days in the spring to paint more hydrants. Because of Lora's work, this great volunteer opportunity with the city is available to other groups.

Chief Barry Hendren said that had the City had to pay someone to do this work, it would have cost approximately $800-$1,000 in labor. Chief Hendren then introduced a brief Public Service Announcement that gave more information on the project and how to get involved.

B. RECOGNITION OF AWARDS

City Manager Jackson was pleased to announce that the City of Asheville was honored with two awards last month at the North Carolina American Planning Association Conference.

He recognized Ms. Sasha Vrtunski, Project Manager for the Downtown Master Plan, and said that the first award presented at to the City was the 2010 Sustainability Award for the City's Sustainability Management Plan. The judging committee provided these comments, "The Awards Jury was impressed with the Plan - - very original document and at the forefront of work on sustainability principles. The Jury further considered this to be a highly replicable initiative, and hopes to spread awareness of this model to other communities in North Carolina."

He then recognized Ms. Maggie Ullman, the City's Energy Coordinator, and said that the second award presented to the City was the 2010 Marvin Collins Outstanding Planning Award for Comprehensive Planning in a large community award for the Downtown Master Plan. The judging committee provided these comments, "The Awards Jury was impressed with the inclusive process used to develop the plan, the quality of the plan and its graphics, and the use of the "air rights" concept, among other things." In addition to the NC-APA award, the Downtown Master Plan received a Merit Award from the International Downtown Association at their annual conference in Fort Worth on October 1st.

C. PROCLAMATION PROCLAIMING OCTOBER 2010 AS "NATIONAL ARTS & HUMANITIES MONTH"

Vice-Mayor Newman read the proclamation proclaiming October, 2010, as "National Arts & Humanities Month" in the City of Asheville. He presented the proclamation to Cultural Arts Superintendent Diane Ruggiero who accepted the proclamation on behalf of the local Public Art 360 Committee and the members of the Public Art Board.

D. PROCLAMATION PROCLAIMING OCTOBER 15, 2010, AS "WHITE CANE SAFETY DAY"

Mayor Bellamy read the proclamation proclaiming October 15, 2010, as "White Cane Safety Day" in the City of Asheville. She presented the proclamation to Ms. Karen Harrington, on behalf of the Mayor's Committee for Citizens with Disabilities, and Ms. Joanne Baker, on behalf of the Buncombe County Chapter of the National Federation of the Blind of North Carolina. Ms. Baker thanked City Council for their support and then showed a brief Public Service Announcement.

II. CONSENT AGENDA:

At the request of City staff, Consent Agenda Item "B" was removed from the Consent Agenda to be considered on a subsequent agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 28, 2010

B. ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO ESTABLISH A NEW PRIVILEGE LICENSE FEE FOR ELECTRONIC GAMING OPERATIONS

This item was removed from the Consent Agenda to be considered on a subsequent agenda.

C. ORDINANCE NO. 3903 - ORDINANCE CONCURRING IN A SPEED LIMIT CHANGE ON SR 1455 (CROWELL ROAD) FROM 35 MPH TO 25 MPH

Summary: The consideration of an ordinance concurring in a speed limit change on SR 1455 (Crowell Road) from 35 mph to 25 mph.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, when an engineering and traffic investigation determines that a speed limit other than the statutory 35 mph speed limit would be reasonable and safe along a state-maintained street that is inside municipal corporate limits, a concurring ordinance from the municipality is needed. Typically, these investigations are done by municipal staff but it is not unusual for the North Carolina Department of Transportation (NCDOT) to do the investigations along their streets.

The Division 13 Traffic Engineer for NCDOT recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on SR 1455 (Crowell Road) from a point 0.12 mile west of Old Haywood Road eastward to Old Haywood Road. The subject street serves a mixture of residential and commercial properties that are located near a heavily used interstate interchange.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a medium commercial corridor.

Pros:

- The North Carolina Department of Transportation did the engineering and traffic investigation to determine the reasonable and safe speed limit.
- Since the subject street is a state-maintained street, the North Carolina Department of Transportation will install and maintain the appropriate signs.

Cons:

- There are no known cons with the subject action.

There is no fiscal impact with the subject action. The North Carolina Department of Transportation will be installing and maintaining the appropriate signs.

City staff recommends City Council approve an ordinance concurring in a speed limit change on SR 1455 (Crowell Road) from 35 mph to 25 mph.

ORDINANCE BOOK NO. 26 – PAGE 305

D. ORDINANCE NO. 3904 - BUDGET AMENDMENT TO UPGRADE LIGHTING FOR THE DEVELOPMENT SERVICE CENTER PUBLIC AREA

Summary: The consideration of a budget amendment, in the amount of $7,307, utilizing Progress Energy Carolinas' Energy Efficiency for Business program sustainable rebate for work performed in the Development Service Center to upgrade the lighting for the Development Service Center public area.

The City of Asheville Building Safety Department coordinated the remodel of the first floor of the Public Works Building creating space for personnel from five development departments creating the Development Service Center or One-Stop-Shop. This facility grand opening was held on September 25, 2009. All existing light fixtures within the building were changed out to more efficient fixtures meeting Progress Energy Carolinas' Energy Efficiency for Business program thereby receiving a rebate from Progress Energy in the amount of $7,306.63. Progress Energy recognized our commitment to fiscal and environmental stewardship. These funds were deposited into an associated revenue account for the project. As part of the project, additional lighting is necessary for the public area in the atrium. An evaluation for the amount of lighting necessary during all seasons and weather conditions was conducted during the past year. The type of lighting to meet these demands while meeting the energy efficiency standards of Progress Energy's program has been determined. The use of these funds will allow the appropriate energy efficient lighting to be installed in this area improving the customer experience. The addition of these lights will close out the remodel of the Development Service Center.

This budget amendment supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- Improves the lighting in the Development Service Center public area for customers and staff
- Utilizes energy efficient fixtures.
- Does not use Fund Balance or General Fund dollars to complete the project.
- Allows the remodel of the Development Service Center to be closed out upon the addition of the lighting fixtures.

Con:

- None

This budget amendment is funded with the rebate revenue from Progress Energy; therefore there is no financial impact to the City's General Fund.

City staff recommends City Council approve the budget amendment for $7,307 to add lighting in the Development Service Center public area.

ORDINANCE BOOK NO. 26 – PAGE 306

E. ORDINANCE NO. 3905 - BUDGET AMENDMENT FOR THE WALNUT COVE RESERVOIR SITE REPAIR

Summary: The consideration of a budget amendment, in the amount of $35,940, in the Water Resources Capital Improvement Projects (CIP) Fund for the Walnut Cove Reservoir Site Repair.

The Walnut Cove Reservoir site located in the Cliffs of Walnut Cove Subdivision in south Asheville off Avery's Creek and Brevard Road is in need of repair. The work involves all efforts required to repair a wall and attached fence that are in danger of failing due to a slope failure. The work shall include, but is not limited to: permanent wall stabilization and repair of failed areas of existing pavement and subgrade between the fence and the water storage tank.

Water Resources solicited four (4) quotes on September 14th, 2010, from the following firms with only two (2) contractors submitting bids:

1. David Burnette, Inc. – Leicester, NC (bid)
2. Fletcher Grading Contractors – Arden, NC (bid)
3. T & K Utilities, Inc. – Asheville, NC (did not bid)
4. Huntley Construction Company, Inc. – Asheville, NC (did not bid)

Of the two contractors that submitted bids, only David Burnette, Inc., was considered responsive in an amount of $29,950. A construction contingency was not figured into the cost, so Water Resources added a 20% contingency for an amount not to exceed $35,940.

This project is part of City Council's strategic plans to maintain city infrastructure.

Pro:

- Approval of the bid award will allow the City to complete the necessary repairs to the reservoir site to ensure its stability and functionality.

Con:

- Not awarding the bid may result in failure of the slope around the reservoir, which may jeopardize the integrity of the water tank.

The Water Resources Department has a Pump Stations capital project in which funds are specifically reserved for pump station and reservoir maintenance. To date, there is a balance of $368,109.80 in that project. The funds needed for the Walnut Cove Reservoir Site Repair in an amount not to exceed $35,940 will be moved out of the Pump Stations reserve project into a separate Walnut Cove project.

Pump Stations Capital Project	$368,109.80
Walnut Cove Reservoir Site Repair	$ 35,940.00
Amount Remaining in Pump Station Reserve	$332,169.80

City staff recommends City Council adopt the budget amendment, in the amount of $35,940, in the Water Resources Capital Improvement Projects Fund for the Walnut Cove Reservoir Site Repair.

ORDINANCE BOOK NO. 26 - PAGE 308

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY UPDATE

Mr. Kelly Miller, Executive Director of the Buncombe County Tourism Development Authority (TDA), updated City Council on the Authority's mission, accomplishments and goals.

An overview of Buncombe County tourism includes (1) critical economic driver (a) generates nearly $1.9 Billion in direct and indirect economic impact; and (b) compared to $200

Million in 1983; (2) more than 2.9 Million overnight leisure visits annually; and (3) direct employment impact of more than 22,000 jobs (a) direct labor income impact is more than $473 Million.

He said that more than 22,200 people are employed in Leisure and Hospitality related jobs in the Asheville MSA area.

Regarding tourism dollars impact on residents in Buncombe County, more than $25 Million is generated for local government through retail and property taxes annually. Without tourism revenues, each Buncombe County household would pay approximately $300 more in taxes each year.

Using a chart, he showed the overnight leisure visitation to the Asheville area is more than 2.9 Million. A typical visitor to Asheville is in their 50s with an income of $100,000+, has a college or post-graduate degree, no children in the home, more than half employed full-time (1/3 retired), is married and traveling as a couple, and has internet access. Top points of origin markets include Charlotte, Raleigh-Durham, Atlanta, Greenville-Spartanburg, Tampa-St. Petersburg, Greensboro-High Point-Winston-Salem; Orlando-Daytona Beach, New York City, Washington, D.C., and Nashville. Using a pie chart, he described the main reasons for visits, which top reasons are outdoor activities, mountains/scenery, and downtown Asheville.

Using charts, he showed the historical snapshot of the numbers of the Buncombe County hotel sales by calendar year and fiscal year; hotel occupancy by calendar year, calendar year – 2005 – 2010 year to date, and fiscal year; and average daily rate (fiscal year).

The lodging forecast is (1) Smith Travel Research revises 2010 national forecast upward – to a project a 4.4% increase in occupancy t 57.1% with average daily rate expected to be flat; (2) in 2011, occupancy should climb to 57.9% with average daily rate expected to rise to $101.55; and (3) TDA is forecasting a 5% increase in hotel sales in 2010-11. He also used a chart to show the growth in hotel rooms in Buncombe County.

Despite knowing the exact location of the rock slide on I-40, nearly a third of markets east of the rock slide expected delays and traffic issues on their normal or alternate route to the North Carolina mountains.

The Presidential visit created a higher profile for the mountain region and generated more than $2 Million in publicity.

Regarding advertising effectiveness, (1) the TDA spends nearly half of its budget on net advertising – more than $2 Million each year; (2) for every $1 an estimated $55+ is returned to the community.

He said that studies show editorial converts at a higher rate than advertising. Editorial generated through media outreach from the Conventions & Visitors Bureau includes coverage from Good Morning America, the Associated Press, New York Times, MSNBC, and multiple magazines, blogs and broadcast outlets. In 2009-10, publicity value exceeded $5 Million.

Regarding green and sustainability efforts, the Asheville Offset Program focuses on direct sustainability of the area as a host City; volunteerism opportunities such as the river clean-up and partnership with Warren Wilson College's Insulate Program.

He said that $14,183,500 Million has been awarded in tourism product funding through 2010. In 2010, the TDA awarded the largest single Tourism Product Development Fund grant ($2 Million) to the City of Asheville for renovations to the Asheville Civic Center. This brings the total number of projects funded through this innovative program to 14. The total worth of these community assets total nearly $100 Million.

Significant initiatives include (1) overhaul www.ExploreAsheville.com to inject additional video, social media efforts and interactive components (site gets approximately 2 million unique visits each year); (2) new creative advertising elements; (3) Asheville-Buncombe Regional Sports Commission; (4) Hilton Head Island partnership; and (5) DMAI accreditation.

On behalf of City Council, Councilman Davis thanked Mr. Kelly and the TDA for their initial work and follow-up work on the wayfinding signs. He also thanked them for their assistance in bringing the Southern Conference back to Asheville, along with the Product Development Fund's $2 Million for upgrading the Civic Center.

In response to Mayor Bellamy, Mr. Miller explained how the room tax is distributed, along with the Product Development Fund application process.

On behalf of City Council, Mayor Bellamy thanked Mr. Miller and the entire TDA Board for their efforts on behalf of the City.

B. HUB ALLIANCE UPDATE

Dr. David Brown, Executive Director of the HUB Community Economic Development Alliance (HUB), updated City Council on the HUB's mission, accomplishments and goals.

He said that Mayor Bellamy, Councilman Smith, and City Manager Jackson have each attended over 75% of our 3rd Tuesday board meetings and have been significant contributors to our deliberations. In addition, all 5 of your city appointees have equal records of attendance & participation. Thank you for your trust and for our meeting place.

He said their mission is to take a longer view, to stimulate community leaders to think about what we need to be doing today in order for AVL-BC to be even better 5 years out and beyond, and to catalyze actions that will get us there. This means 3 things: (1) This means spotting opportunities for the future. Our current emphases are in creating new jobs in Climate Change, in Integrative Health, in Green industries, and in the Creative Arts; (2) This means creating systems to monitor our community's advances in jobs, economic well being, social well being, education, the environment, and cultural vitality; an (3) This means breaking down the barriers among silos --- buncombe/wnc, allopathic & CAM, business & non-profit communities, city/county, artists/performers, etc. We must work toward a consensus agenda because our resources are limited and our opportunities are manifold!

Our board and staff are entirely voluntary. Our office is virtual. Our general expenses are under $100 per month. Currently we have no general budgetary support from either you (the city) or the county. Yet, by bringing leaders together, by highlighting emerging opportunities, by monitoring our progress --- we believe that we have had and are continuing to have substantial impact.

He hoped that Council would advise them if there are there issues or opportunities that Council would like them to pursue.

Councilman Smith explained the make-up of the HUB Alliance and explained their importance to the community.

On behalf of City Council, Mayor Bellamy thanked Dr. Brown and the entire HUB Board for their efforts on behalf of the City.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A NEW AIRPORT ZONING DISTRICT

ORDINANCE NO. 3906 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A NEW AIRPORT ZONING DISTRICT

Mayor Bellamy opened the public hearing at 5:48 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance to create a new Airport Zoning District. This public hearing was advertised on October 1and 8, 2010.

In March of last year, the City of Asheville received a copy of a signed resolution and cover letter from the Asheville Regional Airport Authority requesting that the City adopt specific land use/zoning ordinances for the airport property at the Asheville Regional Airport.

The Asheville Regional Airport Authority was established in 1979 as a joint governmental agency organized and created by the City of Asheville and Buncombe County, pursuant to General Statutes, for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport. The majority of the property is zoned Industrial (IND) which generally accommodates the uses associated with the airport functions; however, as a general zoning designation, it is subject to basic development standards that are designed for a wide variety of land uses occurring throughout the city. In recent years, the airport has submitted a number of modest development projects where applying basic development standards proved challenging, particularly for the aviation related projects.

Regional airports are generally recognized to be a very specialized and unique land use and it is not unusual for municipalities to apply special land use designations and standards to airport properties. There are a variety of tools that the City and the Airport Authority could consider including:

1) Develop and Adopt a Master Plan
2) Create a New Airport Specific Zoning Designation
3) Establish a New Authority by Special Act of the NC General Assembly
4) Allow the Airport to Develop their own Zoning Establish an Airport Overlay

Some of these actions require special legislation or other significant efforts. After some consideration, City staff generally agrees with the airport management that an airport specific zoning designation may be the best option available that satisfies the majority of the airports concerns while alleviating the burden of unnecessary detailed reviews applied to relatively modest projects. Both parties also recognize that the creation of an airport overlay applied to properties in proximity to the airport may also be necessary at some point in the future; however, the unique location of the airport would necessitate multi-jurisdictional cooperation that the airport would coordinate and that in which the City will participate.

Among the City Council's top priorities for the new Strategic Operating Plan was continuing to forge intergovernmental and community partnerships to implement initiatives during economically challenging times. This amendment is a joint request from the Airport Authority and City staff and will satisfy key goals for both parties. Specifically, as it relates to the City of Asheville's adopted goals and plans, this effort will help satisfy transportation and economic development goals by supporting and facilitating a healthy regional airport operation.

Pros:

- Addresses the unique needs of aviation operations while preserving standards for non-aviation uses.
- Alleviates the need for detailed reviews for relatively modest projects.

Cons:

- An overlay zoning applied beyond the airport properties is not being proposed at this time.
- Adds a new zoning district when there is interest in reducing the total number of zoning districts.
- Design review responsibilities remain with City staff expending City resources (as opposed to other options that would allow the airport to assume those responsibilities) – could be viewed as "pro" by some.

In May 2009, this item was reviewed by the Council's Planning & Economic Development Committee who supported the pursuit of an airport specific zoning designation and the participation in a multi-jurisdictional collaboration for establishing an airport overlay (at a future date yet to be determined).

The Planning & Zoning Commission reviewed this proposal at their February and March 2009 meetings where the proposal was introduced and generally supported. Final consideration was delayed to accommodate other requests to follow-through on several city-airport initiatives that could influence the final draft. This revised ordinance was reviewed and unanimously approved at the September 1, 2010, Commission meeting.

There is no direct fiscal impact to the City; however, modest reductions in time dedicated to the review of airport projects would result in minor relief to city resources.

City staff recommends City Council adopt the wording amendment creating a new airport zoning designation.

Mayor Bellamy closed the public hearing at 5:54 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3906. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 310

B. PUBLIC HEARING TO CONSIDER REZONING 61 TERMINAL DRIVE FROM INDUSTRIAL DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND HIGHWAY BUSINESS DISTRICT TO AIRPORT DISTRICT

ORDINANCE NO. 3907 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REZONE 61 TERMINAL DRIVE FROM INDUSTRIAL DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND HIGHWAY BUSINESS DISTRICT TO AIRPORT DISTRICT

Mayor Bellamy opened the public hearing at 5:55 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance to rezone 61 Terminal Drive from Industrial District, Commercial Industrial District and Highway Business District to Airport District. This public hearing was advertised on October 1and 8, 2010.

The Asheville Regional Airport Authority was established in 1979 as a joint governmental agency organized and created by the City of Asheville and Buncombe County, pursuant to General Statutes, for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport. The large majority of the property is zoned Industrial (IND) which generally accommodates the uses associated with the airport functions; however, as a general zoning designation, it is subject to basic development standards that are designed for a wide variety of land uses occurring throughout the city. In recent years, the airport has submitted a number of modest development projects where applying basic development standards proved challenging, particularly for the aviation related projects.

Regional airports are generally recognized to be a very specialized and unique land use and it is not unusual for municipalities to apply special land use designations and standards to airport properties. The creation of a new Airport zoning designation and related standards has been simultaneously proposed in order to create a more appropriate and efficient designation for the airport operations.

The purpose and intent of the new Airport zoning is stated as, "It shall be the intent of this district to encourage and support the continued operation and vitality of the Asheville Regional Airport by allowing certain airport-related commercial/industrial and recreational uses in accordance with this ordinance, state law, and Federal Aviation Administration regulations." Clearly, a specialized zoning district designed to address specific aviation needs will accomplish this more than a general use zoning district.

This rezoning was unanimously approved by the Planning and Zoning Commission on September 1, 2010, there has been no opposition to the proposal and no communications from the public regarding this rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning district is generally compatible with the surrounding area and does not change the allowable uses.
- Addresses the unique needs of aviation operations while preserving standards for non-aviation uses.
- Rezoning could encourage development and further job growth.

Cons:

- Requires the creation of a new specialized zoning district.

The staff recommends approval of this rezoning request.

Mayor Bellamy closed the public hearing at 5:55 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3907. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 314

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW APPLICATION PROCESS TO

ALLOW THE CONSIDERATION OF DEVELOPMENT INCENTIVES FOR PROJECTS MEETING KEY STRATEGIC CITY GOALS

ORDINANCE NO. 3908 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW APPLICATION PROCESS TO ALLOW THE CONSIDERATION OF DEVELOPMENT INCENTIVES FOR PROJECTS MEETING KEY STRATEGIC CITY GOALS

Mayor Bellamy opened the public hearing at 5:56 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance to add a new application process to allow the consideration of development incentives for projects meeting key strategic city goals. This public hearing was advertised on October 1and 8, 2010.

This proposal is an outgrowth of the *2008 Affordable Housing Plan for the City of Asheville* which reflects a six-month planning effort by a diverse group of volunteers and advocates dedicated to exploring values and practices that help citizens access and maintain affordable housing. In June of 2008, the Asheville City Council reviewed and accepted this report with a recommendation for more work to continue in identifying high priority areas and possible measures that could be implemented to help accomplish recommendations included in the report and reduce barriers to affordable housing.

Following up on the direction from the Council, a smaller "working group" composed of members of the original task force was formed in the fall of 2008 and planning staff was assigned to work with them on the Plan recommendations. That effort turned out to be complicated by the divergent views of those on the working group. Because of this complexity, the group began by tackling one recommendation of the Affordable Housing Plan, a proposal that would directly address:

> Recommendation #6 – for all proposed developments under 50 units, density bonuses for affordable housing should be a use-by-right, subject-to-special-requirements, not a conditional use. The special requirements should be developed with community input and should not be prohibitive or onerous.

Preliminary work on this proposal was reviewed with the Housing and Community Development (HCD) Committee in February 2009. At that time, the HCD members recognized that the Sustainable Advisory Committee on Energy and the Environment (SACEE) was similarly tasked with developing an amendment that would allow additional density in exchange for sustainable building practices. Recognizing that the two goals were very similar with strong areas of overlap, the HCD members requested that staff work with SACEE and the Affordable Housing Working Group (AHWG) combined, to develop a single application process that would satisfy both goals. After nine months work and substantial discussion, a conceptual draft was prepared.

With a few exceptions, the amendment included with this report is the agreed upon product of the AHWG and SACEE. The primary point of divergence between the two groups is where the additional density should be located. Most, although not all, members of the AHWG preferred that the density bonus application be available to all projects and potentially realized on any parcel within the City's jurisdictional limits, while SACEE felt that density is most appropriately located within a certain proximity to transit lines and, in areas where density is part of larger vision plan such as the River District. A minority of members of the AHWG, representing neighborhood groups, strongly disagreed with the majority decision. Staff returned to HCD in September 2009 to seek policy direction and, to aid in the discussion, had produced several maps illustrating the coverage associated with distances from primary corridors (generally capable of supporting a transit line with a 30 minute frequency) and all transit lines. After reviewing the maps, the HCD

recommended moving forward with limiting the density bonus applications to those properties within ¼ mile of any transit line, not just 30 minute lines.

This proposal was reviewed by SACEE during meetings in: July 15, 2009 and June 16, 2010; and by the Planning and Zoning Commission at their meetings of July 22, 2010, and September 1, 2010. Both bodies recommended further modifications to the proposal, as discussed after the staff review.

SACEE recommended that the proposal be limited to properties within ¼ mile of road corridors with high frequency transit lines proposed. After review, this position was not supported by the AHWG or the HCD and was not included in the original amendment which included an applicability area of ¼ mile from any transit corridor.

At their July 22, 2010, meeting the Planning & Zoning Commission (after substantial public comment) requested the staff to prepare a modification to the proposal limiting the area of applicability to multi-family and commercial zoning districts, specifically excluding the single family zoning districts; and limiting applicability to areas within 1/8 mile of all high frequency transit lines. The first draft was ¼ mile of any transit line in the City of Asheville. After careful consideration, the area was significantly reduced to 1/8 mile from key transit lines. Those key transit lines include those that were identified to be high frequency lines in the City's Transit Master Plan and some of our other major corridors. Even though the high frequency may end closer to the City's core, because it's such a key corridor we extended the coverage to the end of the corporate limits. The entire total area in the City is 45.5 square miles. The areas within 1/8 mile of all high frequency transit lines (within our jurisdiction) cover 10.8 square miles. It's also important to note that the 1/8 mile also includes zoning districts that are not eligible for this application, e.g., urban zoning districts, Central Business District, specialty districts, and single-family districts are not included. That further reduces the area to 7.5 square miles, or 16.5% of the total City. The area of applicability gets narrowed significantly. Of that 16.5%, 70% is commercially zoned property. The majority of the area where these applications will be considered are developable, commercial properties within close proximity to major transit lines.

The Planning & Zoning Commission also requested staff analysis of opportunities to add pedestrian, bike and greenways plans as alternative transportation routes where additional density could be considered, and options for public notification. On September 1, 2010, the Commission reviewed the revised draft and staff analysis and approved the proposal unanimously (6:0) with the additions of portions of Broadway, Riverside and Amboy Road. The Commission was also generally supportive of the options for very light notification as described by staff but did not to include this as a requirement, preferring that this recommendation be reviewed and considered by City Council.

The proposed Unified Development Ordinance (UDO) text amendment replaces the existing Conditional Use Permit (CUP) process titled "Development standard bonuses for residential zoning districts" (commonly referred to as "density bonus" applications) with a use-by-right with standards (USSR) process applicable in all residential and commercial districts. The new proposal, dubbed "Sustainable Development Projects", in addition to changing this process from a CUP to "by right" approval includes density and other building incentives available to projects that address key City adopted goals. Such projects must, however, meet a number of basic requirements. Additionally, a menu of desirable features is included with each feature being assigned a relative value (points). Higher scoring projects are eligible for larger density bonuses and other flexible development options that allow reductions or waivers of other development requirements such as minimum lot size, setbacks, open space and height limitations. A separate, more simplified, option is offered for green building projects based on LEED (or NC Healthy Built) certification. When combined, special projects that meet both strategic goals are offered even larger bonuses. The proposed draft and menu were tested on a number of former development proposals (all approved through other applications) to determine

whether the extent of the resulting bonuses offered were relatively consistent with previous requests.

The proposed UDO amendment replaces only the conditional use permit procedures and standards for density bonus standards for development proposals of 5 or more dwelling units. This category establishes criteria under which proposals in this size category can be approved with additional density. There are other CUPs for smaller scale infill development that include duplex, triplex, and quadraplex structures. While a development proposal in this category of 5 or more dwelling units may include structure types such as a duplex, triplex, or quadraplex; no changes are proposed at this time to the CUP process for duplex, triplex, or quadraplex construction in single family zoning districts.

Some of the key differences between the new proposal and the existing process, and major elements of the current requirements and process that are being maintained in the new proposal are compared in the table below:

Existing Standard	**Proposed Standard**
Applications require public hearing and approval by City Council, regardless of size (projects larger than 50 units also requires review by the Planning & Zoning Commission)	Most applications reviewed administratively with no public hearing and approval by staff
Public hearing regardless of size	Public hearing only if base density is higher than a Level III threshold (50 units) or is a project larger than 70 units, regardless of base density.
Applicable only in residential districts	Applicable in multi-family residential and commercial districts
No relationship to transit proximity	Must be within 1/8 mile of a transit line, with additional points if site has frontage on corridor
No relationship to parking availability	Reductions in off-street parking when on-street parking is available, or the majority of units are 1 bedroom or efficiency size
No requirement to create good relationship with surrounding residents	"Good Neighbor Agreement" proposed, although not enforceable; but no separation requirements
No compatibility requirements other than what may be required through CUP	Compatibility requirements established in residential districts (height, size, orientation, architecture, materials, etc.)
Minimum project size 5 dwelling units	No change
Can be proposed in single-family residential districts	Not permitted in single family districts
No architectural and design requirements other than what may be required through the CUP	Very basic pedestrian oriented design and mixed use building features required.
Flexibility for off-street parking allowing it to be located in front of structures (if certain criteria are met)	No change other than the process for approval
Extent of density bonuses offered	Re-worked per committee recommendations – cutoff's are slightly different and now can combine additional bonuses for meeting both goals (affordable + green)
Relief from other basic development standards (setbacks, open space, minimum lot size, height, etc.)	No change other than the process for approval
Exceptional development and design features included	No change other than the process for approval

To summarize, the proposed wording amendment provides additional density and other incentives and eliminates the public review process for many projects to encourage the development of affordable and/or green building in the City of Asheville. Special standards are also proposed to help ensure that sustainable development projects are compatible with the surrounding areas. Again, this proposal addresses Recommendation #6 in the *2008 Affordable Housing Plan for the City of Asheville* (and a similar recommendation from SACEE), and while it indirectly supports other goals in the plan, it is not intended to:

1. Provide opportunities for smaller infill projects such as duplex, triplex, or quadraplex construction by right (Recommendation #9), or
2. Provide the structure or urban form that may be achieved through a Transit Corridor Overlay (Recommendation #22)

While not an officially adopted plan, the proposal is the result of work directly related to implementing recommendations in *The 2008 Affordable Housing Plan for the City of Asheville.* Additionally, if adopted, this proposal would help reduce barriers to affordable housing in the City as supported by the *City Development Plan 2025* (comp plan) and the *Consolidated Strategic Housing and Community Development Plan.*

Pros:

- Provides density and other incentives for residential or mixed use projects meeting key strategic city goals.
- Provides additional flexibility and relief from basic development standards.
- Allows for an administrative review of eligible projects (no public hearing); although this can also be viewed as a "con".
- Includes compatibility requirements to help ensure the project is compatible with the surrounding area.

Cons:

- Area of applicability in residential areas is more restrictive than the current CUP process.
- Removes public notification from review process, no opportunity for public input.
- Does not address small multi-family infill projects (although other application options exist)
- Does not directly address transit corridor development.

The Housing and Community Development Committee reviewed this proposal during meetings in: February 2009, September 2009, and May 2010. The HCD recommended that it move forward to the Planning & Zoning Commission at their May 2010 meeting.

The Sustainable Advisory Committee on Energy and the Environment reviewed the proposal during meetings on July 15, 2009 and June 16, 2010. As previously noted, in 2009 SACEE recommended a restriction that sustainable projects seeking additional density be limited to those properties within ¼ mile of road corridors with high frequency transit lines proposed; but that recommendation was not supported by the AHWG or the HCD and was not included in the original amendment.

The Planning & Zoning Commission reviewed the proposal at their July 22, 2010, meeting, and directed the staff to prepare modifications to the proposal, as discussed previously. On September 1, 2010, the Commission reviewed the revised draft and approved the proposal unanimously (6:0). The Commission was supportive of options for very light notification but chose not to include this as a requirement, preferring that this be reviewed and considered by City Council.

This proposal and subsequent revisions have also been shared with a variety of interested stakeholders, the Coalition of Asheville Neighborhoods (CAN), the Council of Independent Business Owners and others included in the Planning and Development Department listserve. Opposition has developed primarily from members of CAN and individual residents of single family neighborhoods. Their initial concern was the inclusion of the single family zoning districts in the proposal; which the Planning and Zoning Commission recommended modification would alleviate. Their remaining major concern is the elimination of public notice and approval by an appointed or elected body.

Community Concerns Expressed: In the weeks preceding the writing of this staff report, a number of letters, e-mails, phone calls and voice messages from concerned citizens have been received by the planning and development office. Those comments are summarized below along with response and other considerations offered by staff (additional comments have been added as a result of the revisions generated from the Planning & Zoning Commission, some concerns and considerations are now less applicable):

1) Removal of public notification, need for staff interpretation

Response: The specific direction given to staff was to make density bonus projects an option by-right where there would be no public hearing process. The standards proposed are intended to as objective as is practicably possible but need for staff interpretation is sometimes unavoidable and can occur in all types and ranges of applications, not just density bonus projects.

Consideration: A requirement for a developer sponsored meeting and/or notification of neighbors by the developer would accomplish some outreach and notification while minimizing the burden on staff resources.

See memo dated September 1, 2010.

2) Loss of character in single family neighborhoods, inability to rely on zoning

Response: The existing CUP process allows consideration in single family neighborhoods which is proposed to be maintained in the new by-right proposal. The new proposal requires compatibility (height, size, orientation) with the existing structures in an effort to minimize impact on the physical character of the block. Increased density; however, could result in increased activity which can affect the social character or harmony of the neighborhood.

Consideration: Separation requirements could be considered between projects in single family neighborhoods to help disperse projects and their impacts. This would only be recommended for single family zoning districts.

The effects of the amendment have been further reduced through the actions of the Planning & Zoning Commission to remove single family districts from consideration.

3) Effect of, and propensity for, poorly maintained rental property

Response: Lack of maintenance or poorly maintained properties is an occasional problem throughout all of Asheville and is not limited to rental properties. The proposed amendment would allow equally for owner-occupied units as well as rental units.

Consideration: There is little that can be done to address maintenance of property beyond what is required for public health, safety and welfare. However, this proposal does require the development of a "Good Neighbor Agreement" which, while not binding, has been shown to be effective in communicating reasonable expectations for new residents.

4) On-street parking and special exceptions detracting from character/harmony of block

Response: The City requires minimum road surface widths on roads where on-street parking is allowed. The general City position is that on-street parking is allowed anywhere where "no parking signs" are not posted and is considered a good and effective means of calming traffic on residential streets. On-street parking is public parking and will remain so with these applications. The proposed amendment does not eliminate off-street parking requirements but does allow reductions in situations where the reliance on fewer vehicles is more likely (affordable housing and 1 bedroom or efficiency units).

Consideration: This amendment could be modified to allow reductions only in those areas within a certain distance of a major transit corridor where reliance on alternative modes of transportation may be more realistic.

5) Ineffectiveness and/or legal concerns over "Good Neighbor Agreement"

Response: Legal concerns should be minimal as the Agreement is not intended to be a legally binding agreement but rather, a means of communicating reasonable expectations to new residents. Agreements are to be posted in areas where residents may see them and should be distributed to each new resident upon their entering the community.

Consideration: It may be possible to make these Agreements legally binding; however, this appears to be fraught with concern over legality and effective enforcement and is not recommended. Informal (non-scientific) information suggests that non-binding agreements are almost as effective as legally binding ones.

6) Desire/need for additional public review and input, request for proposal to go to Planning and Economic Development subcommittee prior to P&Z and Council

Response: This proposal has been discussed in two key Committees staffed by citizen volunteers for more than 12 months where significant opportunity for review and input has been offered. It has more recently been shared with other community groups who were afforded more than a month to review and provide feedback/input. Numerous comments and considerations have been offered and are reflected in this analysis and have resulted in several modifications to the draft ordinance being presented. This input has been extremely valuable and helpful. Additional time may provide the community an extended opportunity for comment; however, it is uncertain whether this additional time will result in new information or improvements that have not already been received and considered.

Consideration: A formal request for this item to be reviewed by PED has been requested by the community; however, this request was denied (2 of the 3 members of the HCD also belong to PED and it was felt that there had been enough review already). Nevertheless, the community may request that the Planning & Zoning Commission delay consideration to have specific issues examined and/or reconsidered.

7) Cumulative effect of bonuses offered

Response: Staff tested the draft ordinance on six (6) former development proposals that had all been approved through other means. To summarize, those projects did not result in significantly larger bonuses than what had already been afforded to them. Additionally, it is important to recognize that in many situations, other limitations such as building height, mass, or off-street parking requirements also effectively limit development potential of a site and just because a project is eligible for a large bonus, does not mean that they can effectively realize that bonus.

Consideration: To better understand the cumulative effect of multiple bonuses will require additional staff time to test the effect on additional sites. The Council could direct staff to undertake such research.

8) Loopholes that will be difficult to prevent and enforce against

Response: Loopholes are something that is difficult to protect against. Even when an ordinance appears to be extremely comprehensive, the most creative and motivated individual may work very hard to find a way to avoid certain requirements.

Consideration: It is recommended that if concern over loopholes is substantiated, then an appropriate response would be to invest time in identifying the specific "loopholes" and amend the ordinance to close them. Staff is not aware of any specific loopholes that are not intentional.

9) Lack of separation requirements

Response: A separation requirement mandates a minimum distance between like projects. The current CUP application does not include a separation requirement but this can be reviewed by the staff as part of the applications on a case by case basis. The usefulness of a separation requirement is that it ensures dispersal of higher density uses, preventing a concentration of a particular use or development form in one area. The primary consequence of a separation requirement is that it can greatly limit the available land that could be considered; and the greater the separation required, the greater the limitation.

Consideration: A separation requirement could be considered but staff would recommend limiting it to single-family residential districts with a careful analysis of the minimum distance necessary to achieve the desired outcome.

Consideration of separation requirements may not be necessary now that single family zoning districts have been removed from the proposal.

10) Need for better definitions of terms

Response: Some terms are easier to identify than others. Staff agrees that the ordinance would benefit from the addition of some definitions that members of the community found confusing, and will incorporate those into the draft.

Consideration: The Community and Commission are welcome to assist with the identifying of terms in need of definitions and/or offer basic definitions for consideration.

11) Need for ties to economic development and job creation

Response: Numerous affordable housing reports for Asheville identify an enormous deficit in the amount of affordable housing needed presently. While the need for economic development and job creation is not in dispute, the need for affordable housing is just as great and imminent.

Consideration: Staff would not recommend any changes to the amendment that would tie economic development or jobs to this proposal. Also, conceptually it would be very challenging to successfully do so.

12) Impact of large projects (size and density) is not mitigated by affordability or sustainability

Response: This is not in dispute. The basic premise of the amendment is that a density incentive would be offered for projects meeting the definition of sustainable that is to be established. Such projects would be supported despite their impacts to the neighborhoods where they would be built.

Consideration: This is a philosophical and policy question that does not lend itself to alternate options.

13) Impact on the new Shiloh Neighborhood Plan

Response: Shiloh is a predominately single family neighborhood and will be largely exempt from this application. Properties within 660 feet (1/8 mile) of the Hendersonville Rd. corridor may take advantage of the new application process, however, the very large majority of this area is commercially zoned property.

Consideration: Staff has met separately with the Shiloh community and has shared with them a customized map showing the area of applicability as it specifically relates to the Shiloh Community.

14) Density should be concentrated on major corridors

*Response: **The 2008 Affordable Housing Plan for the City of Asheville** included numerous recommendations including one calling for the creation of a transit corridor overlay that could incentive density and affordable housing through the creation of mixed use, sustainable, transit oriented development. The current proposal is not intended to accomplish the effect of a transit corridor overlay but is extended to those corridors until such a time that an overlay may be developed.*

Consideration: 1) This proposal could be amended to not exclude those commercial corridors and the Commission may direct staff to initiate the development of a transit corridor overlay, or 2) This proposal could be abandoned in favor of a transit corridor overlay, or 3) These projects could be limited to areas within a specific distance of the transit corridors.

The changes as a result of the Planning & Zoning Commission's revisions appear to follow recommendation #3 to a great extent.

15) The proposed architectural and design standards can require lower quality materials and designs in some instances when that is a character defining feature of the existing homes.

Response: This was discussed with the AHWG where an option to consider alternative designs and materials was debated. To summarize, the majority opinion was to require that the existing character be maintained even if that meant sacrificing the opportunity for "higher design".

Consideration: An option could be added to the proposed ordinance for alternative materials and designs to be approved by the Planning & Zoning Commission.

The design requirements related to building materials were limited to single family zoning districts which have now been removed from consideration.

16) Enforceability of LEED Certification or Affordability requirements.

Response: The most common enforcement mechanism is to withhold a CO until a project has demonstrated full compliance. Occasionally, however, projects are discovered to be out of compliance after occupancy. When this occurs, typical enforcement action includes

providing a period to correct the violation; if the responsible party fails to correct the violation by the end of the due process period, the City will move forward with other enforcement action. The City has, depending on the circumstances, a variety of enforcement options available to them including:

- Revoking Certificates of Occupancy
- Fines and penalties for non-compliance (compliance could include a Conditional Zoning which would allow for public notification and input)
- Other legal action (suing developer for violating deed restrictions, etc.)

If for some reason we find that that the project fails to meet the commitment that was originally offered, there a number of avenues to consider, however, the course staff would take would depend largely how out of compliance the project is. If a project fails to meet its silver LEED certification by 2 points or something relatively negligible, staff may ask them to pursue a conditional zoning in front of Council to explain the challenges and see if there is support for the project standing under the level it did ultimately achieve. If it's grossly out of compliance, they would still come before Council for a conditional zoning and at that time Council can consider a wide variety of factors. There is also the normal punitive enforcement action that includes fines that could be assessed.

Consideration:
Some features are easier to enforce than others. LEED certification is not completed until the project has been completed and occupied for a period of time. In these instances, the City could consider requiring a performance bond until such a time that certification is achieved.

Staff concurs with the Planning & Zoning Commission and recommends adoption of the Ordinance proposed as it accomplishes the goals of Recommendation #6 of the *Affordable Housing Plan for the City of Asheville*, and the objectives of the majority of the Affordable Housing Working Group and Sustainable Advisory Committee on Energy and the Environment, that the staff was tasked to assist. The proposal provides development incentives for projects meeting key strategic goals.

The following individuals are opposed to excluding public comment, lack of notification to adjoining properties, including a concern that the ordinance is an illegal delegation of zoning authority:

Mr. Mike Lewis, representing the Coalition of Asheville Neighborhoods
Ms. Teddy Jordan, resident on Normandy Road
Mr. Jack Westall, Asheville resident
Ms. Valeria Hoh, resident on Finalee Avenue
Mr. David Rogers

The following individuals spoke in total support of the ordinance as presented, noting that if the development includes affordable housing, sustainable development, transit-oriented development, and other goals City Council wants to promote, then each development does not necessarily need to have a public hearing:

Mr. David Nash, member of the Mayor's Affordable Housing Task Force and member of the Affordable Housing Working Group
Ms. Julie Mayfield, Executive Director of the Western North Carolina Alliance
Ms. Robin Merrill, member of the Mayor's Affordable Housing Task Force
Mr. Dane Barrager, representing the Sustainable Advisory Committee on Energy & the Environment

At 6:33 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved to adopt Ordinance No. 3908 to amend the Unified Development Ordinance to add a new application process to allow the consideration of development incentives for projects meeting key strategic goals. This motion was seconded by Councilman Smith.

Councilwoman Manheimer said that this ordinance has been reviewed and revised by several committees and that is why she is comfortable with it. She reiterated that the density is increasing from 50 to 70 units so long as green building and/or affordability is provided on the project. And, she noted that these projects will not be allowed in single-family zoning districts. She would be open to (1) to consider whether or not we should exempt this ordinance from any properties subject to the slope development ordinance; (2) publicly interviewing Planning & Zoning Commission applicants to make the process of appointment more transparent; (3) requiring some kind of neighbor notification; and (4) reviewing the ordinance in a year to see how effective or ineffective it is. She believes that this ordinance will encourage green-building and building affordable housing. She liked that if the developer wants to proceed with this application, they have to comply with some design requirements for projects that we don't currently have any control over. She felt that the developer has to follow stricter rules and in exchange they get a process that is more secure for them.

Vice-Mayor Newman felt this ordinance is a positive step forward in achieving some of Council's goals of (1) growth and redevelopment on our major commercial corridors; (2) inclusion of some degree of affordable housing for projects that have major residential components; and (3) green-building. Regarding public hearings for every project, he felt public input is extremely important, but for him the question is does it make sense that the City have the same threshold for triggering a public hearing in every single part of the City. What makes sense in the terms of the threshold for triggering a formal public hearing in the Central Business District and in a low density residential area doesn't make sense to have the same standards. You can put a very significant development in the downtown or in the commercial corridor and it will blend right in. If you take that same type of development and you put it in a residential area, it would be completely out of context and would warrant a public hearing for that type of proposal. To say that the types of thresholds that should trigger a public hearing on our commercial corridors should be the same thing as in low-density residential areas, doesn't make sense from a planning standpoint.

Councilman Smith wholeheartedly supported the ordinance said that this has been a culmination of four years work. He explained how this meets some broad community values. Regarding Councilwoman Manheimer's comments, he (1) felt the slope development ordinance concern should be reviewed at a different time; (2) was supportive of the Planning & Zoning Commission interview process being expanded similar to the School Board appointment process; (3) supported notification to adjacent property owners; and (4) he preferred to see a two-year review of the ordinance.

Councilman Davis regrettably could not support the ordinance as it has a lot of good potential, however, he did not want to eliminate public comment. He felt that people elect Council to hear them and make a decision based on those opinions.

Councilman Bothwell supported the intent of the ordinance, except for eliminating public comment.

Councilman Russell agreed that we need higher density on our commercial corridors. He felt there are some corridors we need moderate price housing and wondered if this will have the long-term unintended consequence of pushing moderate and/or upscale housing out of the corridors.

When Councilman Russell asked if there was any discussion of expanding density along the commercial corridors to non-affordable housing developments, Ms. Tuch said that to be eligible for this application you either have to include some amount of affordable housing or get one of the certified greenbuilding levels. There is the possibility of having mixed housing where some is affordable and some is not.

Vice-Mayor Newman said that the City Council Boards & Commissions Committee has discussed the expanded Planning & Zoning Commission interview process. He said that if this ordinance is adopted and the UDO recommendations regarding the Downtown Master Plan are adopted, there will be definite elevated roles of the Planning & Zoning Commission in the City's planning process. The Committee discussed the interview process be similar to the School Board appointment process where specific questions are asked of the candidates and interviews are conducted in an open session. The Committee will be seeking City Council approval on this new process in the near future.

In response to Vice-Mayor Newman regarding notice requirements, Ms. Tuch said that we do have a precedent for notification. We presently require that developers notify directly adjacent property owners when alternative compliance requests for landscaping are being considered. How that works is we require that the developer send a letter to each of the directly adjacent property owners. We ask the developer to provide the City with a copy of the list of all the people who were notified as well as a copy of the letter. The letter has to include their contact information and the City's contact information. We also ask for additional information in the letter, e.g., the approximate timing of the project, basis elements of the project. etc. The property owners would receive notification before the developer makes application.

At the request of Vice-Mayor Newman, Councilwoman Manheimer and Councilman Smith agreed to the friendly amendment to include the notification requirements as outlined above by Ms. Tuch.

Mayor Bellamy said that this concept did originate out of the Mayor's Affordable Housing Task Force and she is a strong supporter of affordable housing. However, she believes in public input because they provide Council with valuable information that sometimes Council doesn't think of. If there is an outstanding project, it should stand in the midst of community review. She felt we should have density bonuses but not as a use by right at this time. She felt this is a good policy but felt we should do it in smaller steps to gain community support. She felt we could proceed with this ordinance with projects downtown, but not in our neighborhoods.

Councilman Davis moved to call the question. This motion was seconded by Councilman Russell and carried unanimously.

The amended motion made by Councilwoman Manheimer and seconded by Councilman Smith carried on a 4-3 vote, with Mayor Bellamy, Councilman Bothwell and Councilman Davis voting "no."

City Attorney Oast said that due to the vote, this ordinance will need to come back to Council at their next meeting for a second reading.

ORDINANCE BOOK NO. 26 – PAGE 317

Closed Session

At 7:18 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the

properties are (1) Eagle Street and (2) Shelburne Road. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3)) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 7:45 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilwoman Manheimer and carried unanimously.

ANNEXATION PUBLIC HEARINGS

Urban Planner Blake Esselstyn said that this is the consideration of public hearings to obtain comment on the following two annexation areas: Coopers Hawk area and the Royal Pines area.

On July 27, 2010, the Asheville City Council passed Resolutions of Intent beginning the annexation process for the Coopers Hawk Drive and Royal Pines areas. The Annexation Services Plan for these areas was approved on August 10, 2010, and a public information meeting was held on September 13, 2010. Approximately 95 persons attended this meeting. The meeting consisted of a video presentation defining annexation in general and providing a description of the proposed annexation areas and how each meets the standards required for annexation by the State of North Carolina. The video also detailed the specific services that the City would provide to the proposed annexation areas and outlined the financing and revenue sections of the services plan. Staff members from various City of Asheville departments were on hand at the meeting to respond to questions about proposed services.

Prior to the public hearing, staff will make a brief presentation concerning each area; the Mayor should then open the public hearing for each area. As part of the presentation for the Royal Pines Area, Cathy Ball, Public Works Director, will provide Council with information concerning corrections to the approved Plan for Services. Council should hear from the public separately on each area, and the order of comments should be (1) residents of the defined area and residents of the City; (2) and then any other commentators. The staff will bring forward annexation ordinances for Council consideration at the October 26, 2010 meeting. The proposed effective date for these annexations is June 30, 2011.

Pros:

- Supports the City of Asheville's Smart Growth Annexation Program (regular program of annexations) as set forth in the City's 2025 Plan.
- Provides for an urban level of service for developed and developing areas adjacent to the existing city limits and includes those benefitting from existing City services in participation in the costs of such services.

Cons:

- There are mixed reactions from residents of proposed annexation areas, including objections for financial and other reasons.
- Phasing in services to achieve the service plans will involve skillful organization and management.

The fiscal impact of these annexations is contained in detail on pages 29-35 of the Plan for Services. General fund impact is enumerated on pages 33 and 34.

Staff will make a brief presentation concerning the annexation areas and the Mayor should then open the public hearing for the area. Council should hear from the public separately on each area. The staff will bring forward annexation ordinances for Council consideration at the October 26, 2010, meeting.

PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE AREA COOPERS HAWK AREA

Mayor Bellamy opened the public hearing at 7:50 p.m.

Urban Planner Blake Esselstyn said that this is the public hearing to consider the annexation of the Coopers Hawk area. This public hearing was advertised on September 3 and 10, 2010.

He then made a brief presentation concerning the Services Plan for the Coopers Hawk area – (a) 31 parcels (or portions of parcels); (b) 41.8 acres; (c) 16 dwellings; (d) approximately 35 people); (e) residential land use; and (f) meets development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

The following individuals spoke against the annexation of the Coopers Hawk area for various reasons, some being, but are not limited to: there will be no reductions in homeowners insurance premiums; there is no subsidy of water delivery to remote customers by Asheville citizens; there will be a slower fire response due to increased travel distance; they are losing a higher degree of emergency response; there is no better refuse service for new residents; certain areas will not receive trash collection; their taxes will increase by 57%; they already receive and pay for water and sewer services at the same rates as City residents; Asheville should not use annexation as a means to meet current budget problems; the City should manage the capital and operating budgets prudently; annexation public hearings should be scheduled separately so as not to have to have a long wait for their item to appear before Council; City should not forcibly annex; request for moratorium on forced annexation; and people are already financially unstable:

Mr. Mike Parentice, resident of Coopers Hawk Drive
Ms. Betty Jackson, Buncombe County resident
Mr. Alan Ditmore, Buncombe County resident
Ms. Nancy Grace, friend for resident in Coopers Hawk

At 8:10 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that annexations are set by statutes and there is not a lot of flexibility in setting dates.

Mayor Bellamy said that consideration of the ordinance to annex the Coopers Hawk area will be held on October 26, 2010, which is also set statutorily as well.

PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ROYAL PINES AREA

MOTION TO WITHDRAW FROM THE CURRENT PLANS FOR ANNEXATION OF THE ROYAL PINES AREA

Mayor Bellamy opened the public hearing at 8:12 p.m.

Urban Planner Blake Esselstyn said that this is the public hearing to consider the annexation of the Royal Pines area. This public hearing was advertised on September 3 and 10, 2010.

He then made a brief presentation concerning the Services Plan for the Royal Pines area – Royal Pines area (a) 682 people; (b) 388.7 acres; (c) 670 dwellings; (d) approximately 1,595 people; (e) residential land use; and (f) meets population density test, subdivision test and development test.

City Attorney Oast said that the City Clerk is required to perform certain functions under N.C. Gen. Stat. sec. 160A-49 with respect to notification of property owners, investigation of tax listings, filing of plans, delivery of certain information to the Buncombe County Board of Commissioners, etc. In addition, she has notified volunteer fire departments and solid waste haulers in the affected area. City Clerk Burleson and Urban Planner Blake Esselstyn have provided that certification for this area.

Public Works Director Cathy Ball clarified some inconsistencies in the Plan for Services for the Royal Pines area. In the initial Plan for Services there was some indication that we would not be providing solid waste collection or street maintenance on some of these streets. After further review, staff went back and re-looked at those areas. There are only two streets that we would not propose to do solid waste pick-up on unless the owners of the property are willing to sign an agreement, because the right-of-way does not exist for us to be able to access the property. The Plan for Services will be amended. In addition, we have sent 145 letters to all the affected property owners last week that are impacted by this change. There is no change in the cost of the Plan for Services as a result of this clarification.

The following individuals spoke against the annexation of the Royal Pines area for various reasons, some being, but are not limited to: the area will no longer contain affordable housing; additional taxes will place a financial burden on the already financially-strapped residents; don't balance the City's budget by annexing people; people can't find jobs and will not be able to pay the increase in taxes; don't annex due to current economic conditions; people in area are living in poverty or just above poverty levels; don't impose new local taxes because federal and state taxes will probably also rise; area has a lot of elderly on fixed, low and continually declining incomes; the law allows annexation, but it's not the right thing to do; this is taxation without representation; wait to consider annexation until economic times improve; City needs to take care of their current City residents before annexing more; street light burns day and night at the corner of Battery Park Avenue and Wall Street and residents don't want to have to pay for that waste; annexing some streets in the area will kill the ability for others to sell their homes; it's unfair to make some residents in the area pay City and County taxes and people on the other side of the road do not; some residents will not receive solid waste collection; annexing will cause a substantial hardship on residents; annexation is a violation of individual rights; not annexing the entire area will cause service delivery problems; will the City provide sewer service to each home; will streets be brought up to City standards; annexation will not benefit the area residents;

Ms. Deryn Blackmon, resident on Cedar Lane
Ms. Belle Reina, resident on Royal Pines Drive (presented petition "We, the citizens of Royal Pines, Arden, North Carolina, who live within the boundaries set forth in Buncombe County, stand in opposition of the proposed annexation" with over 650 names)
Mr. Mike Hinman, resident on Rathfarham
Ms. Diane LeBeau, resident on Fox Hollow Court
Mr. Tim Navaille, resident on Walnut Street
Mr. Charles Lewis, resident on Appian Way

Mr. Robert Cheek, resident on Chestnut Place
Ms. Amy Churchill, resident on Spring Cove Court
Ms. Joanne Watson, resident on Weston Road
Mr. Gerald Mozian, resident on Tree Top Drive
Mr. A.B. Wexler, resident on Pinehurst Circle
Ms. Jane Bilello, representing the Asheville Tea Party
Mr. Wilson Davis, resident on Sycamore Drive
Mr. Tim Moffitt, resident on Sweeten Creek Road
Mr. Hugh Murphy, resident on Locust Court
Ms. Michelle Rippon, resident on Rippon Court
Ms. Linda Murphy, resident on Locust Court (read letter from Patty Dalton who was unable to attend the public hearing)
Ms. Agnes Cheek, resident on Appian Way
Ms. Lisa Fruchtman, resident on Fox Hollow Court
Ms. Nichol Hazzard, resident on Royal Pines Drive
Mr. Rocky Hollifield, resident on Cedar Lane
Mr. Larry Carter, Acting Secretary for the Rosscraggon Wood sanctuary on Sweeten Creek Road
Mr. Andrew Euston, resident on Weston Road

Mayor Bellamy closed the public hearing at 9:40 p.m.

City staff responded to various questions/comments from Council, some being, but are not limited to: which roads are private and which roads will the City take over for maintenance; explain the street maintenance repair schedule; what is the City's procedure in extending sewer lines; are there any water line extensions planned for this area; what is the criteria for areas to be considered for annexation; since the City is not annexing all of the properties in the Royal Pines area, will there be confusion regarding service delivery and if not, why; explanation of the reasoning behind the boundaries in the Royal Pines annexation area; and if the area was annexed how, could the annexation take effect five years from now.

Councilman Russell moved that we withdraw from the Coopers Hawk annexation area and the Royal Pines annexation area and impose a 12-24 month moratorium on annexation plans and policies, which would allow the City to get a grasp on their own finances and give the people an opportunity to get back on their feet.

When Councilwoman Manheimer asked if the motion would be for a 12 month moratorium, she said that she would second it. Therefore, Councilman Russell amended his motion (keeping the withdrawal of the two annexation areas) that there be a 12-month moratorium on annexation plans. Councilwoman Manheimer then seconded the motion.

When Vice-Mayor Newman questioned if a motion is in order at this meeting, City Attorney Oast said that although a vote is scheduled in two week, he felt that Council can direct staff to cease pursuing the annexations thereby stopping the process. He felt Council has the authority to consider the motion at this meeting, but if it turns out that Council can't he will advise them and schedule the vote for October 26.

Councilwoman Manheimer explained that she is not interested in placing a moratorium on all annexations, but she is interested in ceasing the process on this one area. She believed there are better annexations for the City to pursue, other than these two areas.

When Vice-Mayor Newman clarified that the motion that the withdrawal was for both annexation areas, Councilman Russell said that he would be willing to amend his motion to withdraw just the Royal Pines annexation area.

Councilman Davis explained why he supported withdrawing from the Royal Pines annexation area.

Councilman Russell clarified his motion to withdraw the current plans for annexation of the Royal Pines area. This motion was seconded by Councilwoman Manheimer.

Vice-Mayor Newman doesn't agree with any of the concerns or sentiments expressed, but from a City Council standpoint this is probably the toughest issue we are charged with. The implicit opposition of people to go through an annexation is understandable. The state does goes through a democratic process to set the annexation process, so he disagrees to some extent that people do not have a voice in it. However, at a local level it feels that way. In every other city around the state when areas received city water services, they are basically automatically incorporated in to the City. That is how most cities grow. Involuntary annexations happen in other parts of the State, but they are relatively rare. However, in Asheville, that process has not been used. Asheville has been urbanized, but the City limits have stayed relatively fixed for a long period of time. The City of Asheville has had by far the least annexation of any city in North Carolina over the last two-three decades. In the long-run he does not believe it is a tenable position for the City to say that we are not going to grow. He felt the City will have to do some annexations and he doesn't enjoy it, but he feels it's the right thing for the City and the right thing for the region as well. He felt that City Council needs to have a focused discussion on what our approach is on annexations and give some type of clarity to City staff. We are all aware of the financial dynamics that we are in and that the costs and services on our City are growing every year but our revenue base to support them are not.

Mayor Bellamy agreed that Council needs to re-visit our annexation policy via a worksession and provide City staff direction. The next round of annexations are scheduled to begin in January and it would be good to give staff direction on whether to proceed with that schedule or not.

Councilman Bothwell noted that he received a letter from the community association in Coopers Hawk stating that some percentage of people want to be annexed. He still believes there are good reasons for the City to annex. However, it's clear that there are a lot of affordable housing in this community, and for us to give tax incentives for builders to create affordable housing and then turn around and raise taxes for people who have affordable housing is not logical.

Councilman Smith felt that if we had more choices to grow the City, we would not use annexation. He urged the community to contact their state legislators to provide Asheville more tools to grow their City. We are stuck with a litany of bad choices in order to maintain the infrastructure in the City. He explained that cities create wealth. Eighty-three percent of North Carolina's gross domestic product is created in urban centers. That money fans out across the State to be a part of all our lives, whether we live in those urban centers or not. It's important to acknowledge that we have to maintain those urban infrastructures if we are going to keep those economic engines. That is one of the reasons why cities are important. Asheville is unique because we have well over one million tourists come into our city every year. Asheville takes more calls for emergency services per capita than any other city in North Carolina. We have 178 calls for emergency service for every 1,000 residents. The City of Charlotte receives 126 calls per 1,000 people. We have an enormous responsibility to take care of people that don't live here. The money from hotel and motel taxes does not come into the City. It goes to the Buncombe County Tourism Development Authority, which does a great job marketing to get more tourists here. However, if we have some of the same tools as other cities in North Carolina we would have a percent or two of those taxes to be able to maintain the infrastructure used by people visiting the City. We have 40,000 people who daily come into work into Asheville. Buncombe County grew by about 150,000 residents between 1950 and 2000. The City of Asheville grew by about 16,000. The City of Asheville creates about 75% of the sales taxes for Buncombe County and we are returned about 19.6% of those sales taxes. We do have a lot of infrastructure

responsibilities to maintain. He understood that people that live outside the City's limits don't want that to be their responsibility, but City Council has the responsibility to figure out a way to keep up that infrastructure. Council cut over $6 Million from the budget in the last two years and they are belt-tightening. We provide water for customers across Buncombe County and we should be able to charge what it costs to do that. There are rules that prohibit us from doing that – uniquely to Asheville. He felt if we had some occupancy tax, or some more flexibility regarding our water system and more of our sales tax returned to us, we wouldn't have to annex.

Vice-Mayor Newman said that there are other ideas to change the rules regarding annexation, such as instituting a policy for areas involuntarily annexed that their taxes do not automatically go up to the full amount that would be paid under city taxes, but phased in over a period of time. City Council will be discussing their legislative agenda soon and he supported the idea of encouraging our legislators to support that idea. He was not sure that that middle class neighborhoods not be considered for annexation was the right thing to do for the City. If we take that tool out, then it leaves the City with few options to address long-term financial realities

Councilman Russell moved to call the question. This motion was seconded by Councilman Davis and carried unanimously.

The motion made and seconded by Councilman Russell to withdraw the current plans for annexation of the Royal Pines area carried on a 5-2 vote, with Vice-Mayor Newman and Councilman Smith voting "no."

Mayor Bellamy said that she would schedule a worksession regarding the City's annexation policy.

At 10:18 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. MOTION TO REQUIRE METER ACTIVATION BY ALL ON-STREET PARKING SPACE USES IN CONJUNCTION WITH OPTIONS FOR HANDICAPPED DOWNTOWN RESIDENTS TO PARK DOWNTOWN

City Attorney Oast said that this is the consideration of options for addressing handicapped parking issues in downtown Asheville.

Earlier this year, staff began reviewing the City's policies and practices regarding parking by vehicles displaying handicapped placards or license tags (herein "handicapped vehicles") in downtown Asheville. That review has disclosed that this is an issue with many different aspects, and differing points of view, and that addressing it will involve consideration of multiple options. This report covers only regular parking spaces, which are available for use by any vehicle, including handicapped vehicles. It does not cover designated or restricted handicapped spaces. This report also does not cover abuses and improper usage of handicapped placards. The determination of a handicap condition and the issuance of placards is done by State agencies, based on medical information.

I. Issue: Handicapped vehicles have been observed parking in on-street metered parking spaces for long periods of time - - sometimes days and weeks - - without activating the parking meters. Anecdotal information suggests that, at any given time, approximately 10 percent of the 740 metered spaces in downtown Asheville are occupied by handicapped vehicles. This use is concentrated in the northwest quadrant of downtown where there is a high concentration of downtown residents, and where business activity in downtown, including the Grove Arcade, has been growing in recent years. However, the issue is not confined to this area, and the phenomenon occurs throughout downtown.

II. Law: The law regarding handicapped parking is summarized in his Staff Report of July 27, 2010. In essence, the law allows handicapped vehicles to park in a time-limited on-street parking space for an unlimited time. If that space is a metered space, however, the law does not expressly relieve the handicapped vehicle from the requirement of activating the meter. The law is not clear, however, and there have been conflicting interpretations of it. The practice in Asheville has been to allow handicapped vehicles to park in on-street spaces, but not to require activation of the meters. Other cities in North Carolina have followed a similar practice but some, notably Raleigh and Charlotte, require that handicapped vehicles pay to occupy the space, whether by activating a meter or by inserting money in a central "pay station."

Even though maximum times have been established for parking in downtown, ranging from 30 minutes in some areas to three hours in others, this maximum limit is not well understood and has not been consistently enforced. The purpose of having time-limited spaces (metered or not) is to ensure regular turnover of the spaces, making them available for use by transitory parkers, who may only need a short time to conduct their business. Metering is a way to keep track of the time, and to generate revenue to defray the cost of administering and enforcing traffic and parking regulations. Vehicles not displaying handicapped placards are allowed to remain in a parking space for as long as the meter is activated. While revenue is generated by such use, however, a space occupied in this way is just as unavailable for on-street parking by transitory users as a space occupied by a handicapped vehicle that does not activate the meter.

The City's zoning ordinances play a part in this equation. In most areas of the City, any development projects (even single family homes) need to provide sufficient off-street parking to accommodate their anticipated uses. For developments in or (for residential uses) near downtown, however, there is no requirement that off-street parking be provided. There are several reasons for this, including (a) that the urban pattern of development (lot line to lot line) does not allow for off-street parking; (b) parking is available in the decks; (c) it encourages in-fill development and increased density, and (d) facilitates alternate modes of transportation. Despite there being no requirement for off-street parking, however, many newer developments have supplied their own parking for their building occupants.

III. Observations. These policies, practices and ordinances have combined to produce several effects:

(a) Handicapped persons who live in downtown, especially those in assisted housing who are on fixed incomes, have come to depend on the availability of free on-street parking. Similarly, handicapped individuals who visit downtown for various services (legal, medical, etc.) some times need to leave their vehicles for several hours. For individuals with handicaps, mobility is frequently an issue, and parking on the decks presents practical problems. While many handicapped individuals are willing to and can afford to activate the meters, getting back and forth to the meters is difficult and time consuming. Some individuals have dexterity challenges, and depositing a coin or token in a meter is difficult for them.

(b) Extended use of on-street parking - - on-street vehicle storage - - makes the space unavailable for businesses that depend on frequent turnover of spaces to generate business traffic.

(c) Occupancy of an on-street space by a non-handicapped vehicle for long periods of time, even if a meter is activated, reduces turnover and makes the space unavailable for transitory use.

(d) The City loses some parking revenue when a space is occupied for long periods by vehicles that do not pay. This amount is difficult to ascertain, but has been estimated at more than $100,000 per year.

(e) Equipment and methods are available to enable handicapped vehicles to pay for extended periods of parking at metered spaces, but the equipment is expensive.

(f) A review of parking ordinances for other North Carolina cities reveals that Asheville's ordinances, while adequate, are not nearly as detailed as ordinances from other cities, which regulate more aspects of parking, such as the practice of "meter feeding," and include detailed parking schedules that are reviewed and revised regularly.

IV. Process: In reviewing this matter, my office has worked with the Transportation and Engineering Department. That process has included: (a) Several meetings and conversations with business owners, including the Asheville Downtown Association. The issue was also taken up at a meeting of the Mayor's Task Force for Persons with Disabilities. The Downtown Commission has reviewed this matter on several occasions, and Council has received an update; (b) Review of the applicable law, including State law, the Americans with Disabilities Act, and City Codes. This included a review of practices in other cities in North Carolina; (3) Exploring options for addressing the issue, including requiring meter activation in all cases, establishing zones where handicapped vehicles may park without activating the meter, making City-issued handicapped placards available for a fee, clarifying ordinances, setting aside spaces in decks and surface parking lots, and working with the operators of downtown residential facilities.

V. Options: Our research and review has revealed several options for addressing the issue. They are listed below, along with some considerations associated with the implementation of each.

a. Require meter activation by all on-street metered parking space users.

- This would require handicapped vehicles to pay for parking at the same rate as other vehicles, or to locate off-street or non-metered parking.
- There would be some hardship - - financial and mobility - - on those low/fixed income handicapped individuals who have come to depend on the availability of this parking.

b. Enforce time-limited parking as to all.

- This should be done in any case, but especially if meter activation by handicapped vehicles will be required.
- Will ensure more turn-over in on-street spaces, and more availability for transitory parking.
- Will require the posting of clear information as to applicable time limits.
- Should involve some review of parking patterns in downtown, and adjustments to the parking schedule, as needed.

c. Establish times every day during which no on-street parking is available (for instance, 2:00 a.m. to 5:00 a.m.). This is done in larger cities to allow for trash collection, street cleaning, and snow removal, and to ensure that vehicles are not stored on the street.

- This ensures that streets are not used for vehicle storage.
- Disruptive to vehicle owners who need on-street parking at those times.

d. Make City-issued handicapped parking placards available (at a cost) for handicapped residents downtown.

- Cost could approximate parking in decks, or on-street
- This would generate some revenue.
- This would address the mobility and dexterity issues experienced by some handicapped individuals.
- This would obviate requirement to deposit coin or token in parking meter.

e. Establish areas or zones on the periphery of downtown where handicapped vehicles may park in metered spaces without activating the meters.

- Areas would be "non-exclusive" - - anyone could park there, but handicapped vehicles would not have to activate the meter.
- Require meter activation everywhere else.
- Could be used in combination with handicapped parking placard described in Paragraph 4 above.

f. Make reduced cost spaces available on the tops of the parking decks or in surface parking.

- This may be impractical for some handicapped individuals with mobility challenges.
- There are not many spaces available.

g. Ensure availability and convenience of adequate designated handicapped spaces.

- May require metering of spaces.
- May require more action enforcement.

h. Work with the owners/managers of downtown residential facilities to assist in providing off-street parking.

- This would likely be an added cost for the facilities.
- This would allow exploration of non-public parking options.

VI. Public education: Any one or any combination of these options should include substantial efforts to educate the public, including businesses and handicapped vehicle operators, as to the new policies and practices. There are several resources available for doing this, including the owner/operators of the residential facilities, community organizations, warning tickets, etc.

VII. Timing for Implementation. Some of these options can be implemented almost immediately. These include a requirement for all users to activate meters, and enforcement of time limits for non-handicapped vehicles. If this is the policy direction of Council, it is recommended that there be a phase-in period so that affected parties and groups can be notified.

Some of these options will take a short time (30 to 45 days) for implementation. These include establishing non-exclusive on-street handicapped vehicle zones, and identifying the availability of spaces in the parking decks and surface lots.

Some options will take longer. These include implementation of a City of Asheville handicapped parking placard program, and reviewing and revising (if necessary) the parking schedules.

VIII. Summary and next steps. No one of these options is likely to address the issue completely, but a combination of some or all of them is likely to have some effect. There are many competing interests involved in this issue; no one group will be completely satisfied with any particular policy directive, but Council may continue making adjustments as needs dictate. Our review and suggestion of options has been with the following goals in mind.

a. Ensuring regular turnover in on-street parking spaces, making them available for transitory parking.

b. Making on-street parking available - - at a cost - - for those handicapped individuals (including downtown residents) who really need it, but not allow for on-street vehicle storage.

c. Increasing utilization of off-street parking.

d. Regular review and consistent enforcement and application of City parking ordinances.

e. Generation of some revenue to defray administrative costs.

The ordinance structure already exists to implement some of the options listed above. Depending on Council's policy direction, staff can quickly come back with more detailed implementation information.

Mayor Bellamy said that regardless of which option(s) Council chooses to implement, staff will need to develop an education package and work to see how the option(s) can be implemented in coordination with each one.

In response to Councilman Bothwell, Transportation Director Ken Putnam said that the monthly parking rate at the Civic Center Parking Garage is $70 a month and Vanderbilt Apartment residents are offered a monthly rate of $35 a month. Mayor Bellamy was interested in seeing how many Vanderbilt Apartment residents take advantage of the reduced offer in the deck.

Councilman Bothwell said that it appears that Battery Park residents are the parkers who are most affected. He asked if there has been any discussion with the management of the Basilica parking lot. Mr. Putnam responded that the City has not made contact with the property managers for Battery Park or the Basilica. He noted the Battery Park Apartments do have their own lot across the street from Haywood Street tucked in between a couple lots owned by the Church.

Mayor Bellamy said that the surface lot next to the Flying Flog that the City owns is technically just as close to Battery Park as the on-street parking is that they are currently utilizing. Mr. Putnam said that there are several monthly parkers in that lot but that is a City surface lot.

Mayor Bellamy was interested in looking at a permit only section on O.Henry Avenue (close to the AT&T lot) for Battery Park residents, similar to what we do on Woodfin Street. That would provide some additional guarantee of parking for residents of the Battery Park Apartments,

as well as some revenue for the City. She did talk to some Battery Park residents that supported that idea in that it would meet their needs.

Mr. Putnam said that there is also a permit-only section on Grove Street. The City works with the management of the residential unit and they determine how many spaces they need and it's up to them to hand it out to their residents.

Vice-Mayor Newman pointed out that we don't want to use high demand on-street parking for long-term car storage. He felt that some of those spaces on O.Henry would have heavy turnover.

Mayor Bellamy felt that in order to address the needs, there needs to be a combination of options. She suggested we look at all the options for a good package. In addition, she felt there should be additional accessible parking spaces in our decks for those who are handicapped.

In response to Councilman Russell, Mr. Putnam said that handicapped spaces in the parking decks are not a problem and we do follow the Building Code requirements. He said that the City does have the appropriate designated handicapped spaces close to the door. He said that he would look at creating more spaces in those areas. He noted that the Civic Center Parking Garage does not fill up on a day-to-day basis. The difference is if you park in the deck, they will have to pay to get out. There is no distinction made between someone who may have used a handicapped parking space inside the deck.

Councilman Smith was interested in reduced rates, if not in the parking garages then on the surface lot next to the Flying Frog, if it is currently available. If someone in the future ends up owning that lot, he hoped we could continue to work with them to continue that sort of parking for people in the Battery Park Apartments. He does not support long-term car storage at metered spaces, but around the high traffic business area we need to provide some parking proximity. He hoped to be able to use the existing parking meter enforcement personnel to make this work. He suggested staff consider a seasonal parking plan, e.g., January-March when sidewalks would be icy people could park closer to their homes.

Councilman Davis supported meter activation by all on-street metered parking space users. He felt that option was equitable. It is important, however, to look for alternative spaces for those Battery Park residents, but he noted that there are other handicapped parkers around town who use metered parking spaces for long-term storage as well. All parking spaces are valuable to the merchants and residents and they should not be used as storage. He did want to make sure that there are adequate handicapped spaces.

Councilman Russell agreed with Councilman Davis.

Councilwoman Manheimer moved to require meter activation by all on-street parking space users (option a). This motion was seconded by Councilman Russell.

In response to Councilman Russell, City Attorney Oast suggested a 30-day period to begin implementation as he understands that the merchants are anxious to have the parking available during the holidays.

Councilman Smith offered a friendly amendment to not begin implementation until we also have a deck or surface lot solution for disabled residents. Mayor Bellamy suggested we postpone taking action on this friendly amendment until all the options have been discussed.

Councilman Manheimer and Councilman Russell re-stated their motion to require meter activation by all on-street parking space users (option a) no sooner than 30 days of its adoption.

Vice-Mayor Newman offered a friendly amendment that option (a) be implemented with some combination of option (e) (establish areas or zones on the periphery of downtown where handicapped vehicles may park in metered spaces without activating the meters) and option (f) (make reduced cost spaces available on the tops of the parking decks or in surface parking). Councilwoman Manheimer and Councilman Russell accepted the friendly amendment.

Mayor Bellamy suggested that Council also consider, in combination with the other options (a), (e) & (f), option (d) (make City-issued handicapped parking placards available at no cost for handicapped residents downtown).

Councilman Russell felt that option (a) is pretty simple instructions and suggested we have staff work on the other options and report back to Council.

Mayor Bellamy felt that option (a) focuses on meeting the needs of the merchants and not really meeting the needs of the handicapped. She just wanted to make sure that we have places for the disabled to park.

Councilman Russell felt the property managers need to take a lead on this since this is their property and their residents. He felt the City should with the property managers on solutions.

Mayor Bellamy felt there is a conflict in our policies, in that, we have a policy of no required parking for residential developments in our Central Business District, and now we have a policy about how we are handling people with disabilities who have a handicapped placard. She felt we need to offer solutions to people who have disabilities that live downtown full-time and can't afford the current monthly rates for our parking decks.

In response to Councilwoman Manheimer, City Attorney Oast explained option (d). He said that in order to address the issue of some people who have mobility or dexterity challenges and can't go back and forth to feed a meter, which they are allowed to park at all day as long as they activate the meter, you could have a City-issued placard for downtown residents that would come at a cost, which would allow them to park on the street in a metered space.

Councilwoman Manheimer withdrew her motion.

Councilwoman Manheimer then moved to require meter activation by all on-street parking space users no sooner than 30 days of its adoption; and to allow a City-issued handicapped parking placard be issued, pursuant to an application, to downtown handicapped residents to park in parking decks at a less than full rate; and to include the establishment of areas or zones on the periphery of downtown where handicapped vehicles may park in metered spaces without activating the meters. This motion was seconded by Vice-Mayor Newman.

Mr. Clarence Gray, resident of Battery Park Apartments, said that the Battery Park is the only building that has zero parking facilities that you don't have to pay for. There is a parking meter every ten feet. We have one street that doesn't have meters on it and it has no parking signs on it. We surveyed our building and talked to 80% of our residents - 49% of the residents have vehicles, 43% are disabled, 37 have handicapped placards, and 33 said they need to park close to the building. For many of the handicapped residents they cannot walk to the Civic Center Parking Garage. He said that all of the Battery Park vehicles have their sticker in their vehicle window. When the lease is signed and you have a vehicle, you get a sticker. He said there are 7-9 vehicles that are Battery Park residents who park on the streets.

Ms. Shirley Early, resident of Battery Park Apartments, said that she is in a wheelchair most of the time and cannot walk to and from the Civic Center Parking Deck. The Apartments have too many cars and not enough spaces allotted for them. People will have no choice but to move from Battery Park if they cannot park their vehicles close-by. She felt that a lot of the

spaces are taken up by people who work in the vicinity of Battery Park and feed the meter all day long.

Ms. Holly Stiles, staff attorney representing the Disability Rights of North Carolina, said that Disability Rights of North Carolina did an accessibility survey on August 18, 2010, of the Wall Street, Rankin Avenue and Civic Center Parking Decks and none of the City decks currently meet Americans with Disabilities Act guidelines.

Ms. Rose Logan Weaver Walker, resident of Battery Park Apartments, urged Council to provide parking for the Battery Park residents as they cannot move their car every hour or two.

Ms. Raelin Hanson gave a brief history of the Battery Park Apartments and felt that now since the Grove Arcade has been renovated they want the residents gone. She hoped Council would proceed with the surface lot next to the Flying Frog option and presented Council with some sketches of how to use that lot. She felt this would address the issue of parking for handicapped downtown residents and also address additional green space downtown.

Mr. Joe Minicozzi, Executive Director of the Asheville Downtown Association, said that this conversation stated approximately 4 years ago. They performed a study and found that 10% of cars are being stored on the downtown streets, which represent approximately $160,000 in lost revenue. He said this is not just about the Battery Park Apartments, but in several areas throughout downtown. He asked that if the City chooses the City-issued placard system, that they find a way to close the door on abuse. He urged City Council to move forward on option (a) as recommended by the Downtown Commission.

Mr. Bill Griffin, representing the Grove Arcade Merchants Association, explained that they have tried to be a good neighbor (as does the Battery Park Apartment residents) but the parking issue around the Grove Arcade is important to everyone. Downtown merchants have had a rough time during the past two years and every shopper that they can get to downtown, they want them to have an opportunity to park and shop. They asked Council to find a solution that would both free up spaces on the street for short-term metered parking, while at the same time finding adequate parking for the residents of Battery Park and Vanderbilt Apartment residents and others with handicapped placards downtown.

Ms. Karen Harrington, Chair of the Mayor's Committee for Citizens with Disabilities, thanked Council for inviting them to be a part of this discussion regarding handicapped parking in downtown Asheville. She felt it was a very passionate subject for both sides and trusted Council will do the fair thing for both sides.

After a short discussion, Mr. Putnam said that he would work toward bringing a report to Council within 30 days of how he will implement meter activation by all on-street parking space users no sooner than 30 days of its adoption, in conjunction with allowing a City-issued handicapped parking placard be issued, pursuant to an application, to downtown handicapped residents to park in parking decks at a less than full rate; and including the establishment of areas or zones on the periphery of downtown where handicapped vehicles may park in metered spaces without activating the meters

The motion made by Councilwoman Manheimer and seconded by Vice-Mayor Newman carried unanimously.

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS

RESOLUTION NO. 10-221 – RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE BOARD OF ADJUSTMENT

The following individuals applied for a vacancy (Alternate) on the Board of Adjustment: Diane Meek, Jeffory Quick, Eugene Britton, Bill Branyon, Richard Fort, Eric Rainey, Nelda Holder and Ron King

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Richard Fort.

Vice-Mayor Newman then moved to appoint Richard Fort to serve the unexpired term of Kristy Carter, term to expire January 21, 2013, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 229

RESOLUTION NO. 10-222 – RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

The following individuals applied for vacancies on the Homeless Initiative Advisory Committee: Allison Browne, Jeff Paul, Christopher Winebrenner and Laura McIlvanie.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Scott Rogers, David Nash and Gerald Hixson. Since Mr. Rogers' attendance was below the 75% attendance requirement, it was the consensus of the Committee that in the reappointment letter that Mr. Rogers be made aware of the attendance requirements. In addition, City Clerk Burleson was instructed to write a letter to Chairman Nash to explain that Mr. Rogers' attendance will be reviewed in one year to see if his attendance increases and if not, City Council will consider replacement.

At Mayor Bellamy's suggestion, it was the consensus of Council to include in Mr. Rogers' reappointment letter that since his organization's involvement with the Committee is so valuable if he is unable to attend a meeting that he send a proxy.

Councilman Smith then moved to reappoint Scott Rogers, David Nash and Gerald Hixson to each serve a three-year term respectively, terms to expire November 1, 2013, or until their successors have been appointed. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 230

RESOLUTION NO. 10-223 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

The following individuals applied for a vacancy on the Public Art Board: Shad Marsh, Kathleen Lyons, Jeanna Maines, William Meller and Nancy Sokolove.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Nancy Sokolove.

Councilwoman Manheimer then moved to appoint Nancy Sokolove to serve an three-year term, term to expire June 30, 2014, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 231

RESOLUTION NO. 10-224 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

The following individuals applied for vacancies on the River District Design Review Committee: Philip A. Ellis, Michael McDonough, Stuart Smith and Darren Green.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Marty Black (owner of property within the River District) and re-advertising for the second vacancy of an owner of property within the River District.

Councilwoman Manheimer moved to (1) reappoint Marty Black (owner of property within the River District) to serve an three-year term, term to expire September 1, 2013, or until his successor has been appointed; and (2) re-advertise for the second vacancy of an owner of property within the River District. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 232

RESOLUTION NO. 10-225 – RESOLUTION APPOINTING A MEMBER TO THE SOIL EROSION/STORMWATER REVIEW COMMITTEE

The following candidate applied for the positions on the Soil Erosion/Stormwater Review Committee: Ter MC Spinner.

Vice-Mayor Newman said that it was the recommendation of the Boards & Commissions Committee to appoint Ter MC Spinner (City resident or an individual who resides in the extra-territorial jurisdiction area)

Councilman Russell moved to appoint Ter MC Spinner (as a City resident or individual who resides in the extra-territorial jurisdiction area) to serve a three-year term, term to expire November 1, 2013, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following claims were received by the City of Asheville during the period of September 17-30, 2010: Frontier (Water), Mary Avery (Streets), Eric Edwards (Water), Steve Brown (Parks & Recreation), Pinecliff Condos (Water), Progress Energy (Water), Cody D. Moliterno (Police), Robert D. Gaddy (Police), Tom Reynolds (Streets) and Georgia Miles (Parking Services). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:28 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – October 26, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer (arrived in meeting at 5:47 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Miss North Carolina Kristian Tobias led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 2010 AS "ADOPTION AWARENESS MONTH"

Vice-Mayor Newman read the proclamation proclaiming November, 2010, as "Adoption Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Tara Foster, who briefed City Council on some activities taking place during the month

B. PROCLAMATION PROCLAIMING NOVEMBER 6, 2010 AS "AIDS AWARENESS WALK 2010 DAY"

Mayor Bellamy read the proclamation proclaiming November 6, 2010, as "AIDS Awareness Walk 2010 Day" in the City of Asheville. She presented the proclamation to Ms. Peggy Weil, Advocacy Coordinator for WNC AIDS Project and Kristian Tobias, Miss North Carolina International, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF CAPITAL IMPROVEMENT PLAN WORKSESSION HELD ON OCTOBER 8, 2010; AND THE REGULAR MEETING HELD ON OCTOBER 26, 2010

B. RESOLUTION NO. 10-226 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH CORT ARCHITECTURAL GROUP, P.A., FOR THE CIVIC CENTER ROOF REPLACEMENT

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Cort Architectural Group, PA, for the Civic Center Roof Replacement in the amount of $91,512.43 for a total contract amount of $223,611.43.

On July 22, 2008, City Council authorized a contract with Cort Architectural Group in the amount of $132,099 to design, provide construction documents and contract administration for the Civic Center Roof Replacement. The City contracted with Owens Roofing to replace the roof in August 2009. The construction was anticipated to take five months to complete. Due to bad weather, change orders and exceeding amount of time on the part of the contractor, the project

took an additional six months for substantial completion and another three months for final completion for a total construction time of 14 months.

As a result of this increase in time, the construction administration cost for Cort Architectural Group, PA, increased an additional amount of $91,512.43. The Contractor will be penalized for liquidated damages in the amount of $31,000 for exceeding the time limit to help offset this cost.

Processing this change order was delayed because of the uncertainty of when the project would be completed, given the excessive additional amount of time it took to complete the project. Staff wanted to make sure that the overall project would not be exceeded as a result of the excessive time to complete the project. As noted above, the contractor will be required to pay liquidated damages in the amount of $31,000.

The final contract amount with Owens Roofing including six change orders is $1,513,452.42. The budgeted amount allowed for the construction was $1,647,982.00 for a difference of $134,529.58. This amount will cover the change order request from Cort Architectural Group, PA. No additional funds will be required on the project.

The total savings on the project, if this change order is approved will be $43,017.15.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a change order with Cort Architectural Group, PA, for the Civic Center Roof Replacement in the amount of $91,512.43 for a total contract amount of $223,611.43.

RESOLUTION BOOK NO. 33 – PAGE 234

C. RESOLUTION NO. 10-227 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH T&K UTILITIES INC. FOR THE RICEVILLE FOREST TANK REPLACEMENT AND WATER SYSTEM IMPROVEMENTS PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with T&K Utilities, Inc., in the amount of $289,535.06, for the Riceville Forest Tank Replacement and Water System Improvements project.

The Riceville Forest tank, located in the Riceville Forest Subdivision in East Asheville off of Riceville Road, is in need of replacement. The work consists of the demolition and disposal of the existing 19,000 gallon steel ground storage reservoir, construction of a new 97,000 gallon glass fused to steel reservoir, installation and operation of a 21,000 gallon temporary water storage tank with temporary booster pumping system for 3 existing residences, and construction and installation of approximately 370 linear feet of 6-inch ductile iron pipe with related appurtenances. In response to the Advertisement for Bids, Water Resources received five (5) bids.

Companies responding were:

1. Blitheco Construction, LLC. – Penrose, NC
2. Bryant's Land Development Industries, Inc. – Burnsville, NC
3. Spur Construction – Waynesville, NC
4. T & K Utilities, Inc. – Asheville, NC
5. Turner & Murphy Company, Inc – Rock Hill, SC

A review team comprised of City staff reviewed these bids and selected T & K Utilities, Inc., as the lowest responsible bidder in the amount of $289,535.06.

The Water Resources Department has a Riceville Forest Tank capital project in which funds are specifically reserved for this project. To date, there is a balance of $320,000.00 in this project.

Riceville Forest Tank Project	$320,000.00
Actual Bid for Project	$289,535.06
Amount Remaining After Contract Award	$ 30,464.94

City staff recommends City Council approval of the City Manager to enter into an agreement with T & K Utilities, Inc., in the amount of $289,535.06 for the Riceville Forest Tank Replacement and Water System Improvements project.

RESOLUTION BOOK NO. 33 – PAGE 235

D. RESOLUTION NO. 10-228 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE AUTOMATED GARBAGE CANS FROM SCHAEFER SYSTEMS INC.

Summary: The consideration of a resolution waiving the formal bid process and authorizing the City Manager to enter into a contract with Schaefer Systems Inc. to purchase automated garbage cans.

The Sanitation Division requires new automated garbage cans on a continuous basis for replacement of damaged, existing, out of warranty automatic garbage cans, for new customers and additional garbage cans as requested by residents.

Pursuant to N.C.G.S. 143-29(g) when in the best interest of a local municipality, the formal bid process may be waived for the purchase of apparatus, supplies, materials or equipment from a vendor after the vendor has participated in a formal bid process substantially similar to the need of the municipality with another local government within the last twelve (12) months.

On January 26, 2010, the Township of Brick, County of Ocean and State of New Jersey, after completing a formal bidding process, awarded a contract to Schaefer Systems International Inc., 10021 Westlake Drive, Charlotte, NC, for the supply of automated trash cans of the same make, models, size and markings satisfactory for the City's needs. Comparing our 2009-2010 automated garbage can pricing structure to the Township of Brick's contract with Schaefer Systems Inc. an estimated savings of approximately $9,720.00 can be realized FY 2010-11.

The Public Works Department budgeted $65,000 in its FY 2010-11 operating budget for the purchase of automated garbage cans. Based on the pricing structure above, the department will realize an estimated savings of $9,720.00 FY 2010-11.

City staff recommends City Council adopt a resolution waiving the formal bid process and authorizing the City Manager to enter into a contract with Schaefer Systems Inc. to purchase automated garbage cans.

RESOLUTION BOOK NO. 33 – PAGE 237

E. RESOLUTION NO. 10-229 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE BLACK MOUNTAIN ROUTE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to accept State Funds for the operating expenses of the transit service route to and from the Town of Black Mountain.

The NCDOT has agreed to contribute funds to be used for the operating expenses of transit service to and from Black Mountain and the Asheville Transit System has agreed to operate the subject service.

Route # 28 and the Black Mountain Trailblazer Route were established in 2002 following a collaborative effort between NCDOT and the Land-of-Sky Regional Council as a result of a number of the region's counties and municipalities who passed resolutions in 2000 asserting the need for fixed route bus service connecting urban areas not in close proximity to each other.

The subject service operates seven times a day, six days a week. All funding is provided by the State of North Carolina (maximum of $141,667), and Fare Box Revenue ($7,084) for a total budget of $148,751.

This route's ridership grew considerably since 2007. However, during FY2010 ridership decreased significantly due to the changes the city had to make to comply with the Intercity regulations.

Route 28		
Year	Total Ridership	Change
FY2010	33,240	-40%
FY2009	55,038	44%
FY2008	38,216	9%
FY2007	35,140	78%
FY2006	19,727	

This funding is vital to keep the route operating. NCDOT is funding the route from August 1, 2010 to December 31, 2010 and funding will be discontinued after that date. These funds are programmed in the current transit operating budget, with no City funds being spent. The City of Asheville has been awarded a Job Access and Reverse Commute Grant that is in process of being approved by the Federal Transit Administration. If approved, this grant will guarantee continuation of this service for two more years.

The City of Asheville will receive State Funds in the maximum amount of $141,667 to cover operating expenses of the transit service route to and from the Town of Black Mountain for total budget of 148,751. These funds are already programmed in the current transit operating budget, with no City of Asheville funds being spent. As such, no budget amendment is required.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the NCDOT for the acceptance of funds to be expended for service to and from Black Mountain.

RESOLUTION BOOK NO. 33 – PAGE 238

F. RESOLUTION NO. 10-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM SECTION 5303 PLANNING GRANT OF THE FEDERAL TRANSIT ADMINISTRATION METROPOLITAN PLANNING ORGANIZATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to fund the transit planning program, Section 5303 Planning Grant of the Federal Transit Administration (FTA) Metropolitan Planning Organization (MPO).

The FTA MPO Section 5303 Planning Grant is an annual grant designated exclusively for transit planning. The funds are currently administered by the City of Asheville as a direct recipient of Federal Transit Funds. The funds are primarily used to pay the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning. In addition, the funds support grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses.

Fiscal Year 2010-11 anticipated funding totals $63,390. The grant will fund 80% of the anticipated funding, which equals $50,712, the City will fund 10% local match, which equals $6,339. The North Carolina Department of Transportation will provide the additional 10% local match.

The anticipated grant funding and the City's local match in the amount of $6,339 are currently budgeted in the Transportation Department's approved budget.

The total anticipated grant funding for Fiscal Year 2010-11 is $63,390. The City is required to provide a 10% local match in the amount of $6,339. The anticipated grant funding and the City's local match in the amount of $6,339 are currently budgeted in the Transportation Department's approved budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the NCDOT to fund the transit planning program, Section 5303 Planning Grant of the FTA MPO.

RESOLUTION BOOK NO. 33 – PAGE 239

G. RESOLUTION NO. 10-231 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE EXISTING CONTRACT WITH KIMLEY-HORN AND ASSOCIATES TO UPDATE THE DOWNTOWN PARKING STUDY

Summary: The consideration of a resolution authorizing the City Manager to amend the existing contract with Kimley-Horn and Associates, Inc. in an amount not exceed $38,000, to update the downtown parking study that was completed during May 2008.

City Council authorized the City Manager to execute a contract (PO # 81138) with Kimley-Horn and Associates, Inc. for the feasibility study of a parking garage on Rankin Avenue during June 2007 (Resolution # 07-117) at a cost not to exceed $154,100. The subject contract was amended during July 2007 (Resolution # 07-142) to include a downtown parking study for all of the Central Business District (CBD) at a cost not to exceed $97,500. With the amendment, the total contract equaled $251,600. At this time, all of the agreed upon work has been completed at a total cost of $221,485 which leaves an encumbered balance of $30,115.

Since the downtown parking study was completed, economic conditions have drastically changed. As a result, staff believes that it would be a good idea to update the downtown parking study and the modeling tool to be sure that the data is still valid and/or to update the data based on current conditions. Kimley-Horn and Associates, Inc. has submitted a proposal to accomplish the work for an amount not to exceed $38,000. Since the existing contract has an encumbered balance of $30,115, it only needs to be increased by $7,885 for a total contract amount of $259,485. All funds would come from the Parking Enterprise Fund and are currently budgeted.

The total maximum cost of the subject supplement is $38,000 and it is already budgeted in the FY 2010-11 Parking Enterprise Fund Operating Budget.

Staff recommends that City Council adopt a resolution authorizing the City Manager to amend the existing contract with Kimley-Horn and Associates, Inc. in an amount not to exceed $38,000 to update the downtown parking study that was completed during May 2008.

RESOLUTION BOOK NO. 33 – PAGE 240

H. ORDINANCE NO. 3909 - ORDINANCE AUTHORIZING PARTIAL REFUND OF PRIVILEGE LICENSE TAXES FOR OPERATIONS THAT CEASE BY OPERATION OF LAW

ORDINANCE NO. 3910 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO ESTABLISH A NEW PRIVILEGE LICENSE FEE FOR ELECTRONIC GAMING OPERATIONS

Summary: The consideration of ordinances amending the privilege license tax for electronic gaming operations, and authorizing partial refunds.

The State has attempted for years to prohibit and/or regulate electronic gaming operations (herein "EGOs"). The most recent attempt was challenged in the courts by the EGO industry and the court enjoined enforcement of the law. While this was a Superior Court decision and its applicability is limited, many localities suspended their efforts to enforce the law, which made unauthorized operation a criminal offense.

In response to the uncertain status of the State law, many localities began regulating EGOs through their ordinances, primarily zoning ordinances and privilege license taxes.

In May, Council amended the zoning ordinance to regulate the location of EGO's, and some aspects of their operation. At the same time, Council adopted a license tax of $2,500 per location, and $500 per machine. These fees were effective for the fiscal year beginning July 1. While high, the fees are within the range of what other cities across the State have done.

In July, the N.C. General Assembly again adopted legislation to prohibit EGOs. This legislation is effective as of December 1, 2010. Several EGO operators have asked staff whether partial refunds of the tax, to reflect partial year operation, are possible. Individual refunds are not possible because taxes must be uniform, and because the constitution prohibits "exclusive emoluments." However, an ordinance that amends the previous fee and provides for a reduced fee to reflect the reduced period of legality, with provision for partial refund of tax already paid, is possible. In the interest of observing the requirement for uniformity, the authorization for the refund has been drafted to apply to any business whose operating year is cut short because the legislature prohibits the activity. As a practical matter, however, this is not likely to affect any business other than EGOs or affect any year but this one. Also, in order to address pending court actions (in other counties) the refund is only authorized for businesses that actually cease operations.

Council may provide for a "straight" proration of the refund, based on the number of months during the tax year that the business was not prohibited. Fees collected so far from EGO's come to approximately $192,000. Adjusting the tax to reflect five months of operation would reduce that amount to $80,000; this would also reduce the expected stream of revenue from those businesses that have not yet paid. The refund ordinance as proposed uses the "straight" proration formula.

There is the possibility that, due to court cases pending in other jurisdictions, enforcement of the law banning EGO's could once again be enjoined. City Code Sec. 9-30 provides for some privilege license taxes to be for periods of "less than a full license year." In order to avoid a confusing "full payment/partial refund" process for those establishments that have not yet paid, but to authorize a full year's tax in cases EGO's are allowed to continue

operation, a second ordinance is attached that amends the license fee to make it apply one monthly basis for the period of operation. Again, this only affects EGO's, and only for this year. The fee is payable at the start of the license year, or the commencement of operation.

As noted above, revenue from this source has not been programmed yet, so no City programs would be affected.

Adoption of the proposed ordinances is recommended.

ORDINANCE NO. 3909 - ORDINANCE BOOK NO. 26 – PAGE 325
ORDINANCE NO. 3910 - ORDINANCE BOOK NO. 26 - PAGE 326

I. UPDATE FROM THE BLUE RIBBON HEALTHCARE TASK FORCE

Summary: In late July 2010, City Council appointed four (4) members of the community to serve on the Healthcare Task Force. Council directed the group to provide final health fund recommendations by the onset of the FY 11–12 budget process (January – February, 2011). The Task Force was initially charged with:

- Evaluating best practices to determine the optimal range of health insurance-related benefits afforded to employees
- Cost-for-service comparisons
- Employer-employee cost-share analysis
- Review of the Asheville Project Disease Management Program
- Other areas of interest

Since its inception, there has been one (1) additional Task Force member appointed: Mr. Marty Stamey, Assistant Manger for Haywood County. As with the other members, Mr. Stamey has a background in Human Resources and health insurance management in a medium to large organization.

The Task Force convened once in September to receive a comprehensive review of the City's benefits package, risk structure, healthcare funding and the Asheville Project. At this meeting, the Task Force directed staff to provide more detailed information in a number of areas, to include:

- Health and Wellness initiatives related to the strategic plan
- Health claim costs
- Medical and dental administrative costs
- Current health clinic costs
- Wellness Health Incentive/Employee Benefit Committee

The next Task Force meeting will take place on November 2, 2010.

This information is to update City Council on the progress of the Healthcare Task Force. No action is necessary at this time.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously (Councilwoman Manheimer was not present).

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE SCHOOL BOARD UPDATE

Mr. Gene Bell, Chairman of the Asheville School Board, briefly updated City Council on the activities and mission of the Board. He provided Council with the School system configuration, a 6-year look at district membership (noting that they are up 121 students from 2009/10), the 2010-11 budget by revenue source, and the 2010-11 budget by object of expenditure.

Mr. Allen Johnson, Superintendent of Asheville City Schools, said that regarding academic performance, using charts he explained the Scholastic Assessment Test Report, and the NC's STAT gap vs. the USA (math & reading). He provided statistics on out of the 50 goals of the District AYP goals, 42 were achieved.

Mr. Johnson and Mr. Bell then reviewed in detail the following challenges: (1) budget; (2) facility needs; (3) achievement gap; and (4) dropout rates/graduation rates. They will continue to protect their classrooms, streamline Central Services, implement energy efficiency plans, sustain reductions in professional development, and do "more with less".

They then explained the new and innovative programs of (1) In Real Life; (2) Single-Gender Classrooms; (3) Uniform/Standardized Dress; (4) Teaching Artists Presentations in Asheville Schools (TAPAS); and (5) Fit2Learn.

Mr. Johnson responded to Mayor Bellamy when she questioned what was causing the decrease in scores in math and reading in the 3rd grade, and what caused the dramatic increase in the Asheville High scores.

Mr. Johnson also responded to Councilman Bothwell regarding the cost of computers vs. textbooks.

On behalf of City Council, Mayor Bellamy thanked Mr. Bell and the entire Board for their hard work and efforts on this Board, pointing out several achievements, including their participation in the City of Asheville Youth Leadership Academy.

B. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE

Mayor Bellamy said that due to a conflict, this update would be held at a later date.

C. UPDATE ON HANDICAPPED ON-STREET METERED PARKING IN DOWNTOWN ASHEVILLE

Transportation Director Ken Putnam said that the purpose of this report is to update City Council on the recent action that was taken regarding handicapped on-street metered parking in downtown Asheville.

A motion was adopted unanimously on October 12, 2010, to require meter activation by **all** on-street metered parking users within 30 days. In addition, City Council directed staff to research and suggest various options to "soften the blow" for people with disabilities. It should be pointed out that the subject action only affects on-street metered parking which includes about 743 on-street parking spaces in the Central Business District of downtown Asheville. It does **not** affect designated on-street handicapped parking spaces.

Staff met on Thursday, October 14, 2010, to brainstorm and formulate an action plan to implement the subject action. The following action items are suggested in order to educate the public regarding the subject action assuming an effective date of November 12, 2010:

1. The Public Information Office will prepare comprehensive communication plan.
2. The Parking Enforcement Officers will place informational flyers on the windshields of vehicles parked in on-street metered parking spaces displaying a handicapped placard and/or license tag on October 27, 2010, and November 5, 2010.
3. The Parking Enforcement Officers will begin issuing warning citations on November 12, 2010, for a period of seven calendar days. In addition, an informational flyer will be included with the warning citation.
4. The Parking Enforcement Officers will begin issuing overtime parking citations on November 19, 2010. Informational flyers will continue to be included with parking citations.

Staff met with the Battery Park Apartment management team on Thursday, October 14, 2010, to discuss the subject action. The complex has a total of 122 residential units that are currently fully occupied with a waiting list. They do provide parking for up to 24 vehicles in a private surface lot that is located between Haywood Street and I-240. Residents use the parking lot on a first-come basis at no cost.

Various options to "soften the blow" for people with disabilities include the following items:

1. Provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage ($35 per month instead of $70 per month).
2. Provide a prepaid metered parking option to users that have a valid handicapped placard and/or license tag (modeled after the City of Boulder, Colorado).
3. Provide Battery Park Apartment residents a discounted monthly parking rate in the upper end of the Handi-Park surface lot ($27.50 per month instead of $55 per month). Staff is currently studying the possibility of a demolition project on the subject property to remove a couple of old structures so this option probably would not be available until mid-2011.
4. Consider providing monthly on-street parking permits along the area immediately adjacent to the Battery Park Apartment building (includes 13 on-street metered parking spaces). Current monthly on-street parking permits range from $30 per month to $45 per month. We would recommend half-price on these on-street parking permits.

Staff does not recommend establishing any on-street metered parking spaces as "free" areas because it would be confusing to the actual users and could lead to more citations in the non-"free" areas.

Councilman Bothwell was uncomfortable with proceeding with the November 12 effective date without having the immediate option for a discounted monthly parking rate in the upper end of the Handi-Park surface lot.

Councilman Russell cautioned Council about Option 4 because we will be getting into the original problem of on-street parking access. He felt that whatever option Council proceeds with should contain an annual review. Mayor Bellamy felt the Finance Committee would be reviewing this annually as part of the Fees & Charges discussion.

At this time (5:47 p.m.), Councilwoman Manheimer arrived at the meeting.

Councilman Smith supported Option 1 and to be able to move to Option 3 when feasible.

After Mr. Putnam provided Council with an update from his meeting with the Battery Park Apartment management team on October 14, 2010, Councilman Davis felt it was prudent to get

additional information from them to determine how many residents have cars and how many have handicapped placards, especially since the Apartment complex does provide free parking to their residents in their private surface lot behind the building.

Vice-Mayor Newman agreed that we need to have the Battery Park Apartment management involved in working on solutions as well. Long term, he questioned charging only $55 a month (market rate) for a parking space in the upper end of the Handi-Park surface lot when that parking area is probably the most prime parking in the downtown area. If we do maintain that surface lot for parking (which did not seem the highest and best use of that site), it might be a place for turn-over parking, opposed to long-term parking storage. Mr. Putnam said that once we made the investment in the surface lot (after demolition of the old structures), he felt it might be a good time to consider increasing that amount because the Parking Enterprise Fund is a self-sufficient fund.

In response to Mayor Bellamy, Mr. Putnam explained the on-going negotiations with AT&T for at least 50 parking spaces in their lot. He said that is still a viable option.

When Mayor Bellamy asked about the number of designated handicapped spaces in downtown, Mr. Putnam said that out of the 1200 spaces available on street, 50 are designated as handicapped, which is roughly 5-6%. Mayor Bellamy felt that the downtown area should have 10% of the parking designated for handicapped since there are a lot of service providers and non-profits in downtown.

Mayor Bellamy also asked that the City research our parking meters to make them more accessible height to drivers with disabilities. In addition, we need to look at our meters from a standpoint of people who are physically unable to physically hold a coin to put in the meter. She supported all four options.

Councilman Russell moved to (1) proceed with requiring meter activation by all on-street metered parking users effective November 12, 2010; (2) provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage ($35 per month instead of $70 per month); and (3) provide an update to City Council in January 2011 with feedback from residents and staff on how this is going. This motion was seconded by Vice-Mayor Newman.

Mayor Bellamy asked for a friendly amendment to include continued negotiations with AT&T to secure parking spaces in their lot and to direct staff to look at our parking meters for ADA compliance. Councilman Russell and Vice-Mayor Newman accepted the friendly amendment.

Mr. Bart Floyd explained that he cannot physically feed a coin-operated meter and this will require someone to be with him when parking downtown, robbing him of his independence. He supported the pre-paid option. He also noted that in the District of Columbia they replaced two accessible meters in each block. He offered his services to be a part of the solution.

Ms. Frances Moore, resident of Battery Park Apartments, said that management is changing and the residents were not allowed any input. She urged Council to find a solution prior to making any changes to on-street parking.

Mr. Clarence Gray, resident of Battery Park Apartments, said that they cannot afford to park, even at a reduced rate in the Parking Garages. Residents at the Battery Park live on a fixed income and he urged Council to be compassionate with them.

Ms. Bernadette Thompson, south Asheville resident who is wheelchair bound, said that she had trouble finding designated handicapped spaces downtown and when she parks at a

metered space she has problems with reaching the coin activation. She urged Council to take into account people with manual dexterity problems.

Ms. Raelin Hanson, speaking on behalf of residents at the Battery Park Apartments felt that the City should contact doctors to see why they are issuing handicapped placards so freely to people who don't need them. In addition, residents at the Battery Park Apartments and Vanderbilt Apartments were there longer than the businesses in the area and should be given due consideration. She said that residents in the Battery Park Apartments will either have to move out or sell their cars to afford the parking.

Ms. Rose Walker felt it was not fair to make elderly disabled people who have worked in the City their whole lives and can finally retire to have to move in order to pay for parking.

Councilman Bothwell was concerned of Battery Park residents parking in the Civic Center Garage and then having to traverse up the hill to their apartments.

In response to Councilman Bothwell, Mr. Putnam said that they can implement Option 1 immediately. In addition, once the environmental assessment is completed with the demolition of the Handi-Park building, they may be able to open more surface parking sooner than mid-2011.

Councilman Smith offered a friendly amendment to allow a one-month fee waiver for Battery Park Apartment residents to park free in the Civic Center Garage until December 19 in order to allow the continued discussions with the management of the Battery Park Apartments. Councilman Russell and Vice-Mayor Newman accepted the friendly amendment.

Mayor Bellamy doesn't want this policy to indicate that low income people can't live downtown because of parking. The apartments are now affordable, but when you add in the cost to park, it increases their affordable housing expenses. She felt Council supports affordable housing and we need to look at this in a holistic fashion, keeping in mind the people who live downtown.

Councilman Russell restated his motion to (1) proceed with requiring meter activation by all on-street metered parking users effective November 12, 2010; (2) provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage ($35 per month instead of $70 per month); (3) provide an update to City Council in January 2011 with feedback from residents and staff on how this is going; (4) continue negotiations with AT&T to secure parking spaces in their lot; (5) direct staff to look at our parking meters for ADA compliance; and (6) allow a one-month fee waiver for Battery Park Apartment residents to park free in the Civic Center Garage until December 19 in order to allow the continued discussions with the management of the Battery Park Apartments. This motion was seconded by Vice-Mayor Newman and carried unanimously.

D. 2010 COMMUNITY HEALTH ASSESSMENT

Ms. Jennifer Nelson-Weaver, Executive Director of Health Partners, briefly updated City Council on the Department of Health's 2010 Community Health Assessment, which is a community-wide strategic planning session to set health priorities for the next few years. One piece of this process is to ask community residents to vote on what they consider to be the top health priorities. She urged City Council and the community to participate by filling out a 3-minute survey by midnight on October 31st.

Mayor Bellamy felt it would be appropriate for the City to put this information in the City's next newsletter.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

Mayor Bellamy opened the public hearing at 6:36 p.m.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance regulating telecommunication towers to be more consistent with changes in the federal and state laws. This public hearing was advertised on October 15 and 22, 2010.

At its meeting on September 14, Council adopted all of the proposed revisions to the telecommunications ordinances except the revision described in subparagraph (f) of the proposed ordinance. That subparagraph and the Staff Report summary of it are reproduced below:

(a) By amending Sec. 7-16-2(d)(3) a. to read:

- Ordinance revision.

"a. Use districts: Office/Business, Community Business II, Resort, Institutional, Highway Business, Regional Business Commercial Industrial, River, Industrial, Light Industrial. In addition, telecommunication towers shall be allowed as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; provided: (i) said use is not otherwise non-conforming, (ii) the property is not subdivided for the purpose of accommodating a telecommunication tower and, (iii) the application meets the standards set forth in subsections 7-16-2(c) and (d) of this chapter."

- Staff Report summary.

"3. The requirement for facilities in residential districts to be located only on publicly owned property is removed in order to comply with a prohibition in the State law. Location on publicly-owned property is encouraged, and facilities are still prohibited from locating on property that is in use for residential purposes."

This proposed revision was referred to the Planning and Economic Development Committee of Council, which considered it at its meetings of September 21 and October 19. After further presentations from staff, which included a review of the applicable law and a review of ordinances from other cities, and further discussions, the PED Committee recommended against adopting this revision.

The PED Committee recommended further changes to the ordinance, including (1) prohibiting telecommunications towers from residential districts entirely, adding a set back from residentially zoned property, (2) establishing a minimum lot size for towers, and (3) requiring that towers be constructed to allow co-location. These are material changes to the ordinance, and are not encompassed within the revisions currently under consideration by Council. They should be handled as a new and separate amendment to the ordinance. In addition, staff requires time to research the suggested revisions, and prepare language for the ordinance.

If Council adopts the proposed ordinance revision, then Council should proceed with the application for a conditional use permit for a telecommunication tower to be located at 415 Beaverdam Road. If that is the route Council chooses, he felt Council may wish to continue the conditional use permit application public hearing because notice has not been circulated to Beaverdam residents that this issue would be considered at this time. If, however, the ordinance

revision is not adopted, the Beaverdam application is moot. He said this is an evolving technology situation and an evolving zoning situation and staff will continue to review the law and come back to Council with whatever they feel is appropriate.

Assistant Planning & Development Director Shannon Tuch said that a question raised at the PED Committee is what other cities do. They surveyed 19 municipalities in North Carolina and of those 19 surveyed, it appears that 13 did allow cell towers in residential districts with a conditional use or a special use permit. Similar to our conditional use permit process, they had a variety of special standards, particularly a proof of need standard that the applicant demonstrates there is no other way to achieve coverage. Out of the 19 cities surveyed, staff found 3 that do not allow cell towers in residential districts.

Ms. Patsy Brison, attorney representing U.S. Cellular and North Carolina RSA#4, urged Council to adopt the proposed wording amendment to allow telecommunication towers as conditional uses in residential districts on properties not used for residential purposes. She pointed out that the Planning & Zoning Commission unanimously recommended to Council that they adopt this amendment. Further, if the amendment is not adopted, it is her opinion that the City's failure to adopt it will prohibit or have the effect of prohibiting provision of personal wireless services within certain areas of the jurisdiction of the City of Asheville. As evidence of the prohibition of personal wireless services, she showed Council a copy of the City of Asheville zoning map which includes the location of the residential districts within the City's jurisdiction. In addition, she provided Council with a copy of a "City of Asheville Cellular Coverage Map" produced by her clients, showing that the coverage issues are coincidental with residential zoning districts, particularly in the Haw Creek and Beaverdam areas. Further, if the existing language regarding allowing telecommunication towers on certain properties in residential districts is also removed, that further prohibits the provision of personal wireless services within residential areas in the City's jurisdiction. If the provision of personal wireless services is prohibited, it most likely will have serious safety implications due to the wide-spread use of cellular phones and their specific use for access to 911 calls. She respectfully urged Council to allow the provision of these services in residential districts where the evidence documents lack of service.

Mayor Bellamy closed the public hearing at 6:51 p.m.

Councilwoman Manheimer said that the PED Committee did review this issue and their recommendation was that we ask staff to prepare an ordinance amendment that will bring us into compliance with state law. We have to expand the types of properties within a residential zoning districts that cell towers can be located on (with a conditional use permit) or we need to zone them out entirely of residential districts. The PED Committee recommended (1) prohibiting telecommunications towers from residential districts entirely; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. If Council agrees with the PED Committee recommendation, City Council would not need to act on this proposed amendment. City Attorney Oast felt the amendments to the ordinance recommended by the PED Committee would need to go back through the Planning & Zoning Commission process.

In response to Vice-Mayor Newman (who felt this is largely an aesthetic issue), City Attorney Oast said that if Council does allow cell towers in areas zoned residential, through the conditional use permit process Council can require that they look like a picture Ms. Brison provided to Council of a cell tower in Harrill Hills, Knoxville, Tennessee. Ms. Brison said that this would be on a case by case basis and with the 100-foot limit you already have some aesthetic values in the conditional use permit process. She noted that they have done a number of different kinds of design applications in various jurisdictions to comply with that jurisdictions interests and how it might look in a specific location.

Mayor Bellamy didn't think that all applications are created equal, because she noted that the cell tower disguised as a flag pole at our Fire Station on Louisiana blends in. She supported allowing cell towers in certain residential districts with the conditional use process. She felt that Council can legislate what the tower will look like and she felt that coverage is needed in our community. Councilman Russell agreed that we need to look at each application through the conditional use permit process on a case by case basis.

Councilman Bothwell moved to instruct City staff to research the suggested revisions recommended by the PED Committee.

It was the consensus of Council (Mayor Bellamy, Vice-Mayor Newman, Councilman Davis and Councilman Russell) to allow cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes. In addition, staff is to research (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. The proposed wording amendment will come back to City Council for consideration of adoption.

In response to Vice-Mayor Newman, City Attorney Oast believed that staff previously researched city-owned properties looking for gaps that we could build the infrastructure for co-location. He would provide that research to Council.

Councilman Bothwell revised his motion to remand this issue to staff and the Planning & Zoning Commission to consider (1) allowing cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; and (4) requiring that towers be constructed to allow co-location. This motion was seconded by Councilman Russell.

Ms. Tuch said that staff prior to the PED Committee meeting, staff hadn't identified the requirement for co-location, but after subsequent review, they discovered that there is a requirement for co-location, but only one additional space for another provider. In most cases we do find two, sometimes three other spaces. The proposal that is before Council tonight (for a cell tower at 415 Beaverdam Road) that would extend service to those privately owned residential properties that are occupied by non-residential uses. If Council is interested in adopting that wording amendment, the application on the agenda could move forward and they could return to the Planning & Zoning Commission for an additional amendment for the PED items discussed earlier.

It was the consensus of Council to not move forward with the application for a conditional use permit for a cell tower in Beaverdam at this meeting in order for the Beaverdam community an opportunity to speak at the public hearing. City Attorney Oast said that all of the items mentioned can be conditions on the pending application; however, he felt some separation of time between the wording amendment and the consideration of the application of the conditional use permit would be helpful.

In response to Mayor Bellamy, the main reason why he felt this wording amendment should be re-considered by the Planning & Zoning Commission was based on the PED Committee recommendation that cell towers not be allowed at all in residential areas. However, now that it is not the consensus of Council and Council is talking about incorporating these additional requirements on the conditional uses for allowing them in residential areas.

Ms. Brison noted that there is already a co-location requirement in the ordinance. She said there is a requirement in federal law and in the state law and that is if you fail to act in a

reasonable time period of the application being submitted then it can be challenged under federal law. Their application was submitted on July 27, 2010. She felt this is beyond a reasonable time period for action. She requested Council proceed with the proposed wording amendment and send the other PED items back to the Planning & Zoning Commission for review for inclusion on future applications, not this pending one.

A resident and homeowner in Beaverdam understood that federal law requires equal access for towers and cellular use, but didn't believe it applies to every single telecommunication company. He was concerned that there will be a lot of other telecommunication companies to follow and if we acquiesce to this tower within Beaverdam, will we have to give into those other telecommunication towers as well.

Mayor Bellamy closed the public hearing at 7:16 p.m.

In response to Councilman Russell when Ms. Tuch said that the next Planning & Zoning Commission meeting would be December 1, Vice-Mayor Newman felt this didn't need to go back to the Planning & Zoning Commission for review since they have already recommended approval of the cell towers being "allowed as a conditional use in residential districts ... not used for residential purposes," and staff could recommend some changes to the wording amendment as recommended by the PED Committee and bring those changes back to Council for review.

When Councilman Russell asked for a friendly amendment to continue this item to the November 9, 2010, agenda, Councilman Bothwell accepted the friendly amendment, with the amended motion to be to remand this issue to staff to consider (1) allowing cell towers as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; (2) adding a setback from residentially zoned property (fall zone); (3) establishing a minimum lot size for towers, but perhaps with the fall zone, this would not be necessary; (4) increase the requirement for co-location; and (5) that this item be reconsidered by City Council on November 9, 2010. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Manheimer voting "no."

Councilman Russell moved to continue the public hearing to consider a conditional use permit for the project identified as a U.S. Cellular telecommunication tower, located at 415 Beaverdam Road, for construction of an 80' monopole tower until November 23, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS US CELLULAR TELECOMMUNICATION TOWER, LOCATED AT 415 BEAVERDAM ROAD, FOR CONSTRUCTION OF AN 80' MONOPOLE TOWER

Councilman Russell moved to continue the public hearing to consider a conditional use permit for the project identified as a U.S. Cellular telecommunication tower, located at 415 Beaverdam Road, for construction of an 80' monopole tower until November 23, 2010. This motion was seconded by Councilman Bothwell and carried unanimously.

Closed Session

At 7:21 p.m., Councilman Smith moved to go into closed session for the following Reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the properties is Eagle Street. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the

General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:40 p.m. Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I

RESOLUTION NO. 10-232 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT BETWEEN THE CITY OF ASHEVILLE AND FRONTIER SYNDICATE LLC FOR THE MONTFORD COMMONS DEVELOPMENT, PHASE I

Mayor Bellamy opened the public hearing at 7:45 p.m.

Planning and Development Director Judy Daniel said that this is the consideration of a resolution approving an economic development incentive grant between the City of Asheville and Frontier Syndicate LLC for the Montford Commons Development, Phase I. This public hearing was advertised on October 15, 2010.

In response to the directive of the City Council at their August 24 meeting, the following elements are proposed to be included in an Economic Incentive Grant (EIG) between the City and Frontier Syndicate, LLC. The City Council will need to vote to support the agreement. With that vote, the City Attorney will draw up the required documentation for approval by the City and Frontier Syndicate, once the City has received notice that the Buncombe County Commission has agreed to support the project as noted below.

The elements of the proposed agreement include:

The City of Asheville will make an Economic Incentive Grant (EIG) to Frontier Syndicate LLC that will support the installation of infrastructure necessary for the construction of Phase One of the Montford Commons development – consisting of a 250 unit apartment complex and attendant 390 space parking structure - contingent upon:

1. Agreement by Buncombe County to an equivalent or greater amount of support (which the Commissioners did agree to an equivalent level of support); and
2. Agreement that Frontier Syndicate will assume responsibility for any legal challenge to this interpretation of the EIG enabling statutes.

The extent of the grant is:

1. An amount equivalent to City property taxes (in excess of currently assessed taxes), annually applied, that will be generated by the project for the first five years of its operation after construction is complete;
2. Relief of 50% of any permitting fees (up to $350 per unit constructed); representing approximately $43,759;
3. Relief of 50% of water tap fees representing approximately $51,506.

In return the developers will:

1. Guarantee that 100% of the apartments remain at workforce housing level rents for the first 15 years of rentals – this clause to apply to any future owners of the property during

those years. An annual report to be submitted to the City Manager during that term to verify the current rent levels.

2. Work with the Community Development staff to develop a "preference queue" for the apartments that will give first right of rental to civil service employees (City and County government employees, City and County school employees) who are earning workforce level family incomes.

3. Report the number of construction jobs that will be created by the project.

If the developer or other subsequent owner of the property fails to perform as required, any expended grant funds will be refunded to the City.

The strategic plan goals most closely aligned with this proposal are the: (1) Affordable Goal in that it expands opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development; and (2) Job Growth and Community Development Goal in that is will support diversified job growth and small business development; and will promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- Meets Council goal to expand opportunities for public/private partnerships and innovative financing mechanisms to incentivize affordable housing development
- Meets Council goals to promote sustainable, high-density, infill growth that makes efficient use of existing resources

Cons:

- The City will not receive the full development permitting fees that are used to offset staff time required for reviews, but all required reviews will be needed.
- The City will not receive tax revenue for the improved property for the length of the incentive authorized; although City services will be provided.

The City will not receive standard development permitting fees (that fund staff time required for reviews), but all required reviews will be needed. The City will not receive additional taxes for the improved property for the length of the incentive authorized; although City services will need to be provided to the property.

City staff recommends City Council adopt an Economic Incentive Grant that will support the construction of the Montford Commons Development, Phase I to the extent noted within the staff report.

A representative of Frontier Syndicate LLC appreciated Council's favorable consideration on this incentive grant.

Mayor Bellamy closed the public hearing at 7:49 p.m.

Councilman Bothwell noted that although this does provide workforce housing, this does not incentivize affordable housing per our definition.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 10-232. This motion was seconded by Councilman Davis and carried 4-3, with Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

RESOLUTION BOOK NO. ~~32~~ 33 – PAGE 241

V. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3908 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD A NEW APPLICATION PROCESS TO ALLOW THE CONSIDERATION OF DEVELOPMENT INCENTIVES FOR PROJECTS MEETING KEY STRATEGIC CITY GOALS

Mayor Bellamy said that the public hearing on this issue was held on October 12, 2010, and due to the vote, it required a second reading.

Councilman Bothwell said that the first vote on this ordinance was very difficult. While he understood why people want public comment regarding changes to development in their neighborhoods, he now believes that this won't have nearly the impact that opponents are concerned about.

Vice-Mayor Newman moved to adopt Ordinance No. 3909 on its second and final reading. This motion was seconded by Councilman Smith carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

ORDINANCE BOOK NO. 26 - PAGE 317

B. RESOLUTION NO. 10-233 - RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE COOPERS HAWK DRIVE AREA

At the request of Councilwoman Manheimer, Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter and the consideration of an ordinance extending the corporate limits of the City of Asheville to the Coopers Hawk Drive area, due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously. Councilwoman Manheimer left the room and did not return until after the vote on the ordinance extending the corporate limits of the City of Asheville to the Coopers Hawk Drive area.

Urban Planner Julia Fields said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2011 Annexation Areas to reflect the removal of the Royal Pines Area from the plan.

In adopting an annexation ordinance, the City has the authority to annex all, some, or no portion of an area proposed for annexation, as long as any area being annexed qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Coopers Hawk Drive and Royal Pines Areas to City Council on August 10, 2010. The City Council approved the plan on this date.

Following the public hearing on these proposed annexation areas held on October 12, 2010, the City Council voted not to move forward with the annexation of the Royal Pines Area. This action necessitates an amendment to the approved Annexation Services Plan to reflect the removal of the Royal Pines Area from the plan. The amended Annexation Services Plan along with a resolution must be approved to effectuate this amendment.

The entirety of the approved plan has been reworked to delete all sections specifically addressing the annexation of the Royal Pines Area. Proposed capital expenditures for additional police patrol and solid waste vehicles/personnel have been removed (no longer needed) as have expenditures for the potential economic loss for the private waste haulers (no longer required per statute). The amended plan now only reflects the annexation of the Coopers Hawk Drive Area.

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

The fiscal impact of the remaining proposed annexation area is contained in detail on pages 23-27 of the Plan for Services.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan as presented.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy said that members of Council have previously been furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 10-233. This motion was seconded by Councilman Bothwell and carried on a 5-1 vote, with Councilman Russell voting "no" (Councilwoman Manheimer excused).

RESOLUTION BOOK NO. 33 – PAGE 242

C. ORDINANCE NO. 3911 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE COOPERS HAWK DRIVE AREA

Note: Councilwoman Manheimer was recused from participating in this matter due to a conflict of interest as noted by the motion in the prior item.

Urban Planner Julia Fields said that this is the consideration of an ordinance extending the Corporate Limits of the City of Asheville to include the Coopers Hawk Drive area.

On July 27, 2010, the City Council adopted a Resolution of Intent beginning the annexation process for the Coopers Hawk Drive Area. The Annexation Services Plan for this area was approved on August 10, 2010, and a public information meeting was held on September 13, 2010. A public hearing on the annexation was held on October 12, 2010. Adoption of the annexation ordinance is the final step in the annexation process should City Council want to continue to proceed. The proposed effective date for this annexation is June 30, 2011.

The ordinance sets forth this effective date and also reference a metes and bounds description attached to the ordinance.

The fiscal impact of the remaining proposed annexation area is contained in detail on pages 23-27 of the Plan for Services.

City staff recommends City Council adopt the annexation ordinance for the Coopers Hawk Drive Area with the effective date as established by ordinance.

Councilman Russell was disappointed that this annexation area was not withdrawn from consideration as was the Royal Pines area.

When Mayor Bellamy asked for public comment, she received none.

Mayor Bellamy noted that she spoke with some residents of the Coopers Hawk Drive area and they asked if Council would be willing to extend the effective date in order for them to properly prepare for the annexation into the City.

Mayor Bellamy said that members of Council have previously been furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3911, with an effective date of November 30, 2011 (400 days from the date of adoption). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Russell voting "no" (Councilwoman Manheimer excused).

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Councilwoman Manheimer returned to continue participation in the Council meeting.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-234 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN DOCUMENTS RELATED TO AN AGREEMENT WITH NC GREENPOWER FOR ACCEPTING PAYMENT FOR RENEWABLE ENERGY GENERATED USING A HYDRO MICROTURBINE

Director of Water Resources Steve Shoaf said that this is the consideration of a resolution authorizing the City Manager to sign documents related to an agreement with NC GreenPower for accepting payment for renewable energy generated using a hydro microturbine.

The Water Resources Department is pursuing a grant from the Appalachian Regional Commission (ARC) for a pilot microturbine installation to capture renewable energy. As a first step, the City of Asheville Water Resources Department is applying to NC GreenPower for supplemental payments for renewable energy generated using a hydro microturbine. Payments for renewable energy through NC GreenPower would supplement energy buy-back payments from the electrical utility and would make payback calculations for the microturbine pilot project more favorable.

Due to the mountainous terrain, the City of Asheville has several locations in the water distribution system that requires a reduction of high water pressure to serve customers. Currently, pressure reducing valves are used to achieve this, but they waste available energy. Installation of turbines would capture that energy and generate electricity for sale back to the electric grid. This project would serve as a demonstration of feasibility and could be modeled in other areas of Appalachia. The impact of wide-spread implementation could reduce the need to construct new electric generating plants in the region. In January the ARC is entertaining proposals for grants for planning and implementation of community energy projects. The Water Resources Department has been working with the engineering firm WK Dickson to investigate the performance, logistics, and payback of the technology and the ARC application process.

The Water Resources Department is relying on a grant from ARC and payments for the electricity produced to provide a favorable payback for this project. The NC GreenPower payments would be combined with the actual purchase of kilowatt hours by the electrical utility and an "avoided cost of new construction" payment from the electrical utility.

This project is part of City Council's strategic plans to become more Green and Sustainable. It would make use of an existing resource (water energy) and convert it to a commodity.

Pros:
- Promotes the concept of green and sustainable.
- Could provide an alternate source of revenue for the Water Resources Department.
- May provide an example for other systems to model.

Cons:
- The ARC grant funds will not cover the total cost of the project and a NC GreenPower supplement is necessary to improve payback calculations.
- The installation of turbines may present challenges for our system operation.

There is no budgetary impact associated with the application for supplemental funds from NC GreenPower. Any funds needed for this project will be allocated in the Water Resources FY 2011-2012 CIP budget. There will be a payback calculated by the sale of energy back to the electrical utility.

City staff recommends City Council approval of the City Manager to sign documents related to an agreement with NC GreenPower for accepting payment for renewable energy generated using a hydro microturbine.

When Mayor Bellamy asked for public comments, none were received.

City Manager Jackson commended Mr. Shoaf for this kind of innovation and leadership.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-234. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 243

B. ORDINANCE NO. 3912 - ORDINANCE AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES PERTAINING TO STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Director of Public Works Cathy Ball said that this is the consideration of an ordinance amending Chapter 16 of the Code of Ordinances that amends existing Section 16-3 relating to maintenance of sidewalks.

Section 16-3 of the City of Asheville Code of Ordinances currently states that " *It shall be the duty of every occupant or tenant of improved property and of the owner of every vacant property within the city, in front of which the sidewalk has been paved, to keep such sidewalk clean and to do such sweeping and scraping as may be necessary to keep such sidewalk clean and free from snow, ice, dirt and trash and to render the sidewalk passable, comfortable and sightly and the gutter next to and along such sidewalk open and free from obstructions for the full width of the front.*" There is no other reference in the existing ordinance that clarifies these requirements and no direction, remedies or cures in the event the property owner does not correct the problem. She showed several pictures of overgrowth on streets and sidewalks, some which render the sidewalk non-Americans with Disabilities Act compliant.

Staff has revised the ordinance to make it clarify the responsibility of the adjacent property owner to maintain sidewalks, grass strips, drainage swales and gutters, clean and

unobstructed. The revised ordinance also provides for notice and enforcement of these requirements.

In summary, the purpose of the ordinance is twofold: (1) to make it easier to understand and (2) to be able to have some penalties to require property owners to take action. This ordinance clarifies what is required to keep sidewalks clear and free of overgrowth from adjacent properties as well as curb and cutter and to be able to create a civil penalty in the event the property owner does not comply. It also stipulates some requirements for when ice or snow is on streets, and it gives the City the ability to assess a criminal penalty if someone has deliberately piled snow upon the sidewalks or streets, or cleared off snow off their parking lots and piled it onto the sidewalks.

This recommendation complies with City Council's Strategic Plan by in the area of Fiscal Responsibility by improving the condition and safety of our sidewalks, grass strips, drainage swales and gutters.

Pros:

- Improve the condition of existing sidewalks, grass strips, drainage swales and gutters.
- Improve the safety and ADA compliance of existing infrastructure.
- Provides an enforcement arm to the existing ordinance.

Con:

- There are approximately 9.5 miles of sidewalks adjacent to City owned land that would need to be maintained by the City.

No fiscal impact but the City would need to reprioritize our resources to provide the maintenance for the 9.5 miles of sidewalk adjacent to City owned properties. We could utilize some of the nuisance court community service to accomplish some of this maintenance.

Staff recommends that City Council adopt an ordinance that amends existing ordinance 16-3 relating to maintenance of sidewalks.

After a short discussion, initiated by Mayor Bellamy, about an appeal process, it was the consensus of Council to amend the ordinance to include a provision for civil penalty appeals (including the penalty increases) similar to the street cut permit violations in Section 16-40 (appealed to Public Works Director and then to the City Manager).

Mayor Bellamy also felt it was necessary for the City to have a process for hardship cases for those that are unable to do the necessary maintenance.

In response to Mayor Bellamy, Ms. Ball said that the City the City will make sure we do our part on this ordinance as well. We determined that 9.5 miles of sidewalks are adjacent to City-owned property, so we have an obligation to maintain those sidewalks at the same level we are asking other property owners to maintain their property.

Councilman Bothwell felt it was important for the City to set a model on how sidewalks should be maintained.

When Councilman Bothwell asked whose responsibility is the sidewalk on the Flint Street bridge, Ms. Ball said that she would have to research that and report back.

Ms. McGlohon responded to Councilwoman Manheimer about the City's process now of when properties are not maintained.

Councilman Russell moved to adopt Ordinance No. 3912, to include a provision for civil penalty appeals (including the penalty increases) similar to the street cut permit violations in

Section 16-40 (appealed to Public Works Director and then to the City Manager). This motion was seconded by Councilman Bothwell.

When Mr. Dwight Butner asked if this ordinance has been reviewed by any other group, Ms. Ball responded that following the snow events last year, they worked with the Neighborhood Coordinator and sent out to all downtown residents a survey money asking them what would be the most important thing to improve. The result was a request for an ordinance on how to address snow removal from sidewalks. Even though we did not follow back up with them, we moved in the direction to clarify the responsibilities.

At the request of Mayor Bellamy, Ms. Ball said that they will develop a communications plan for educating property owners of their responsibilities regarding maintenance on sidewalks and suggested the ordinance not be effective until 60 days after adoption. In addition, she said they are working on a program so that property owners can purchase the necessary equipment at a cheaper rate to remove snow. She also noted that they are also looking at grants to make the equipment accessible as well. Mayor Bellamy wondered if there would be any Community Development Block Grant monies available to help on some level for those who can't afford to maintain their sidewalks.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

The motion made by Councilman Russell and seconded by Councilman Bothwell, with an effective date of 60 days after adoption for educating the public, carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Leslee Kulba suggested the City review Governor Beverly Perdue's bureaucracy reduction initiative to review the counter-productive unfunded mandates. Mayor Bellamy said that the Finance Committee would be the appropriate body to review the unfunded mandates coming from the state.

Ms. Betty Jackson spoke against forced annexation and suggested a forum where retired city planners and others who have expertise can provide information on why forced annexation doesn't need to occur.

Ms. June Patterson, Arden resident, asked the City to investigate why snipe signs are allowed along Airport Road. Mayor Bellamy said that City Manager Jackson would investigate the matter.

Mr. John Kleckner, local artist, explained his frustration with working with the City on an art project.

A Buncombe County resident spoke in opposition to forced annexation.

The following claims were received by the City of Asheville during the period of October 1-21, 2010: Stefan Bonitz (Parks & Recreation), Steven Anderson (Sanitation), Arville Dale Jenkins (Police), Don Adams (Streets), Asheville Property Management (Streets), Douglas Miller (Police), Melinda Vetro (Water), Progress Energy (Water), Progress Energy (Water), NC Dept. of Transportation (Police), Veronica Crouch (Transit); Michele Davy (Sanitation) and Pulliam Properties (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:42 p.m.

Magdalen Bamberson
CITY CLERK

MAYOR

Tuesday – November 9, 2010 – 3:30 p.m.
Worksession
1st Floor North Conference Room

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Unified Development Ordinance amendments according to the recommendations of the Downtown Master Plan.

Urban Planner Alan Glines showed Council some wall examples of wall streets, along with some street wall alternatives. He then provided some scale comparisons of the larger buildings in the downtown area.

Mayor Bellamy felt that there should be an option for buildings where you see a difference in materials to not have to have a setback.

There was discussion by Council of the setbacks, with Mr. Glines responding to questions while each Council member voiced their opinions.

Mr. Glines then said that at the October 12, 2010 work session to discuss the UDO changes to implement the Downtown Master Plan, the City Council gave staff direction to look at the types of incentives that could be put in place for projects in the Central Business District that support City goals for affordable and workforce housing and sustainable projects. The staff, after considering the Council's request, proposed three options for approaching what we thought was the intent of the Council to integrate Council goals for affordability and sustainability with the downtown development review process.

Those options were sent to the Downtown Commission and the Urban Design Subcommittee, as these were the groups who have been working to get the Downtown Master Plan recommendations implemented. The options were then discussed at a special meeting on Thursday October 28, 2010. The group also reviewed City Council's broader comments on the Master Plan from the work session.

Based on comments made during the meeting and from email responses received before the meeting, there is a feeling by many that the incentives, while important, need additional thought. Most felt that getting the development standards pertaining to the Central Business District (CBD) adopted is the priority, and need not wait for the affordability and sustainability program. There was strong support for that added policy; the concern is timing and the pressing need to get the development standards in place.

There was support for the Sustainable Features List items by some as they represent issues identified by the community; but most others felt that with the current economic downturn requiring these specific features may affect development potential in the City and hurt chances of redevelopment and investment in an already challenging economic environment.

Option 1 - Of the options presented to the group, the idea of using the City Council proposed Transformational Projects Policy, with added elements specific to the CBD, was reviewed most favorably. The option would follow the proposed *Transformational Projects Policy and Incentives* that is currently being considered by City Council, but add elements specific to the CBD; as have already been suggested by the Council at their September 28 consideration of this

policy such as a smaller lot size and reduced percentages of affordable or workforce housing (reflecting higher land costs). The incentives in this policy would be available to projects of any scale that are able to meet the priority elements identified by City Council once that policy is adopted.

Because the program is voluntary and participation is not limited by the scale of the development, the group felt that it would not add burdens during this time of economic difficulty. The group felt that keeping the policy out of the Unified Development Ordinance (UDO) would maintain flexibility and responsiveness since it can be changed and adapted quickly in response to economic conditions. There was also appreciation of the policy because it could work like a synthetic "TIF" and support the infrastructure needs of the development and downtown in general.

Again, the group felt that the policy could be amended to represent the specific needs of the CBD by recognizing that some projects bring more community benefits than others and so the incentives received could reflect that. The Downtown Commission is willing to help with determining the range of incentives for the CBD if needed but they would like to see the UDO changes move forward and not be delayed.

Option 2 - This option would adjust project review thresholds for Level II and Level III projects based on desirable, sustainable features as follows:

Level II (base threshold):
20K s.f. – 150K s.f. (down from 175K s.f.) and/or up to 145 feet in height

Level II (adjusted threshold):
20K s.f. – 200,000 s.f. (up from 175K s.f.) and/or up to 200 feet in height (height option only available to those projects in the tallest height zone)

To be eligible for the adjusted threshold, projects would have to achieve a minimum of 5 points from the following list:

Sustainable Feature List

3 points	20% or 10,000 s.f. of office or retail space is offered as a business incubation space at a price meeting affordable rates for a period of 10 years.
3 points	The building meets the bronze level of LEED certification
4 points	The building meets the silver or better level of LEED certification
3 points	20% of the residential units are priced to meet the affordability standards for workforce housing^
4 points	20% of residential units are priced to meet the affordability standards for affordable units at or below 80% of area median income^
2 points	The developer provides a small public park located in the CBD with a design and orientation approved by the Downtown Commission and the Parks and Recreation Advisory Board to be accepted by the COA
1 point	The developer provides a pocket park of at least 1,000 s.f. located in the CBD accessible to the public and with a design and orientation approved by the Downtown Commission and the Parks and Recreation Advisory Board to be accepted by the COA

1 point Developer provides a fee in lieu of improvements for projects included in areas where an official streetscape plan or small area/neighborhood plan. Fee assessed based on costs associated with specified improvements.

1 point The developer provides funds for fee in lieu to the parking fund at a rate to be determined by calculating the parking demand of the proposed building (consulting the parking table based on uses) and providing $1,000 per space for each space not provided directly in the development.

^ *In calculating residential affordability the operating expenses for each unit may be factored in to the estimate of affordability while noting any energy saving features of the building or unit*

After discussion, many in the group felt that as proposed this proposal would not provide enough incentive to make this a viable option because the economic climate has changed so much. Just avoiding Council approval might not be enough reason for the extra expense incurred by gaining the required "points". There were suggestions that some of the sustainable features list might be useful to add to the Transformational Projects Policy. There was support for the types of things on the list and some felt that additional ones may be identified from many City adopted master plans.

Option 3 would require all Level III projects to achieve a minimum of 5 points from the *Sustainable Feature List*. The Level III project review process could be adjusted in a number of ways such as adjusting the scale of Level II and Level III projects (similar to above) or, expanding the area where the conditional zoning (CZ) process is applied.

This proposal received the least amount of support and most attending the meeting felt that this is the wrong time, given the continuing economic weakness, to require all developments to include affordable or sustainable features. Some attendees appreciated the concept of requiring participation for the largest projects since it would bring needed benefits to the most sustainable area of the city, even if it limited the growth potential in the city in the near term.

Summary and Recommendation

The staff supports Option One incorporating the *Transformational Projects Policy and Incentives* as an incentive available to projects proposed in the CBD. As has already been stated, that recommendation includes adding specific incentives to be directed towards needs in the CBD. The Downtown Commission is willing to work to identify community benefits for downtown projects based on the level of the benefit to the downtown CBD. The "pros and cons" of the three options, based on staff input and the thoughts of the Downtown Commission and Urban Design Review Committee, are noted below:

Option 1:

Follow the program of the proposed *Transformational Projects Policy and Incentives* that is currently being considered by City Council, with certain elements targeted to the CBD, which would be available to projects of any scale that are able to meet a number of priority elements that have been identified by City Council.

Pros:

- Voluntary, based on the interest of the developer (may be considered a con)
- A variety of incentives may be considered that may be tailored to the proposal
- Applies to specific areas in the City identified as under-developed but with potential for redevelopment, including downtown

- This policy is not a part of the UDO and could be more responsive to the needs of the city and the goals prioritized by City Council

Cons:

- Does not require participation in the program
- Participation is not tied to the scale of the development (a potential pro)
- Policy is designed for a number of areas and projects and not tailored to downtown specifically

Option 2:

Adjust project review thresholds for Level II and Level III projects based on desirable, sustainable features.

Pros:

- Provides a process related incentive for projects meeting community affordability and sustainability goals
- Participation is voluntary
- The incentive is specific to downtown
- Would apply to the largest category of projects (Level II)
- Provides a menu of options to choose from (although somewhat limited)

Cons:

- The incentives only apply to Level II projects (may not be necessary for all projects)
- An opportunity to avoid a Level III project review process may not be enough incentive to encourage participation, particularly for those projects outside the traditional core area that would follow the site plan review process
- Alone this may not be enough to affect the pro forma of a project which would assist in securing financing for the development
- Any new park facility will have a fiscal impact on the City for regular maintenance and repair
- Other incentives may also be available (*Transformational Projects Policy & Incentives*) producing an effect of "double-dipping" (may be viewed as a pro)

Option 3:

Require all Level III projects to achieve a minimum of 5 points from the *Sustainable Feature List*. The Level III project review process could be adjusted in a number of ways such as adjusting the scale of Level II and Level III projects (similar to above) or, expanding the area where the conditional zoning (CZ) process is applied.

Pros:

- All Level III projects would include desirable sustainable features
- May help mitigate the impacts that Level III projects can have on neighboring properties and on downtown as a whole
- Provides a menu of options to choose from (although somewhat limited)

Cons:

- Regarded as a requirement and not an incentive (may be amended to include a small incentive; however, incentive is likely to be weak)
- Tighter development rules may come at a difficult economic time and discourage new growth
- There are no incentives set aside for Level II projects
- Opportunity to negotiate specific features may be limited based on the point system

While Mr. Glines responded to various questions/comments from Council, discussion was held regarding the different options, resulting in Council providing guidance to City staff in preparation of the November 23 public hearing on the UDO amendments to the Downtown Master Plan. Mayor Bellamy asked staff to provide examples of what is being proposed, as visualization will make the presentation clear. In addition, Councilman Smith asked that staff underscore the areas of agreement. Councilwoman Manheimer emphasized that this has been worked on by a large number of people for hundreds of hours and they have reached consensus.

At 4:17 p.m., Mayor Bellamy recessed the worksession to go into the formal meeting.

Tuesday – November 9, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF THE WNC NATURE CENTER ASSOCIATION OF ZOOS AND AQUARIUMS RE-ACCREDITATION

City Manager Jackson invited to the podium for recognition Mr. Jim Maddy, President and CEO of the Association of Zoos and Aquariums; Mr. Chris Gentile, Nature Center Director; Ms. Diane Ruggiero, Superintendent of Cultural Arts; Mr. Roderick Simmons, Director of Parks, Recreation & Cultural Arts; and the WNC Nature Center staff. He said that in early September 2010, the Western North Carolina Nature Center was re-accredited for another 5-year period by the Association of Zoos and Aquariums (AZA). Today we are honored to welcome Mr. Jim Maddy, President and CEO of AZA to Asheville as he presents the AZA accreditation plaque to the City of Asheville for the Nature Center. Mr. Maddy then spoke about the rigorous efforts and standards that needed to be met to achieve this re-accreditation.

Mayor also recognized Friends of the Nature Center, Mr. Simmons, Mr. Gentile and his staff for their efforts in making the WNC Nature Center an excellent facility.

B. PROCLAMATION PROCLAIMING NOVEMBER, 2010, AS "NATIVE AMERICAN INDIAN HERITAGE MONTH"

Mayor Bellamy proclaimed November, 2010, as "Native American Indian Heritage Month" in the City of Asheville. She said that she would send the proclamation to Ms. Renissa Walker, Manager Kituwah Preservation & Education Program for the Eastern Band of Cherokee Indians, who was unable to attend the meeting.

C. PROCLAMATION PROCLAIMING NOVEMBER 12, 2010, AS "CITY SCHOOLS CHAMPIONS DAY"

Mayor Bellamy read the proclamation proclaiming November 12, 2010, as "City Schools Champions Day" in the City of Asheville. She presented the proclamation to Ms. Leah Ferguson and the champions Wachovia Wells-Fargo Bank, Appalachian Sustainable Agriculture Project, Tanya Presha, Susie Jameson, Marjory Jackson Maxwell, and Cheri Torres. Ms. Ferguson then briefed City Council on thanked City Council for their support.

D. PROCLAMATION PROCLAIMING NOVEMBER 14-20, 2010, AS "NATIONAL HUNGER AND HOMELESSNESS AWARENESS WEEK"

Vice-Mayor Newman read the proclamation proclaiming November 14-20, 2010, as "National Hunger and Homelessness Awareness Week"" in the City of Asheville. He presented the proclamation to Ms. Laura Furey, representing the Key Center for Community Citizenship and Service Learning at UNC-Asheville, and Ms. Amy Sawyer, the City's Homeless Initiative Coordinator, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 26, 2010

B. ORDINANCE NO. 3913 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO WAIVE THE BURNING PERMIT FEE FOR THE PROPER DISPOSAL OF THE UNITED STATES FLAG AT FLAG DISPOSAL CEREMONIES

Summary: The consideration of an ordinance amending the Fees & Charge Manual to waive the burning permit fee for the proper disposal of the United States Flag at flag disposal ceremonies.

The City of Asheville requires a permit for open burning within the city limits. Citizens obtain this permit at the Development Services Center and are charged $52 to cover the operational costs associated with the permit. American Legion Post #2 recently applied for a burning permit for a United States Flag retirement program. They informed us that they hold this program every 6 months and that they retire about 50 flags according to the United States Flag Code procedures for proper disposal during these ceremonies.

Staff would like to recommend that Council waive the burning permit fee for these ceremonies as there is no other way to properly dispose of United Stages Flags. The operational cost involved in issuing this permit include administration of the permit application and an on site inspection of the open burning. The on site inspection typically takes 30 minutes of one staff members time.

The Finance Committee has reviewed this request and has recommended approval.

This action complies with the City Council Strategic Operating Plan goals within Job Growth and Community Development in that it helps to reduce fees.

Pro:

- Citizens in Asheville will be able to properly dispose of flags according to the United States Flag Code without an associated cost of doing so.

Con:

- None identified

A minor reduction in revenue would occur as these permits would be issued without the $52 fee. The recent request by the American Legion is the first that we have record of, so we do not anticipate a large number of these permits being issued.

Staff recommends City Council adopt an ordinance amending the Fees & Charges Manual to waive the Burning Permit Fee for Flag Disposal Ceremonies.

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C. RESOLUTION NO. 10-235 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH URBAN TRANS CONSULTANTS FOR THE DEVELOPMENT OF THE MARKETING PROGRAM FOR THE CITY OF ASHEVILLE TRANSIT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Urban Trans Consultants Inc. for the development of the Marketing Program for the City of Asheville transit services.

The Transit Master Plan (TMP), approved by City Council in October 27 2009, identified the development of marketing – branding strategy as one of the essential elements to promote the use of the transit system. This strategy is developed along with the implementation of the first phase of the TMP that proposes operational changes and increases frequency to 30 minutes in the main corridors and coincides with the delivery of the five new hybrid buses.

The Transportation Management Division, Transportation Department, issued a Request for Proposals (RFP) for the Transit Marketing Program on August 13 2010. The RFP closed on September 8 2010, and seven proposals were received from the following firms:

1. Hornsby BranDesign, Knoxville, TN
2. Urban Trans Consultants Inc., Atlanta, GA
3. B.B. DESIGN Inc., Fort Wayne, IN
4. SmartMaps, Knoxville, TN
5. Task Mania, LLC, Asheville, NC
6. Native Marketing, Asheville, NC
7. Granite Sky Design, Inc., Huntsville, NC

The evaluation committee recommended Urban Trans Consultants Inc. as the firm to provide services for the development of the City of Asheville Transit Marketing Program. The firms were evaluated based on their experience, similar projects completed, team qualifications, quality of proposal and project management plan. This procurement process has followed federal regulations that apply for professional services and geographic preference is not a factor to be considered.

The Transit Commission reviewed this and recommended approval.

The project cost will be approximately $132,674 and $17,000 contingency for unforeseen expenses the consultant may incurred during the development of the contract.

The goals of this marketing program are:

1. Improve Asheville Transit's public image.
2. Inform the public of the TMP route changes.
3. Boost ridership by targeting choice riders and tourist.

This action complies with the City Council Strategic Operating Plan, in particular the financial responsibility, pursuing funding opportunities with State and Federal government; and green and sustainable, since this program will contribute to the implementation of the TMP, therefore improving the multi-modal network.

Pros:

- The marketing strategy will give a fresh image to the transit system, promote the implementation of the first phase of the TMP, and highlight the new buses that the City should receive towards the beginning of the next calendar year.
- Improves the experience of passengers through the creation of improved maps, schedules, and website and other way-finding material.
- Federal Funds will provide 80% of the total cost of the marketing task, which equates to $120,000.

Cons:

- The total maximum cost of the subject project is $150,000.
- A 20% local match, which equates to $30,000 is required and it was already budgeted.

The cost of the marketing program will be approximately $132,674 and $17,000 contingency. This project is funded 80% by the Federal Transit Administration and 20% by the City. The project is already budgeted in the Transit Capital Fund.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into a contract with Urban Trans Consultants Inc. to develop the Marketing Program for the City of Asheville Transit.

RESOLUTION BOOK NO. 33 – PAGE 244

D. RESOLUTION NO. 10-236 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO ADD A WORKSESSION ON DECEMBER 14, 2010, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL TO REVIEW ANNEXATION POLICY DIRECTION AND LEGISLATIVE OBJECTIVES

RESOLUTION BOOK NO. 33 – PAGE 245

E. ABC BOARD MEMBER COMPENSATION

Summary: The City Clerk received a letter from Curtis L. Canty, Chief Executive Officer of the Alcoholic Beverage Control Board as follows: "The members of the City of Asheville Board of Alcoholic Control respectfully request that the Asheville City Council approve the following monthly compensation amounts at its November 9, 2010 meeting: Board Chairman - $300; Each Board Member - $250. I am providing this request pursuant to North Carolina General Statute 18B-700(g). The Asheville ABC system is very unique as we operate 10 stores with a total of 33 full-time and 33 part-time employees including law enforcement responsibilities, and we generate yearly revenues in excess of $19 million dollars. In addition, we have distributed to the City and County a total of $5,408,478 since 2005. We thank the Asheville City Council in advance for it's consideration of this request."

Upon inquiry of Councilman Russell, Councilman Davis said the ABC Board manages the revenue stream and they do a credible job. He felt this is a model board and they are very accountable. He noted that some profits are redistributed to the City and County. He felt that even though this is a fairly high amount of pay for volunteer service, it is a minimal amount of compensation for the work they dedicate to the Board and the exposure they receive from their service.

City Attorney Oast said that this request to Council is pursuant to N.C. Gen. Stat. sec. 18B-700 (g).

At the request of Vice-Mayor Newman, City Manager Jackson said that he would provide Council with a memorandum on the extraordinary duties, responsibilities and time commitments of the ABC Board members. Additionally, he would provide them information on how their compensation compares to the compensation of the Airport Authority Board members and the Metropolitan Sewerage District Board members.

F. ORDINANCE NO. 3914 - ORDINANCE TO PROVIDE FOR AN APPOINTMENT TO THE ASHEVILLE TRANSIT COMMISSION BY BUNCOMBE COUNTY

Summary: The consideration of an ordinance to provide for an appointment to the Asheville Transit Commission by Buncombe County.

: The Transit Commission consists of seven members serving three year terms. The initial ordinance, adopted in 1999 as a successor to the Transit Authority, provided for all appointments to be made by the City Council. Recently, Council directed that one of the appointments be made by the County. This reflects the fact that the service area for the transit system now extends beyond the City limits, and will likely continue to grow.

The ordinance provides that the Buncombe County Board of Commissioners will make its appointment to the first vacancy occurring as a result of a term expiring after the effective date of the ordinance. This vacancy will occur in December.

This action aligns with the City Council Strategic Operating Plan in that it supports development of a regional transit system.

Pros:

- Supports regional transit system
- Reflects current service beyond City limits
- Establishes another regional partnership with City local government

Cons

- None noted

Adoption of the ordinance is recommended.

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G. RESOLUTION NO. 10-237 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE COMMUNITY ACTION OPPORTUNITIES OF THE ROOF AT THE REID CENTER ANNEX

Summary: The consideration of a resolution authorizing the City Manager to accept a donation from the Community Action Opportunities (CAO) of the roof on the Reid Center Annex.

In April 2010 City Council authorized CAO to replace the roof on the Reid Center Annex. Since then CAO has successfully met the requirements of the roof installation agreement and the work is complete. CAO is now making a gift of the roof to the City valued at $59,437.75.

The action complies with the City Council 2010-2011 Strategic Plan in that it supports fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements,

and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department resources with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pro:

- Further strengthens the partnership between the City and CAO to enhance facility development and programming at the Reid Center Annex.

Con:

- None noted.

There is no net fiscal impact to the City's operating or capital improvement budget in accepting the roof donation.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept a donation from the Community Action Opportunities of the roof at the Reid Center Annex.

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H. ORDINANCE NO. 3915 - BUDGET AMENDMENT TO ACQUIRE APPROXIMATELY 12 ACRES OF PROPERTY LOCATED AT SHELBURNE AND HOMINY CREEK ROAD, KNOWN AS THE WALLER TRACT

Summary: The consideration of a budget amendment, in the amount of $130,285, for action approved by City Council on October 12, 2010, authorizing the acquisition of 12 +/- acres of property located at Shelburne and Hominy Creek Road, known as the Waller Tract.

This budget amendment establishes a project budget within the General Capital Projects Fund for the purchase of 12 acres of undeveloped real property along the Hominy Creek. This property is to be land banked for the future implementation of the Hominy Creek Greenway. Acquisition of this property was approved by City Council in closed session on October 12, 2010, with the purchase price of the property at $120,000 with estimated $15,000 in closing costs for legal fees and surveying costs. The purchase will be funded with contributions from the City and Buncombe County, and from third party pledges.

For budgeting purposes, a total estimated project budget has been set at $130,285, plus additional third party funds held in escrow by the closing attorney in the amount on $16,715. The City has received $60,000 from Buncombe County for its share. An additional third party pledge of $10,285 has been received by the City of Asheville as a donation. The City's contribution of $60,000 will come from the $75,000 that was approved for land acquisition as a part of the Parks & Recreation Department's FY2010-11 Capital Improvement Plan (CIP).

In the event that total acquisition costs are less than the budgeted amount plus the amount held in escrow, remaining funds will be dispersed according to the percentage of initial contribution.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through leveraging external partners to pursue master plan implementation. In addition, this action complies with the Greenway Master Plan in that this acquisition serves to land bank a key property for future implementation of the Hominy Greenway.

This item has been reviewed by the Greenway Commission and has received the Commission's endorsement.

Pros:

- Leverage outside funding to implement the Greenway Master Plan
- Buyer's real estate market has allowed for a favorable purchase price

Con:

- None

As noted above, the City's contribution to this project will come from the $75,000 that was approved for land acquisition as part of the FY2010-11 Parks and Recreation Department's CIP. Revenue sources for the project are summarized below:

City's Contribution through currently budgeted CIP	$60,000
County Contribution (already received)	$60,000
Private Donations (already received)	$10,285
Total project budget	$130,285

City staff requests City Council to adopt a budget amendment of $130,285 for action approved by City Council on October 12, 2010, authorizing the acquisition of 12 +/- acres of property located at Shelburne and Hominy Creek Road, known as the Waller Tract.

ORDINANCE BOOK NO. 26 – PAGE 340

I. ORDINANCE NO. 3916 - BUDGET AMENDMENT FOR YEAR 5 WEED & SEED FUNDING

Summary: The consideration of a budget amendment, in the amount of $155,992, from the U.S. Department of Justice for Year 5 Weed & Seed funding.

October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The strategy was introduced to the community, via a series of public meetings, to determine the concerns of residents of the targeted area. The strategy was favorably received with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed and Seed funds once a year over a five year period. The first funding application was approved and awarded in August 2006.

On September 15, 2010, Assistant Attorney General, Laurie Robinson, announced the City of Asheville's application for fifth year continuation funding was approved in the amount of $155,992. 50% of the funds will be used to support law enforcement and community police programs and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean-ups, housing services, and the salary of the Weed & Seed site coordinator. No additional city funding will be required to support this fifth year grant.

The West Riverside Operation Weed and Seed steering committee, residents and several agencies such as the Housing Authority of the City of Asheville, Asheville City Schools, Children First/ Communities in Schools of Buncombe County, OnTrack Financial Education and Counseling, Asheville Greenworks, GO Asheville, LEAF in Schools and Streets and others continue to collaborate to improve quality of life for the residents of the West Riverside area of Asheville.

Data collected over the last 3.5 years suggests the initiative is having an impact in the targeted area. When comparing the averages from 2 years before strategy implementation to the 3.5 years since implementation, the following changes have been recorded: a 45% decrease in drug calls for service, a 32% decrease in violent crime and a 24% decrease in weapons offenses. An independent evaluator completed a survey of residents in 2009 and made the following assessment, "data shows that the areas where the Weed and Seed program have dedicated resources are improving, but that there is justification for the continued dedication of resources. Efforts should be continued, as many residents see gains being made in public safety and community appearance in the past two years. However, the respondents [residents of the Weed and Seed area] also provide evidence that there is more room for improvement."

This action complies with the City Council Strategic Operating Plan. It complies with the following goals in the "Safe Focus Area": continue to implement strategies to significantly improve public safety, reaffirm commitment to eliminate open air drug market in Asheville, support recreation and employment alternatives for youth at risk of gang exposure. Finally, it complies with the "Job Growth & Community Development Focus Area" in that it supports small business development and expands partnerships with UNCA, AB Tech and other institutions to achieve goals in health and wellness, workforce development, and economic development.

Pros:

- Significantly reduce violent crime and drug activity in a high crime area
- Provide a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs with the residents of the targeted area
- Mobilize community residents to collectively improve the conditions in the targeted area
- Provide resources for residents as a means of personal growth and development
- Address the social, educational, economic and cultural issues in the targeted area through multi-agency collaborations
- Leverage resources to sustain the program and replicate the strategies in other challenged areas in the city

Con:

- Some resistance to change by the residents who live in the target area.

Grant revenue of $155,992 in FY 2011 to implement the comprehensive Weed and Seed strategy which funds police overtime, police equipment, a coordinator position, and community-based resource provider contracts among other things at no additional cost to the city. The goals of the initiative will be sustained by established community efforts after the fifth year of implementation when Weed and Seed funding is no longer available. This program is 100% grant funded; there is no impact on the General Fund budget.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to establish a budget in the amount of $155,992 for the fifth year of the West Riverside Operation Weed and Seed initiative.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A WNC REGIONAL AIR QUALITY AGENCY UPDATE

Mr. David Brigman, Director of the WNC Regional Air Quality Agency, said that their mission is to monitor and regulate Buncombe County's air quality to safeguard public health and the environment, while preserving the quality of life and economic vitality of the area. He provided a history of the Agency, along with an overview of the board.

He explained that the Agency (1) is responsible for enforcing federal, state, and local air quality regulations (a) permitting of industrial and area sources; (b) compliance and enforcement; (c) asbestos removal and open burning; and (d) monitor air quality for compliance with national ambient air quality standards; and (2) is responsible for education and outreach (a) pollution prevention projects and outreach; and (b) indoor air quality hotline. He explained the planning and rules associated with the Agency, the reduction in Title V revenues, the permitting program – 2009 stationary sources, the inspection program – 2009 stationary sources, and the permitting and inspection program 2009 – demolition and asbestos removal.

He talked about air pollution in WNC, along with national standards and reducing ozone in WNC. Using charts and graphs, he explained the emissions reductions at Progress Energy's Asheville stream plant; the ozone attainment status; ozone design values in Buncombe County from 1999-Present; ozone trends in Buncombe County from 1993-Present; Air Quality Index for Ozone in Asheville from 2003-Present; and Fine Particulate Matter in WNC.

He then explained The Idling Reduction Campaign at local schools, clean burning techniques, radon awareness, and diesel retrofits.

He said that you can (1) conserve electricity (a) use power management on your monitor and computer to reduce energy consumption; (b) buy energy efficient light bulbs and turn off the lights when not in use; and (c) insulate your home; (2) drive less (a) carpool; (b) combine trips; and (c) don't idle your vehicle – turn off your engine; (3) buy more fuel efficient vehicles; (4) participate in NC Green Power (a) choose to pay $4/month to purchase 100 kilowatts of renewable energy – sign up on your electric bill; and (5) know the air quality forecast.

On behalf of City Council, Mayor Bellamy thanked Mr. Brigman, Chairman Lovin and the entire Board for their efforts on the Board.

B. COMMUNITY ACTION OPPORTUNITIES UPDATE

Ms. Vicki Heidinger, Executive Director of the Community Action Opportunities, provided Council with a brief history of the agency and their partnership with the City of Asheville. She then explained that their mission is to help people who live on limited income transform their lives. He presented Council with their annual report for 2009-10. In August they received their first American Recovery and Reinvestment Act (ARRA) grant award - $214,000 for general Head Start operations. In September they received an additional $740,000 for Life Works. In November of 2009, state authorities approved their largest ARRA-related grant for the Weatherization Assistance Program, $1.4 Million, which represents 40% of their 3-year allocation. He then explained how those funds were used.

She then explained in detail their programs along with their outcomes (1) Life Works; (2) 21st Century Parenting; (3) Black Mountain Family Center; (4) Weatherization Assistance; (5) Heating/Air Repair/Replacement Program; (6) Head Start; and (7) North Carolina Family Development Credential.

On behalf of City Council, Mayor Bellamy thanked Ms. Heidinger, Chairman Schell and the entire Board for their efforts on the Commission.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 10-238 - RESOLUTION AUTHORIZING THE CITY MANAGER TO WITHDRAW AWARD OF THE CONTRACT WITH MATRIX SYSTEMS FOR A KEY CARD ACCESS AND CAMERA SECURITY SYSTEM FOR THE CITY OF ASHEVILLE

RESOLUTION NO. 10-239 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH RHS PROTECTION FOR A KEY CARD ACCESS AND CAMERA SECURITY SYSTEM FOR THE CITY OF ASHEVILLE

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of the following:

- A resolution authorizing the City Manager to withdraw award of contract for the Key Card Access and Camera Security System contract with Matrix Systems approved March 9, 2010 due to licensing issues with contractor.

- A resolution authorizing the City Manager to enter into a contract with RHS Protection for the Key Card Access and Camera Security System for the Municipal Building, APD Firing Range, Public Works and City Hall. The total bid estimate is $260,650. The portion for the Municipal Building and Firing Range is $178,650 which will be covered by the 2009 JAG ARRA Grant. The JAG ARRA Grant Budget was approved by Council August 11, 2009. The balance of the bid, $82,000 will cover Public Works and City Hall and will be paid from the budgeted Capital Project for security.

At its March 9, 2010, meeting, City Council adopted Resolution 10-62 authorizing the City Manager to execute a contract for this project with Matrix Systems for the Card Access and Camera Security System for the Municipal Building, APD Firing Range, Public Works and City Hall in the amount of $239,049.

In the course of reviewing the qualifications of the subcontractors that Matrix proposed to use for the project, staff learned that Matrix did not possess a license, required by the Alarm Systems Licensing Act (ASLA), to engage in the alarm systems business in North Carolina, which includes sales and installation work. Staff consulted the ASLA Board, the State agency that administers the ASLA, as to whether a license was required for the work that Matrix proposed to do. The ASLA Board ruled that Matrix was not properly licensed to complete the contract work specified. As such, Matrix is not the lowest, responsible bidder on the project and staff advised Matrix of this determination by letter dated August 30th.

Staff is requesting that City Council approve a resolution to withdraw the award of the bid to Matrix and to award it to RHS Protection as the next lowest, responsible bidder.

The Municipal and Firing Range enhancement will be fully covered by JAG ARRA Grant funding. The City Hall and Public Works portions will be funded with money set aside in the Building Security Capital Improvement Project, which was budgeted in a prior year's Capital Improvement Plan (CIP).

The equipment comes with a two year warranty plus an extended warranty through five years. Beyond this period the City of Asheville will be required to maintain the overall operations

and maintenance of the equipment. It is estimated that service extentions would run $15,000 per year. These costs will be added to the departmental operating budget at the beginning of the sixth year. The expected useful life of these systems are 10-15 years. The replacement costs will be at the expense of the department associated with the security equipment.

Pros:

- Increase safety for City Employees and facilities
- Increased safety for our communities
- Increased security of city property

Con:

- Maintenance cost

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to withdraw award of the Key Card Access and Camera Security System contract to Matrix Systems and (2) adopt a resolution authorizing the City Manager to enter into contract with RHS Protections for same for the City of Asheville.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-238. This motion was seconded by Councilman Russell and carried unanimously.

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Councilman Smith moved for the adoption of Resolution No. 10-239. This motion was seconded by Councilman Bothwell and carried unanimously.

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D. CARBON FOOTPRINT ANNUAL REPORT

Energy Coordinator Maggie Ullman presented Council with the 2009-10 Carbon Footprint Annual Report. She outlined the following key highlights from the report: (1) tasked with a 6% reduction over 3 years the City delivered an 8.42% reduction; (2) the most significant reductions can be attributed to energy conservation in public buildings, streamlined efficiency in water distribution, and fuel/routing efficiency in transit; and (3) the most significant opportunities for future reductions are in the fleet and streetlight sectors.

Some 2009-10 financial facts include (1) municipal energy spending totaled $5,349,610; (2) carbon footprint reductions resulted in $336,216 avoided energy spending which is a 5.91% spending reduction from the previous year; and (3) grant monies awarded to the City in support of carbon footprint reduction totaled $8,839,345.

External impacts on energy usage includes (1) in Fiscal Year 2008-09, spending in many sectors increased due to an electricity rate increase of 11.5%; and (2) in Fiscal Year 2008-09, fuel spending in many departments decreased due to the brief fuel shortage in September 2008.

The carbon footprint reduction to date is $2,965 MT eCO2 which equals (1) annual emissions from 567 four-door sedans; (2) annual energy use of 252 homes; and (3) annual carbon sequestration of 76,026 trees.

In response to Vice-Mayor Newman, Ms. Ullman said that she would be coming back to Council in February to talk about the City's plan to achieve a 4% per year carbon footprint reduction.

In response to Councilman Smith, Ms. Ullman said that we project an annual savings of approximately $650,000 for the LED street light replacement.

Mayor Bellamy thanked Ms. Ullman for her commitment to this effort.

E. VOLUNTEER SIDEWALK CLEANUPS

Councilman Bothwell presented a short video explaining the sidewalk clean-ups the volunteer group has done since April 2010. Given the ordinance change at the October 26 meeting, he felt this effort could become a part of the education campaign. They have planned a City-wide clean-up day for Saturday, November 20. He hoped this video would educate the public on the need for people to maintain to sidewalks on their property, and to tell people who are physically limited in their ability to do the work that volunteers are available to help out.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED AT 301 LONG SHOALS ROAD (INGLES AREA) TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3917 - ORDINANCE ZONING 301 LONG SHOALS ROAD (INGLES AREA) TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:23 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to zone 301 Long Shoals Road (Ingles area) to Highway Business District. This public hearing was advertised on October 29 and November 5, 2010.

The City of Asheville recently annexed (effective September 30, 2010) 3. 6 acres (all of one parcel and a portion of another) located at 301 Long Shoals Road. The property is located on the south side of Long Shoals Road at the intersection of Long Shoals Road and CP and L Drive. The property contains a portion of the Ingles grocery store and an Ingles Gas Express facility.

The property is currently zoned Commercial Service by Buncombe County. The portion of the Ingles store that is currently in the City of Asheville is zoned Highway Business. Staff proposes HB zoning for the remainder of the facility.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- None noted.

Based on the analysis provided in the report, staff finds this request to be reasonable. At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission recommended approval of this initial zoning (6-0).

Mayor Bellamy closed the public hearing at 6:25 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3917. This motion was seconded by Councilman Smith and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED ON SCHENCK PARKWAY TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3918 - ORDINANCE ZONING PROPERTY ON SCHENCK PARKWAY TO CENTRAL BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:26 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to zone property on Schenck Parkway to Central Business District. This public hearing was advertised on October 29 and November 5, 2010.

The City of Asheville recently annexed (effective September 30, 2010) .7 acres of a 10.32 acre parcel on which is sited a convenience store and fast food establishment at 380 Long Shoals Road. The property is located on the west side of Schenck Parkway.

Of the .7 acres, 3,500 square feet was not previously zoned by the City of Asheville. The remainder of the parcel is zoned Central Business District (CBD). Staff proposes CBD zoning for this last portion of the property.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- None noted.

Based on the analysis provided in the report, staff finds this request to be reasonable. At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission recommended approval of this initial zoning (6-0).

Mayor Bellamy closed the public hearing at 6:26 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3918. This motion was seconded by Councilman Russell and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED IN THE DEERFIELD AREA AT RACQUET CLUB ROAD/SALISBURY DRIVE TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 3919 - ORDINANCE ZONING PROPERTY IN THE DEERFIELD AREA AT RACQUET CLUB ROAD/SALISBURY DRIVE TO INSTITUTIONAL DISTRICT

Mayor Bellamy opened the public hearing at 6:27 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to zone property in the Deerfield Area at Racquet Club Road/Salisbury Drive to Institutional District. This public hearing was advertised on October 29 and November 5, 2010.

The City of Asheville recently annexed (effective September 30, 2010) 29.3 acres of a 109.76 acre tract that is the site of the Deerfield Retirement Community. The property is located on and north of Salisbury Drive at the intersection with Racquet Club Road.

Of the 29.3 acres, approximately 2200 square feet was not previously zoned by the City of Asheville. The remainder of the parcel is zoned RM-16 and Institutional. The 2200 square feet more closely aligns with the portion of the lot zoned Institutional. Staff proposes Institutional zoning for this last portion of the property.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- None noted.

Based on the analysis provided in the report, staff finds this request to be reasonable. At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission recommended approval of this initial zoning (6-0).

Mayor Bellamy closed the public hearing at 6:27 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3919. This motion was seconded by Councilman Smith and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED AT 1445 TUNNEL ROAD TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3920 - ORDINANCE ZONING PROPERTY AT 1445 TUNNEL ROAD TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 6:27 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to zone 1445 Tunnel Road to Highway Business District. This public hearing was advertised on October 29 and November 5, 2010.

The City of Asheville recently annexed (effective September 30, 2010) a 1.5 acre tract on which a dental clinic is located. The property is located at 1445 Tunnel Road.

The property is currently zoned R-2 by Buncombe County. Staff proposes that the property be zoned Highway Business as are the other properties in the area that are in the City of Asheville.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- None noted.

Based on the analysis provided in the report, staff finds this request to be reasonable. At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission recommended approval of this initial zoning (6-0).

Mayor Bellamy closed the public hearing at 6:28 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3920. This motion was seconded by Councilman Davis and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF ENKA CENTER LOCATED ON SAND HILL ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT, RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING

ORDINANCE NO. 3921 - ORDINANCE TO CONDITIONALLY ZONE ENKA CENTER LOCATED ON SAND HILL ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT, RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING

Mayor Bellamy opened the public hearing at 6:28 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone Enka Center located on Sand Hill Road from Commercial Industrial District, RS-2 Residential Single-Family Low Density District and Highway Business District to Commercial Industrial District/Conditional Zoning, including a request for modifications to allow parking within the front setbacks and to modify required transportation infrastructure. This public hearing was advertised on October 29 and November 5, 2010.

She said that the applicant is requesting a Conditional Zoning for multiple parcels located off of Sand Hill Road and Smoky Park Highway from RS-2 (Residential Single-Family Low Density District), HB (Highway Business District) and CI (Commercial Industrial District) to CI - CZ (Commercial Industrial District – Conditional Zoning) in accordance with Section 7-7-8 of the UDO. With this master plan approval, each phase will be reviewed by the Technical Review Committee as a Level II project.

She said that due to the large plan size, overall plan pages have been distributed. Detailed sections are available for review in the Planning Department.

The project site consists of nine separate parcels with a combined area of 191.90 acres, located off Smoky Park Highway and Sand Hill Road. This site comprises a substantial portion of the campus formerly occupied by the BASF plant and is zoned CI (rezoned from IND to CI - January 2009) with a small portion of HB at the northern boundary and a small area of RS-2 in the northeastern corner. Adjacent zoning districts include Industrial, CBII and RS-2; adjacent uses are industrial, commercial, industrial vacant and recreational. Approximately half of the project area is within the Asheville City limits; the other half is within the extraterritorial jurisdiction area (ETJ).

The applicant is proposing a mixed-use development with 509,233 SF of retail commercial space; 19,803 SF of restaurant use; 364,650 SF office/medical/business space; 4,500 SF for a financial institution; 130,000 SF of warehouse/industrial space and additional acreage for recreation/open space/greenway use. Buildings are 1-3 stories with maximum heights between 50 – 80 feet. The appearance of the retail structures/area will be governed by the "Big Box Standards (Section 7-16-2(b)(10) of the UDO)" and will be reviewed in detail with each subsequent phase submittal.

The development plans show build-out over 15 phases, which each phase returning to the TRC as a separate Level II review. Due to the overall timeline for completion as +/-14 years and with the inevitability of changing market conditions over time, there may be some deviation from the master plan in terms of use type and phasing. Staff will bring any significant amendments back to City Council for review.

Primary access to the property will be from a new roadway connection to Smoky Park Highway at the northern boundary of the project site, to be built during the initial phase. The applicant is proposing a new bridge that will span over the Norfolk Southern rail line and Hominy Creek, leading into road "A." There are two main roadways proposed through the project site and two smaller connector roads. A secondary, narrowed access point is located towards the eastern edge of the site and connects into Jacob Holm Way. Retail buildings "I" and "Z" (Phases 10 & 11) are accessed directly from Sand Hill Road but do not have connections into the larger site at this time. All new roadways are noted as public.

The proposal provides sidewalks on both sides of all roads, including the bridge crossing. Dedicated bike lanes will be provided throughout the development, however, after significant discussion with City staff and incorporating input from the Bicycle and Pedestrian Task Force, the proposal shows dedicated bike lanes ceasing immediately before the bridge. At that point, the outside travel lanes on both sides increase to 13 feet in width (from 11') and bicyclists would merge with vehicular traffic as they approach and/or exit Smoky Park Highway.

According to plans, approximately 4,000 vehicular parking spaces are proposed throughout the project site on various surface lots, incorporating handicapped and van-accessible spaces. There will be a dedicated transit stop at the entrance bridge at Smoky Park Highway for future transit system. Bike parking is dispersed throughout the site.

Significant landscaping will be required throughout the site, including street trees, parking lot landscaping, street buffers, building impact landscaping, dumpster screening and a type "B" property line buffer where the site is adjacent to RS-2 zoning. More than 29 acres of open space will be provided, primarily through the recreational areas and a greenway. The plans include dedication of land for the construction of a greenway along Hominy Creek within the project boundaries.

A large portion of the site (including the closed landfill) has been granted a Brownfield designation by the state and any activity within those limits will be governed by state regulations. This area is indicated for future recreational use in Phase 3. Most of the environmental clean up has been completed and abandoned industrial buildings have been removed. The remediation

work has included removal of asbestos, lead-based paint and other hazardous materials from the site.

The western portion of the project site falls within the City limits, while the eastern portion is within the ETJ. Under the existing conditions, the development layout results in proposed infrastructure (roads and bridge) being situated only partially within the City's jurisdiction – however, the applicant has indicated that the infrastructure would be publically maintained. Any infrastructure that the City maintains must be entirely within the City limits. Additionally, the City limits line bisects a number of proposed structures so a selective voluntary annexation is needed to resolve these issues. The applicant has indicated interest in voluntarily annexing subsequent phases of development as they are built-out, although this is not included as part of this zoning proposal.

The following modifications need approval by City Council:

1. *Parking in Setback* – There are several locations where parking spaces encroach into the front setback, which is 35 feet in this zoning district. The applicant has provided a widened ROW to accommodate sidewalks, bike lanes, driving lanes and a landscaped boulevard, which takes up more space than a standard cross-section. Because of the need for more space for these desired transportation amenities, staff is supportive of this request. Additionally, the applicant has stated that parking will not encroach closer than 15 feet.

2. *Sidewalks and Bike Lanes on the Bridge* – The plans initially submitted included a request for elimination of sidewalk on one side of the bridge from Smoky Park Highway and sub-standard bike lanes. Staff was not supportive of this modification and preferred to see compliance with sidewalk and bike lane standards. Planning & Zoning Commission directed staff and the applicant to works towards an acceptable alternative (see *Required Reviews* below).

   After considerable discussion, the current proposal shows sidewalk on both sides of the bridge and widened outside travel lanes to accommodate bicyclists. Although this cross-section still does not technically comply with City standards, staff believes this layout can safely and reasonably accommodate pedestrian, vehicular and bicycle traffic entering and exiting the development and is supportive of the request.

This proposal was recommended for approval with conditions by the Technical Review Committee on September 20, 2010. The approval moved forward without staff support of the proposed reduced width bike lanes and elimination of sidewalks along one side of the bridge from Smoky Park Highway.

The Planning & Zoning Commission evaluated the project at their meeting on October 6, 2010, and recommended unanimous approval, inclusive of the modification to allow a parking encroachment into the front setback. With regard to the bridge cross-section, the Commission suggested that staff and the applicant should work to come up with various alternatives that may meet the intent of the City's goals for safe and adequate bicycle and pedestrian access. The Commission understood the not insignificant cost and time required with extending the width of the bridge because of complications spanning over the rail line but also highlighted the possibilities for transit, sidewalk and bike lane expansion out in this westward direction as well as the current bike and pedestrian needs within the site.

The only public comment received with regard to this project was at the Planning & Zoning Commission meeting, where a member of the community (also the Chair of the Greenways Commission) was present to support the project, especially the inclusion of the greenway along Hominy Creek. He also expressed a desire to see the City's standards for bike lanes and sidewalks met on the bridge cross-section.

Although not required, the Greenways Commission and Bicycle & Pedestrian Task Force included this proposal into their discussions. On September 9, 2010, the Greenways Commission voted unanimously to pass the following resolution: "Resolve that the Greenways Commission supports the plans to include a greenway in the Enka Center property and also supports the following additional details: 1.) Comments entered in the TRC Staff Report by Parks & Recreation Department staff; 2.) Plans should include bike lanes and sidewalks on both sides of all streets; 3.) The City should acquire a permanent easement for the greenway corridor to ensure ongoing public access; and 4.) Plans should incorporate any appropriate stream restoration elements."

On October 28, 2010, the applicant met with the Bicycle & Pedestrian Task Force to discuss alternatives for the bridge cross-section. The general consensus of the Task Force was that wider outside travel lanes on the bridge would safely accommodate bicycle traffic and may be preferable to dedicated, reduced-width bike lanes.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   Having been previously developed and used as the former BASF industrial site, the bulk of the project area is graded and flat. The development plan has been crafted to accommodate areas where there are topographic changes – for example, there is a significant variation in grade from Smoky Park Highway down into the site and the new bridge will span over the difference, with the railroad tracks and Hominy Creek protected below. Additionally, the area proposed for the recreational fields are somewhat higher than the western half of the site as this was the former landfill, but this physical separation works in its favor as the sports park activities are distinctly different from the commercial, office and warehouses on the rest of the site. The proposed greenway along the Hominy Creek is integrated into the development with connections to the shopping areas as well as the recreational fields.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development includes multiple components that will greatly enhance and increase the value of adjoining and nearby properties, including brownfield remediation, asbestos and hazardous material removal, construction of a large portion of greenway along the Hominy Creek, the new access bridge from Smoky Park Highway, recreational fields on closed landfill and a variety of potential employment opportunities. These elements are expected to be a benefit to the area.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The almost 200 acre site is immediately surrounded by industrial and institutional uses. The proposed mix of retail, restaurant, office, medical, financial, manufacturing and warehouses are all appropriate in this location and have been situated within the site to compliment adjacent uses – i.e. the proposed recreational fields are in the northeastern corner, adjoining the existing Buncombe County Sports Park; the proposed warehouse and manufacturing phases are situated in the southeastern corner, adjoining Jacob Holm Industries and the proposed retail adjacent to the AB Tech satellite campus.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are directly aligned with the City's goals and objectives, including providing a mix of uses (retail, medical, office, manufacturing, warehouse and recreational) on an infill site; locating a regional commercial center close to transportation facilities; redevelopment of a derelict former industrial site including environmental remediation of a brownfield location; inclusion of community park space and recreational fields on the former landfill; incorporation of a public greenway and a small annexation component.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located just off Smoky Park Highway (US 19-23) and is within approximately 1 mile of I-40. Although the City of Asheville transit route does not currently extend this far west, provisions are included for a bus stop location on Smoky Park Highway to accommodate future transit expansion. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed development is estimated to generate 36,000 vehicle trips per day prior to any trip reduction calculations. This trip generation estimate meets the City of Asheville's threshold of 100 vehicle trips in the peak hour to require a traffic impact study. Due to the nature and size of the project, staff recognizes the inherent uncertainty with identifying each specific use category at the conceptual stage. Therefore, updated studies or technical memorandums will be required as appropriate when these specific use categories are identified. The master plan traffic impact study has been received and reviewed by staff. The corresponding mitigation improvements listed in the study shall be the minimum that the developer is responsible for except as provided in future technical documents as the project phases are identified. The adjacent roadways to the development are maintained by the NCDOT and they will have final approval on the improvements as such.

In consideration of the multimodal standards and goals identified by the City of Asheville, it should be noted that the development's plans are indicating sidewalks on both sides of the road and bicycle lanes on the new street cross-sections. These facilities follow current City of Asheville design standards with the exception of the bridge cross section. Based on the direction given by the Planning and Zoning Commission and the Bike and Pedestrian Task Force, staff has worked with the developer through several potential solutions based on keeping the bridge footprint static. The current bridge cross-section proposal provides 5.5 feet of back of curb sidewalk on each side and wide outside travel

lanes to help facilitate sharing of these lanes between motor vehicles and bicycles. Based on this information, staff has no safety concerns with the current proposal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides a mix of uses on an infill site in an appropriate location to be a regional commerce location
- Extensive environmental remediation of a former derelict industrial site (brownfield program)
- Re-use of closed landfill for recreational fields
- Includes a significant portion of the Hominy Creek Greenway (a portion to be constructed by the developer with the remaining length dedicated in an easement)
- Design retains and incorporates the historic ENKA clock tower.

Con:

- Bridge cross-section as proposed does not comply with City standards for bike lanes (however, it is an acceptable alternative).

Staff recommends approval of the conditional zoning request as submitted by the applicant, inclusive of the request to allow parking to encroach into the front setbacks (but not closer than 15') and the modified bridge cross-section. Staff suggests incorporating "Share the Road" type signage on the bridge/roadways for added safety.

Mr. Martin Lewis, developer, gave a brief history of the project and urged City Council for this support.

Mr. Will Buie, representing Lapsley & Associates Engineering, briefed Council on the details of the project, the overall road system and the bridge. He explained (1) the brownfield site – involves redevelopment of abandoned and blighted industrial site; (2) preservation and restoration of Enka clock tower; (3) recreational amenities – property is being donated to Buncombe County for the development of a recreation complex; (4) pedestrian oriented – greenway trail is planned through a portion of the site with dedication of rights-of-way for future trail sections; (5) alternate transportation – bike lanes are being planned for all new roads in the project site; and (6) transit facilities – bus stops are planned for two locations on the project. Regarding sidewalks and bike lanes on the bridge, they worked with City staff for a modified cross-section.

Mayor Bellamy closed the public hearing at 6:42 p.m.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3921, to conditionally zone Enka Center located on Sand Hill Road from Commercial Industrial District, RS-2 Residential Single-Family Low Density District and Highway Business District to Commercial Industrial District/Conditional Zoning, including approval of modifications to allow parking within the front setbacks (but not closer than 15') and approval of the modified bridge cross-section, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by

the TRC prior to issuance of any required permits; and (6) Incorporation of "Share the Road" type signage on the bridge/roadways for added safety. In addition, she asked that the motion include the following additional conditions, which Mr. Martin Lewis agreed to as well, (1) The developer grant a greenway easement dedicated along Hominy Creek within the boundary of the property owned by this developer, which said exact location to be determined by the developer and the City and/or County (wherever the land lies); (2) The developer will fund the construction of the greenway from the bridge moving in a southwesterly direction to the edge of the Creek where it leaves it the developer's property; (3) As a construction permit is applied for each of the phases, that phase be voluntarily annexed into the City; (4) The developer will set aside the land, delineated on the plans, to be used for some recreational purposes, e.g., ballfields. This motion was seconded by Councilman Bothwell.

In response to Councilman Davis, Mr. Lewis said that the County is open to accepting the brownfields area for ballfields. And, the project builds out, Mr. Lewis was amenable to discussing with potential tenants to partner with the public sector in preparing the land for the development of the ballfields.

Mr. Lewis responded to Vice-Mayor Newman when he asked if there was any potential for multi-family or residential development on this site.

The motion made by Councilwoman Manheimer and seconded by Councilman Bothwell carried unanimously.

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V. UNFINISHED BUSINESS:

A. CONTINUED CONSIDERATION OF AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

ORDINANCE NO. 3922- ORDINANCE AMENDMENT THE UNIFIED DEVELOPMENT ORDINANCE REGULATING TELECOMMUNICATION TOWERS TO BE MORE CONSISTENT WITH CHANGES IN THE FEDERAL AND STATE LAWS

Mayor Bellamy said that this public hearing was held on October 26, 2010, and the matter continued to this date to allow staff to revise the ordinance per Council's direction.

Assistant Planning & Development Director Shannon Tuch said that telecommunication towers and concealed telecommunication support structures are allowed as a conditional uses in most commercial zoning districts. They are prohibited in residential districts unless located on publicly-owned property supporting a non-residential use, such as schools or fire stations, where they are allowed as conditional uses.

The federal Telecommunications Act was adopted in 1996. This law essentially required local jurisdictions to permit telecommunications facilities, but gave deference to local zoning regulations. However telecommunications towers were not originally included in the first UDO adopted in 1997. At the time, wireless telecommunications was a new and burgeoning industry, and the City hired a consultant to draft and explain the new standards, which were added in 1999. The standards have changed little over the years, despite changes in the federal and State laws and available technology. While these standards largely remain relevant and appropriate, there were a few areas that required updating in order to remain consistent with the changes in the laws. Moreover, in 2007, a State law was enacted to help implement the federal law, and to

provide for some consistency across local jurisdictions with respect to zoning decisions involving telecommunications towers.

At its meeting on September 14, Council adopted all of the proposed revisions to the telecommunications ordinances except the revision described in subparagraph (a) of the proposed ordinance related to locating of towers in residential areas. Additionally, the Planning & Economic Development (PED) Committee reviewed the proposed changes at their regular meetings on September 21 and October 19 and asked staff to conduct some additional research and to revise the proposed language to exclude towers in residential districts entirely and include stronger criteria related to setbacks/fall zones, minimum lot size, and co-location. This recommendation was carried to the City Council on October 26 where the recommendation failed to be adopted. In lieu of this change, the majority of Council recommended allowing towers in very limited circumstances in residential districts as a Conditional Use, and asked staff to continue to review existing standards regarding: co-location, setbacks and/or fall zones, and minimum lot size and to return with some new recommendations.

The proposed UDO text amendment proposes several changes to the conditional use standards for telecommunications towers. Per the recommendations from the October 19 Planning & Economic Development Committee (PED) meeting and the October 26 Council meeting, the proposed amendments include:

1. The requirement for facilities in residential districts to be located only on publicly owned property is removed in order to comply with a prohibition in the State law. Location on publicly-owned property is encouraged, and facilities are still prohibited from locating on property that is in use for residential purposes.

2. Increases the requirement for co-location from one additional user to two additional users.

3. Increases setbacks to a distance equal to the height of the tower, when located in proximity to residential zoning or residential structures.

4. Adds a requirement for a minimum five acre lot size to help address potential impact concerns. Minimum lot size may be reduced to three acres in instances where existing site features mitigate potential impact.

Facilities locating in residential areas are still required to obtain a conditional use permit, which requires submission of a detailed application and a public hearing. Therefore, those properties continue to have the safeguards afforded by this process.

The Strategic Operating Plan outlines several goals aimed at improving sustainable growth and development opportunities while ensuring that the City's regulatory environment effectively protect the citizens health, safety and welfare. Wireless telecommunications are a key element to sustainable growth and development and should be supported to the extent that it does not compromise other strategic goals.

Pros:

- Expands opportunity for a utility, enabling providers to meet the growing demand and provide improved service without undue impact on residential areas.

- Is consistent with state and federal laws

- Maintains special standards to mitigate land use conflict with residential properties.

Con:

- Expands the places where telecommunication towers may be located, most notably in residential areas, which has potential for conflict with the surrounding community.

Staff recommends adoption of the ordinance proposed.

She pointed out the following changes to the proposed ordinance, in addition to those directed by Council: (1) amending Section 7-16-2 (d) (3) (t) 6 to correct a typographical error in a subsection number; (2) amending Section 7-16-2 (d) (3) o. to read "... In addition, for all properties other than city-owned properties, telecommunication towers must be setback from any residentially zoned or residentially used properties a distance equivalent to the full height of the tower being erected. ..."; and (3) amending Section 7-16-2 (d) (3) (o.1) to read "In residential districts, a minimum lot size of five acres is required for properties other than city-owned properties. This requirement may be reduced by the city council if other site features are found to mitigate the impact of the tower but, under no circumstances shall the lot size be reduced to less than three acres."

In response to Councilman Bothwell, Ms. Tuch said that the separation standard reads that "no two telecommunication towers shall be constructed within 1,320 feet of each other unless documentation is provided to the Planning & Development Department to show that co-location on towers within 1,320 feet is not technically feasible."

In response to Councilwoman Manheimer, Ms. Tuch explained the criteria for cell towers. She said any cell tower application would be a conditional use permit. As a conditional use permit, in addition to the approximately 20 special standards, staff also evaluates it with the 7 conditional use permit findings.

In response to Councilman Bothwell, Ms. Tuch said that the applicant would have to verify that they can't co-locate on another tower. Should the City want to verify that information, the City can hire a consultant and the applicant is required to post a $5,000 bond should we need that to hire a consultant.

In response to Councilman Davis, Ms. Tuch said that the applicant has to show that there is no other option available to them. If there is another tower in that area, they would have to co-locate on it, if there was space on it. If a competitor wants to provide service in the area, the tower owner is required to lease that space at a lease rate that is supported by the market.

Mayor Bellamy said the agenda item is titled "continued discussion of an amendment to the Unified Development Ordinance regulating telecommunication towers to be more consistent with changes in the federal and state laws." She felt that was a little misleading, because this ordinance would also mean that cell towers would also have to apply to local laws as well. Ms. Tuch agreed. She said we are updating our local laws to be consistent with state and federal laws.

Councilwoman Manheimer explained that she is very familiar with the law regarding zoning of telecommunication towers. She was extremely concerned about allowing cell towers to be placed in residential districts. Her concern starts with the basic premise for land zoning – the purpose of land zoning is to help the individual protect the value and enjoyment of their land, so that they have some type of security in knowing how the neighboring lands will be developed. She felt that by allowing cell towers to be placed in residential districts, we will open the door for residential property owners to lose the value of their land and lose the enjoyment of their land and otherwise harm them. Some people have health concerns and visual concerns. We do need to comply with state and federal law but this is not the only option. We can elect to ban cell towers from residentially zoned districts. She understands that could potentially open the door for a legal challenge, but by allowing a conditional use permit process for cell towers to be located in residential districts, she argued that we are opening up the door for a legal challenge every time

we try to deny a conditional use permit in a residentially zoned district. She didn't know if there is a way to make a decision that safeguards us from legal challenges ever.

Councilwoman Manheimer then moved to adopt Ordinance No. 3922, (1) including the amendments regarding setbacks, co-location requirement and the technical amendment outlined by staff; (3) exclude the provisions allowing for cell towers to be located in residentially zoned districts in Section 7-16-2 (d) (3) a ; and (3) exclude the new Section 7-16-2 (d) (3) (o.1)). This motion was seconded by Councilman Davis.

Councilwoman Manheimer noted that her motion defaults the City back to the current zoning ordinance which allows cell towers in residentially zoned districts using a conditional use permit on publicly owned lands, which will still need to be resolved.

The following individuals spoke in support of the amended ordinance (which prohibits cell towers to be located in residentially zoned districts):

Ms. Suzanna Abell, resident on Beaverdam Road
Dr. Marilyn Haas
Mr. Tyler Martin, resident on Skyview Drive (provided Council with information regarding the real estate being devalued when cell towers are erected)
Mr. Andy Gladstone, resident on Skyview Circle
Ms. Ellen Bluestone, resident on Crescent Lane
Mr. Ralph Lambert, resident on Skyview Drive
Mr. Dave Castell, resident on Skyview Circle
Ms. April Hand, resident on Bassett Road
Mr. Kenneth Haas

City Attorney Oast advised Council that under state law the ability to consider public safety shall not include requirements relating to radio frequency emissions of wireless facilities.

Ms. Patsy Brison, attorney representing U.S. Cellular Corporation and North Carolina RSA#4, asked that her letter provided to Council on October 26, 2010, be incorporated into Council's records again at this meeting. That letter stated, in their opinion, that if Council does not adopt the proposed wording amendment, which includes 7-16-2 (d) (3) a, that Council will be in violation of federal law, specifically 47 U.S.C. sec. 332 (c) (7) b.IV and in violation of state law (N.C. Gen. Stat. sec. 160A-400.52 (h). She also suggested Council members review the conditional use permit procedure which includes for cell towers numerous pages of additional requirements. She then provided Council with a letter dated October 26, 2010, which states "We represent U.S. Cellular Corporation and North Carolina RSA#4, Inc. In the event the City Council does not adopt the amendment to Section 7-16-2 (d) (3) a. of the UDO regarding telecommunication towers, we respectfully request a decision in writing, supported by substantial evidence contained in a written record, on the application we made on July 27, 2010, for a conditional use permit for a telecommunications tower off of Beaverdam Road on property owned by Citadel/Lewis Memorial Park, LLC. We make this request pursuant to federal law (47 U.S.C. sec. 332) and state law (Part 3E of Article 19 of Chapter 160A of the North Carolina General Statutes)." She believed that the other changes made by Council provide even more additional protection to neighborhoods. She felt Council has only heard from one neighborhood tonight, but Council needs to consider the coverage issues all over the corporate limits. That is what federal law prohibits you from doing so by adopting the motion before you, it is her opinion that you will have the effect of prohibiting service. She respectfully requested that Council re-consider the motion or that it should fail.

In response to Councilman Russell, City Attorney Oast said that federal laws are hard to pin down because you don't know if you are effectively prohibiting service until you effectively prohibit it. That law is developed on a permit by permit basis. There are some cities where a ban in residential areas would have no effect because the cities are flat or small and the ban doesn't

affect the ability to provide. It is a location and fact-specific inquiry. With respect to the state law, the city may not require the placement of wireless support structures on city-owned or leased property. Our ordinance says publicly-owned property. He thinks we may have an issue with that in the future. He's not sure how much difference there is between city-owned and publicly-owned property in this particular context. That causes him more concern than federal law, but both matters are of concern.

Councilwoman Manheimer said that under state law, that is our current situation, regardless of whether we were considering an ordinance amendment or not. What we currently have on the books is arguably not in compliance with state law based on this public land vs. city-owned land issue. She felt that if we want to come into compliance with that law, we would still need to amend our current ordinance in some way. She would propose that we delete that we have now with regard to residentially zoned districts.

City Attorney Oast said that if Council were to ban towers or support structures in residential districts, in order to comply with state law, that may have the effect of putting us in violation of federal law.

Vice-Mayor Newman said that our commercially zoned areas are available for development of telecommunication towers in addition to city-owned property. City Attorney Oast read the provision that the opportunity needs to be available across districts.

In response to Mayor Bellamy, City Manager Jackson said that he did not know the immediate answer as to whether the radios we use for the Police Department communicate with radios in other jurisdictions, e.g., Sheriff's Department, County Emergency Medical Services. He said that he would report back to Council.

Mayor Bellamy was concerned if we ban cell towers in all residential districts, we will be saying that it's okay that some parts of our City don't have access to cell service. Because of the topography in the mountains, there are some dead zones in different areas of the City. She noted that some of the cities that have banned complete use of residential cell towers are flat and small. In addition, she felt a lot of people are moving away from land lines to cell phones. She asked for a friendly amendment that this ordinance be revisited in one year. Councilwoman Manheimer and Councilman Davis agreed to the friendly amendment.

In response to Mayor Bellamy, Ms. Tuch said in the use district, it reads: "In addition, where the city council determines that a telecommunication tower disguised as a coniferous tree is a preferable alternative to a concealed telecommunication support structure, it shall be allowed as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers or community centers when meeting the standards set forth in this subsection 7-16-2 (c) and (d) of this Chapter."

Mayor Bellamy said that the City does own one cemetery, so based upon her understanding, we could put a cell tower in that cemetery. City Attorney Oast noted that if the cemetery is city-owned, the City can just say no to the conditional use permit application.

Councilwoman Manheimer clarified that we don't have an allowance for placement on any publicly-owned properties. It's just those that are listed – schools, fire stations, publicly-owned housing complexes, recreation centers and community centers. It has to be public-owned and one of those types of uses.

Mayor Bellamy wanted to make sure that our residents understand that this is not all residentially zoned areas.

Upon an earlier inquiry of Mayor Bellamy, City Manager Jackson said that the Police and Sheriff Departments are on different frequencies which do not rely on cell tower technology. The

Fire Department is on a state-wide VIPER system, so they communicate on the same frequency. Neither one of those communication issues have to do with telecommunication towers.

As a result of the City Manager's response regarding public service communication, Mayor Bellamy was comfortable in voting in support of this ordinance amendment.

Mayor Bellamy felt it would be appropriate to have staff prepare an educational piece on our website to inform the public about the technology our Police and Fire Departments utilize to communicate between each other and other jurisdictions, such as the Sheriff's Department, Highway Patrol, and County Emergency Medical Services.

Councilwoman Manheimer clarified that the amended motion in the floor will preserve the status quo, which does allow towers in residential districts on a very limited basis to those properties previously listed - schools, fire stations, publicly-owned housing complexes, recreation centers and community centers.

The amended motion made by Councilman Manheimer and Councilman Davis carried unanimously.

At 9:09 p.m., Mayor Bellamy announced a short recess.

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B. RESOLUTION NO. 10-240 - RESOLUTION ADOPTING A TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY

Planning & Development Director Judy Daniel said that this is the consideration of resolution adopting a Transformational Development Policy, along with the revised elements of said policy.

At the August 24 meeting the City Council directed the staff to prepare a proposal for a new Council policy to support development meeting thresholds that support major elements of the Council's Strategic Plan. These elements include easy access (walkability and transit) to major employment centers and areas proposed for redevelopment with uses that offer jobs as well as affordable and workforce housing elements. The staff had already received direction from the Planning and Economic Development Committee for such a "Transformational Development" policy, and the additional request from the Council that would support "workforce" housing elements was added to that request.

At the September 28 meeting the staff presented to the Council a proposal for such a policy based on that direction. After substantial discussion and questions, the Council directed the staff to return on November 9 after considering certain changes and options. This report presents answers to questions and alternative wording recommendations for the Council's consideration based on that direction.

As before, there are three parts to the policy: elements that must be included before the Council would consider support for a project, elements that are preferred, and the type of assistance the Council would consider extending. A basic tenant of the policy is that meeting the thresholds for Council consideration is not a guarantee that such assistance would be offered – that would remain at the discretion of the Council. The elements provide a threshold for consideration only. The revised policy document reflects the following changes in response to the Council's questions:

The original request of the Council was a new policy to assist development meeting thresholds that support major elements of the Council's Strategic Plan primarily including easy access (walkability and transit) to major employment centers and areas proposed for

redevelopment, and that offer jobs as well as affordable and workforce housing elements. While there was some Council discussion of the potential for the policy to offer an automatic approval if certain thresholds were met, there did not seem to be consensus to pursue that type of process, so the format was not changed. Also, a statement has been added to the beginning of the policy to clarify for potential applicants that a public hearing and Council action are required for approval of any Economic Incentive Grant (EIG).

> This policy is intended to provide incentives to encourage infill development projects that are located in urbanized employment centers of the City or that are currently underutilized but are in close proximity to major transit lines. *Approval of any requested Economic Incentive Grant (EIG) will require a public hearing and approval by the City Council.*

The Council discussion of September 28 appeared to support continuing that intent, although changes to individual elements were discussed, as noted below.

Element #1: The majority of the Council seemed to support language that would establish the elements desired in a project, including a requirement for some percentage of affordable or workforce housing if housing is proposed; without making any one element an absolute requirement other than meeting public purposes defined by the Council. A clause was added clarifying that intent. Any one of those elements could, if the Council chooses, be made a baseline requirement.

> Demonstrate how it fulfills important public purposes that should include creating jobs, installing desired *elements such as* creating jobs, installing desired public infrastructure, using a substantial level of green building techniques, and if housing is included *it must provide* a percentage of affordable and/or workforce level housing units.

Element #2: The Council expressed no questions and requested no changes to this element.

> Demonstrate that it directly addresses annual strategic goals set by the City Council

Element #3: The Council asked how the staff would be able to confirm that "but for the requested support it would not be able to provide the public benefits desired by the City". The policy has been revised to reflect (as was requested for Montford Commons) that the entity requesting the support would be required to fund an analysis of the financing. Such a document provides an analysis of the financing and is the process most often used for such requests for financial support.

> Demonstrate that but for the requested support it would not be able to provide the desired public benefits desired by the City. *This shall include paying for a fiscal analysis by a qualified financial consultant, chosen by the City.*

Element #4: The Council discussed the potential for expanding the areas proposed as designated "redevelopment" areas. The initial list proposed was drafted based on the Council's desire for this policy to be applicable to areas that have "sustainable" access (walkability and transit) to major employment centers and areas designated for redevelopment at substantial densities, that offer jobs as well as affordable and workforce housing elements. These are generally commercial corridors and nodes that represent enough existing density or zoning that encourage density that support that type of pedestrian/transit friendly environment.

The Council suggested that areas adjoining the Shiloh community should be included, which would entail expanding the applicable corridor along Hendersonville Road from I-40 to the Blue Ridge Parkway (as it extends to the Parkway along Tunnel Road).

Any further extension along Hendersonville Road, Smoky Park Highway, and Leicester Highway would enter areas of primarily low density, suburban scale development. The staff recommends that should the Council desire this change, the intention of the policy would need to be modified; or a new element added requiring existing or requested zoning that supports the creation of "infill development projects that are in close proximity to major transit lines", or projects that meet the criteria for "TIF eligible areas" in NCGS 155-7.3 (c).

> Be located in currently active defined "redevelopment" areas; or in areas annually designated by the City Council as priority redevelopment areas that are in or within 1/4 mile of designated urbanized employment centers (see Note 1 below); or in a targeted or voluntary annexation area.

She provided a map of the proposed areas (including the extension to the Blue Ridge Parkway along Hendersonville Road).

Element #5: The Council seemed to support a modification to the policy that would reduce the required project land area from 1 acre to ½ acre, except in the downtown CBD where it would be ¼ acre. That change has been incorporated.

> Have a floor area ratio exceeding 1.0 and be located on an area of land larger than *one-half acre, except in the downtown CBD where the size would be one-fourth acre.*

Element #6: The Council expressed no questions and requested no changes to this element.

> Have a minimum ratio greater than 3:1 private investment to public assistance.

Element #7: The Council expressed no questions and requested no changes to this element.

> Demonstrate a minimum 20% equity participation from the entity requesting the incentive assistance.

Element #8: This is a new requirement. As was required for the Montford Commons project, the staff recommends adding a clause requiring the applicant to assume any financial burden for legal challenges. This clause relates to the interpretation of the EIG legislation for use by a primarily residential project. Because this interpretation has not been tested, the use of the incentive to provide public infrastructure and meeting other strategic objectives benefitting residents of the city would need to be a significant element of a "qualified" residential development proposal.

> *Agree to assume any cost related to a legal challenge of the EIG.*

Preferred Elements:

Element #1: A concern was expressed about the non-residential uses requirement, which would primarily serve to create mixed uses in a residential structure. This element was included because such mixed-use structures are recommended as a preferred development type in urbanized areas in the 2025 Plan and the Downtown Master Plan. This is not; however, a required element for a proposal and the Council would be free to consider a building that has no mix of uses.

There is a concern about the legal intent of the EIG legislation being used for a wholly residential project, which is why the staff has also added a clause (#8 in the required elements) that requires (as is required for Montford Commons) that the applicant assume all legal risk. This is also why in the absence of a development providing employment potential, the provision of

public infrastructure and/or other benefits for the public at large (as noted in Element #1, required elements) would be such an important consideration.

Include a minimum of 20% square feet of non-residential (job creation) uses, such as, but not limited to: office, retail, manufacturing, restaurant, civic, cultural, or entertainment.

Element #2: The Council expressed no questions and requested no changes to this element.

Include pedestrian or open space amenities noted in the appropriate master plan for the location proposed.

Element #3: There seemed to be Council agreement that when "green" building is proposed, the developer could propose meeting the standards without getting the actual certification (due to the cost of actual certification). The staff recommends that while LEED certification is fairly expensive, other programs such as Healthy Built are not that cost prohibitive; so exemption from actual certification should be limited to LEED only. The language of the element has been altered to reflect that direction.

Demonstrate a high level of the use of "green" and sustainable building techniques and products, as determined by meeting an outside agency certification standard (*such as, but not limited to, meeting LEED standards, achieving the Healthy Built certification, using Energy Star appliances, or meeting other standards to the satisfaction of the Council*).

Element #4: There was substantial discussion among the Council members regarding the amount of affordable and/or workforce housing that must be provided when housing is proposed. Some members prefer for the percentage to remain undefined, some wanted to see defined percentage minimums. For those preferring a minimum required percentage suggestions included affordable housing at 10%-30% and workforce housing at 25% to 60%. In both cases there would be reduced requirements for property in the CBD given the higher cost of land. Since there was no apparent consensus from the Council on this element, additional guidance will be needed to make a change to the existing wording of a 10% requirement for affordable housing and 40% for workforce housing.

There was also a Council desire to clarify in the policy that while an EIG would not extend beyond five years, the housing affordability requirement could extend up to fifteen years; given the nature of this support as a grant, not a loan. The language of this element has been modified to reflect that intent.

If housing is provided, the housing element of the project must include a minimum of 10% defined "affordable" housing units and a minimum of 40% "workforce" housing units. *Any affordable or workforce housing provided would be required to remain at the designated level of affordability level for up to 15 years, at the discretion of the Council.*

Mayor Bellamy requested that staff talk to HUD representatives to make sure that the policy we put in place will not disqualify projects from consideration from our partners in the community that use HUD funding. The staff has been assured by HUD that a local requirement for affordability does not disqualify a developer from receiving the 221(4)(d) loan guarantee. Depending on the developer's costs, the amount of development equity invested, and other choices made along the development path it could potentially affect a developer's ability to be approved for the guarantee (if their financial projection does not show sufficient loan repayment capacity). This appears to be the reason that the Montford Commons project developers have stated that they cannot provide any affordable housing.

Element #5: There was a Council inquiry as to whether it is it realistic for residential units to be required to be the primary residence of the occupants. This is commonly used criteria for inclusionary zoning ordinances, and can be enforced by agreement. It is usually, however, an issue primarily with condominium units, not apartments; and the staff is recommending that this element be rephrased to reflect that it is pertinent only to condominium residences not rental housing.

> Will require residential units *sold as condominium residences* to be the primary residence of the occupants for the length of the life of the incentive.

Element #6: The Council expressed no questions and requested no changes to this element.

> Demonstrate that 70% of all permanent jobs created will, for the life of the incentive, pay competitive salaries for similar jobs in Buncombe County. This will be verified in an annual report to be submitted to the City Manager for the life of the incentive.

The staff also suggests that this policy have a "sunset" or "date certain renewal" clause. Since the nature of the policy is related to the excessive difficulties in finding financing for even very marketable projects that meet many Council goals; it may be advisable to consider an annual update and reconsideration of the need for the policy or if certain aspects of it should be changed or eliminated. The annual report would also allow the Council to monitor the performance of the grantees in meeting the requirements established by the Council.

The Council also requested input from other community groups Staff met with CIBO, and the members present appeared to support the policy. No negative comments were received. The Chamber of Commerce has received a copy of the policy, and to date have not expressed any thoughts on it. The staff has also not received any email comments on the proposed policy to date.

City staff recommends approval of the new Council policy, with any amendment determined by the Council.

Councilman Smith moved to adopt the Transformational Development Projects Incentive Policy, with an amendment to Preferred Element 4 to include the reclamation of brownfields and/or other environmental certifications discussed. This motion was seconded by Councilwoman Manheimer.

Vice-Mayor Newman felt the Required Element 3 is vague and he was not sure what formula we would use to determine if someone has made the case that unless they receive the support they would not be able to provide the desired public benefits. In addition, he felt the requirement for a fiscal analysis by a qualified financial consultant would add additional cost to a small project. He felt that element should be deleted from the policy or set some threshold so that it's clear that it applies to very large projects. Economic Development Director Sam Powers responded that in the cases where this has been used, in the absence of a formal policy, that is the purpose of the independent analysis of the pro forma. There are industry standards of what acceptable rates of return are on the different types of projects. Those are the analyses that we would rely on to determine whether that requirement element has been met or not.

Vice-Mayor Newman also felt Preferred Element 3, which is very important, was unclear regarding the green building requirements. He is open to processes other than LEED certification; however, he felt the language was vague. He felt there should be crisp standards for what it takes to meet that preferred element.

Vice-Mayor Newman observed that Preferred Element 5 is a good idea, but questioned if should be a preferred element because it sounds more like a description of how it would operate.

Councilman Smith and Councilwoman Manheimer supported amending their motion to delete Required Element 3.

Councilman Bothwell agreed with Vice-Mayor Newman on Preferred Element 3. He too felt it was unclear and wondered if a developer could buy one Energy Star appliance and meet this requirement.

Mayor Bellamy noted the example that UNC-Asheville met LEED certification standards in one of their buildings, but did not apply for LEED because of the expense. They used the money they would have had to apply for those standards towards the green building. If we get the elements we want, we should not have to require LEED certification.

City Attorney Oast said there is a statute that is applicable to Asheville regarding local energy efficiency incentives. The City can offer incentives to developers "based on generally recognized standards established for such purposes and makes a significant contribution to reduction of energy consumption." That does not mean Council can't be more specific than that, but the authorization is fairly general.

It was the consensus of Council to obtain the Sustainable Advisory Committee on Energy & the Environment's (SACEE) input on Preferred Element 3.

Vice-Mayor Newman suggested Council act on the policy at this meeting and let SACEE insert whatever level of LEED they think is appropriate for this policy. When SACEE makes their recommendation, the policy would be brought back to Council on the Consent Agenda.

Mayor Bellamy said that when you look at transportation corridors and opportunities for redevelopment, she asked for a friendly amendment to the policy for the map to be extended at least to the Ingles we just brought into the City on Long Shoals Road. Councilman Smith and Councilwoman Manheimer accepted the friendly amendment.

After further discussion about the corridors, Mayor Bellamy asked the friendly amendment be amended to extend the map to all of the major transportation corridors to the edge of the City limits. Councilman Smith and Councilwoman Manheimer accepted the amended friendly amendment.

Vice-Mayor Newman felt that the initial discussion around this policy was the idea of transit orientation and walkability to key employment centers. There is a lot of advantage of putting higher density infill development in places where people can literally walk to work. He had mixed feelings about providing these strong incentives to almost all new commercial development in the City vs. a more targeted area in the areas we really feel we most strongly want to encourage infill development, e.g., close to the heart of the City.

Mayor Bellamy felt we are saying that we want the type of development in our corridors that would meet these basic principles. Since City Council will see all the projects that apply for this, if they don't meet the criteria, they would not receive the assistance.

Councilman Davis wondered if we are engineering this policy to the point that we might discourage good organic development. Where this policy is at this point and were we started is different and he's not comfortable with it. He felt having the Required Element 3 was important to have in the policy but agreed that it should not apply to small projects.

City Manager Jackson said that regarding the deletion of Required Element 3, staff is not interpreting that to mean that we won't do financial analysis or require sufficient financial analysis to evaluate the pro forma to ensure these are viable projects. We have an obligation to perform

financial analyses. For complicated, complex major scale projects, that might require outside advisors.

Vice-Mayor Newman felt that if someone meets these requirement, we need to give the incentive, and because of that, he was still concerned whether the language in the Preferred Elements are refined enough.

At Mayor Bellamy's suggestion, it was the consensus of Council that (1) the policy be approved at this meeting; (2) SACEE will provide their input on Preferred Element 3; and (3) suggest Vice-Mayor Newman insert language the he would feel comfortable with. Then, once we have SACEE's input and Vice-Mayor Newman's refined language, the policy can come back to Council for a vote on the Consent Agenda.

Councilman Bothwell has an underlying concern of granting tax breaks to developers.

The amended motion as follows made by Councilman Smith and seconded by Councilwoman Manheimer carried on a 4-3 vote, with Councilman Bothwell, Councilman Davis and Councilman Russell voting "no.": Adopt the Transformational Development Projects Incentive Policy, subject to SACEE's input and Vice-Mayor Newman's refined language in the Preferred Elements; (1) with an amendment to Preferred Element 4 to include the reclamation of brownfields and/or other environmental certifications discussed; (2) deletion of Required Element 3;; and (3) extend the map to all of the major transportation corridors to the edge of the City limits.

Mayor Bellamy said that this policy will be brought back to Council on the Consent Agenda once SACEE has provided their input and Vice-Mayor Newman has refined the language in the Preferred Elements.

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Closed Session

At 7:47 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in N.C. Gen. Stat. sec. 143-318 (a) (4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 8:05 p.m., Councilwoman Manheimer moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

B. UPDATE OF NEW COMMUNITY CENTER AT LIVINGSTON STREET PARK

At the request of Mayor Bellamy, it was the consensus to postpone this presentation.

VI. NEW BUSINESS:

A. DISCUSSION OF STATE LEGISLATIVE AGENDA

City Attorney Oast said that this report is to begin discussion of the City's legislative agenda for the 2011 Session of the North Carolina General Assembly.

The 2011 Session of the North Carolina General Assembly begins on January 26; this will be a regular or "long" session. Usually, one of the first orders of business after the legislature convenes is to establish rules regarding special or local legislation. The deadline for submitting local bills for consideration is usually mid to late March, and there are fewer restrictions on the subject matter that may be included in such bills.

Council usually finalizes its legislative agenda in January, after the retreat. The agenda includes local initiatives, for which local bills are requested, as well as positions on matters of State-wide concern, with respect to the general legislation is introduced. Matters likely to be of general importance to the legislature this year include annexation, sustainability, and budget/finance. Other issues will come up, and Council may wish to take an official position on them as well.

As a starting point on State-wide issues, he provided Council with a copy of the N.C. Metropolitan Mayors Coalition 2011 Advocacy Agenda. In developing this part of our agenda we also review information from other organizations, such as the N.C. League of Municipalities and the Asheville Chamber of Commerce, as it becomes available.

As to local legislation, a good place to start is with last year's agenda, which he provided to Council, as well as a previous summary of what happened with our requests. Matters left unresolved from last year include adjusting the boundary of Woodfin, and the disposition of the City's institutional network (I-Net).

(1) We worked with Woodfin and UNC-A last year, and believe that we are in a good position to finally conclude this long-standing issue. Unless directed otherwise by Council, we will continue to proceed as we have been, finalizing boundary descriptions, and contacting affected residents.

(2) As to the I-Net, the bills that the City proposed to amend the Video Service Competition Act of 2006 was referred to a study committee. We have not made much progress in our negotiations with Charter on this issue, legislative solution may still be needed.

(3) Although not taken up in the 2010 short session, Council may wish to continue pursuing legislation to obtain more flexibility with regard to the water system and voluntary annexation.

He wondered if Council would be interested in getting legislative authority to reserve an easement for greenways whenever we close a road.

Although the beginning of 2011 Session of the General Assembly is still months away, and Council has not yet adopted its agenda, it is not too early to begin making contacts with our legislators. Based on the recently concluded elections, our local delegation is:

Senators:	Martin L. Nesbitt, Jr. Tom Apodaca
Representatives:	Susan C. Fisher Tim Moffitt Patsy Keever

Ms. Keever and Mr. Moffitt are new to the delegation.

In order to establish an orderly process and provide appropriate direction to staff, Council may want to establish its own schedule for development of the legislative agenda, bearing in mind that the agenda can be amended or supplemented during the course of the long session, based on new information.

He asked Council to provide him ideas on matters of local legislation and recommendations on matters of general policy by November 23 so he can incorporate them into a tentative agenda that Council can adopt on December 14, as talking points for conversations with legislators. He noted that November 23 is not the end of the time to suggest things, it's just a starting point. Things come up during the year that other cities propose that Asheville might want to join in.

Mayor Bellamy noted that adoption of the legislative agenda on December 14 was a goal so we could talk to our legislators before the session begins. She felt it was important that the agenda is well thought out and has strong unified support.

Councilman Russell felt the Council may need to talk about some of these issues at the December 14 worksession.

Mayor Bellamy suggested City Attorney Oast send out the preliminary items received by Council to all Council members after November 23 in order to begin review.

B. UPDATED PROCESS FOR APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the Committee recommended City Council adopt an updated process for appointing members to the Planning & Zoning Commission, similar to the process used for School Board appointments, with interviews in Council Chamber, televised.

Councilman Smith moved to use an appointment process, similar to the School Board appointments, for the appointments to the Planning & Zoning Commission. This motion was seconded by Councilwoman Manheimer and carried unanimously.

C. PLAN FOR THE LOCATIONS OF FUTURE COUNCIL COMMUNITY MEETINGS

RESOLUTION NO. 10-241 - RESOLUTION AMENDING THE 2010 CITY COUNCIL MEETING SCHEDULE TO ADD A COMMUNITY MEETING ON NOVEMBER 30, 2010, AT 6:30 P.M. AT THE REID CENTER

City Manager Jackson presented City Council with a list of prior community meeting locations and asked for direction on setting future meeting locations. He asked for direction to pre-determine their community meetings in which areas of the City, as they have previously been held north, south, east, west and central. He would schedule the meeting in an Americans With Disabilities Act (ADA) accessible location inside and out, make sure the facilities have the audio visual and sound capabilities; will have the capacity to handle Council's agenda, and will have adequate parking. Staff will look for other locations, other than those used in the past, as directed by Council.

Mayor Bellamy said that earlier this year she received a request by Livingston Street area residents for the November 30 community meeting at the Reid Center. They requested an

update on what is happening in the area. She has also received a request from residents in the south area of the City to hold a community meeting.

Councilman Russell felt the south community meeting should be held further south than the Shiloh Recreation Center.

In response to Councilwoman Manheimer, Mayor Bellamy said that she will contact Buncombe County Commissioner David Gantt on the status of the joint meeting with the Buncombe County Commissioners.

Vice-Mayor Newman liked the format used for the east Asheville meeting and hoped they would be structured similar to that in the future with items of interest for that neighborhood.

Mayor Bellamy was pleased with the east Asheville format as well. Specifically for the Reid Center area agenda, we should include the new Riverfront Area Redevelopment Commission, update on the Livingston Street Park, update on Walton Street Park, the Hospital construction and road status, and other things impacting our community in that area. In the south area, stormwater continues to be an issue.

Councilman Smith moved to adopt Resolution No. 10-241, setting the location for the November 30, 2010, community meeting at the Reid Center, and setting the future community meetings on March 29, 2011 – far south; May 31, 2011 – West; August 30, 2011 – North; and then continue east, central, etc. This motion was seconded by Councilman Bothwell and carried unanimously.

City Manager Jackson said that he would have a staff report at the December 14, 2010, meeting to set the locations for future community meetings in 2011.

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D. RESOLUTION NO. 10-242 – RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

The following candidates applied for a position on the Alcoholic Beverage Control Board: Rick Fornoff and Jeremy Gillespie.

Vice-Mayor Newman said that it was the recommendation of the Boards & Commissions Committee to reappoint Bill Lack.

Councilwoman Manheimer moved to reappoint Bill Lack to serve a three-year term, term to expire November 13, 2013, or until his successor has been appointed. This motion was seconded by Councilman Russell and carried unanimously.

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E. RESOLUTION NO. 10-243 – RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

The following candidates applied for a position on the River District Design Review Committee: Phillip Ellis, Michael McDonough, Stuart Smith, Darren Green and Randy Shull.

Vice-Mayor Newman said that it was the recommendation of the Boards & Commissions Committee to appoint Randy Shull.

Councilwoman Manheimer moved to appoint Randy Shull to serve a three-year term, term to expire September 1, 2013, or until his successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy invited the public to the Veterans Day Ceremony at the VA Hospital on November 11, 2010, at the VA Hospital beginning at 11:00 a.m. Councilman Bothwell noted that there will also be a Veterans Day recognition at the Memorial in Pack Square Park at 2:00 p.m. as well.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:44 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – November 23, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (excused from meeting at 7:16 p.m.); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2010

B. RESOLUTION NO. 10-244 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE FISCAL YEAR 2008 BUFFER ZONE PROTECTION PROGRAM GRANT ADMINISTERED BY THE DEPT. OF HOMELAND SECURITY

ORDINANCE NO. 3923 - BUDGET AMENDMENT TO ACCEPT THE FISCAL YEAR 2008 BUFFER ZONE PROTECTION PROGRAM GRANT ADMINISTERED BY THE DEPT. OF HOMELAND SECURITY

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of $51,500 from the Fiscal Year 2008 Buffer Zone Protection Program Grant administered by the Department of Homeland Security for procurement and installation of wireless telecommunications equipment to enhance the ability of Emergency Responders to communicate while protecting Critical Infrastructure assets of the City of Asheville; specifically the North Fork and Bee Tree Water Sheds; and (2) a budget amendment, in the amount of $51,500, to accept said grant.

The City of Asheville Fire Department has identified grant funding through the Fiscal Year 2008 Buffer Zone Protection Program for the procurement and installation of wireless telecommunications equipment. This equipment will enhance the ability of City of Asheville (COA) Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions while responding to protect COA Critical Infrastructure.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages. This action has been reviewed and approved by the Public Safety Committee.

Pros:

- An increased ability to communicate with responders from other jurisdictions that can not operate on the COA Public Safety Radio System or who are outside the system coverage area.
- Increases responder safety and accountability of COA resources when responding to COA Critical Infrastructure assets that are not within the present coverage area of the COA Public Safety Radio System.
- The infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit the Asheville Police and Fire Departments as well as the Water Resources Department using the COA 800 MHz radio system.

Con:

- None identified

These funds are a non-matching grant from the Department of Homeland Security and will require no initial COA resources. Annual maintenance costs will be incurred but will be minimal as infrastructure maintenance will be funded by the State of North Carolina. COA maintenance costs on the equipment should not exceed $500 annually.

City staff recommends City Council (1) authorize the City Manager to accept grant money from the Fiscal Year 2008 Buffer Zone Protection Program; and (2) authorize a budget amendment to accept said grant.

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C. RESOLUTION NO. 10-245 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE FISCAL YEAR 2010 HOMELAND SECURITY GRANT PROGRAM

ORDINANCE NO. 3924 - BUDGET AMENDMENT FROM THE FISCAL YEAR 2010 HOMELAND SECURITY GRANT PROGRAM

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of $550,000 from the Fiscal Year 2010 Homeland Security Grant Program administered by the N.C. Division of Emergency Management for procurement and installation of wireless telecommunications equipment to enhance the ability of Emergency Responders to communicate locally and throughout the region; and (2) a budget amendment, in the amount of $550,000, to accept said grant.

The City of Asheville Fire Department has identified grant funding through the Fiscal Year 2010 North Carolina Homeland Security Grant Program for the procurement and installation of wireless telecommunications equipment. This equipment will enhance the ability of City of Asheville (COA) Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions. This grant is a reimbursement grant in which the City of Asheville will purchase the equipment and then be reimbursed 100% by the NC Department of Crime Control and Public Safety.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages. This action has been reviewed and approved by the Public Safety Committee.

Pros:

- An increased ability to communicate with responders from other jurisdictions that can not operate on the COA Public Safety Radio System or who are outside the system coverage area.
- Increases responder safety and accountability of COA resources when responding mutual aid to other jurisdictions.
- The redundant infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit the Asheville Police and Fire Departments using the COA 800 MHz radio system.

Con:

- None identified

This equipment purchase will be fully funded by grant proceeds, so there is no impact to the City's General Fund budget. Annual maintenance costs will be incurred by the State of North Carolina or regional jurisdictions.

City staff recommends City Council authorize (1) the City Manager to accept grant money from the State of North Carolina Homeland Security Grant Program; and (2) a budget amendment to accept said grant.

RESOLUTION BOOK NO. 33 – PAGE 257
ORDINANCE BOOK NO. 26 - PAGE 362

D. RESOLUTION NO. 10-246 - RESOLUTION AUTHORIZING THE ASHEVILLE FIRE DEPARTMENT TO PURCHASE RAZOR EX BIOLOGICAL FIELD SAMPLER BASED ON STANDARDIZATION NEEDS WITH FUNDING FROM THE N.C. DEPT. OF HOMELESS SECURITY GRANT

Summary: The consideration of a resolution authorizing the Asheville Fire Department to purchase Razor EX Biological Field Sampler based on standardization needs.

The Asheville Fire Department (AFD) has grant funds available for the procurement of equipment to be utilized by Hazardous Materials Regional Response Team 6 (RRT-6) Asheville with State Homeland Security Grant FY09. This item will be procured through a previously Council approved grant through the U.S. Department of Homeland Security and the Office of Domestic Preparedness State Homeland Security Grant Number: FY2009-SS-T9-0046 to implement the State Homeland Security Strategy. This grant approved the NC Hazardous Materials Response Team Asheville (RRT-6) to procure equipment to be better prepared and respond to manmade and natural emergencies and disasters. The equipment to be procured through this grant will be used in the field to detect and identify unknown and potentially hazardous biological agents during a hazardous material response. The RAZOR EX is the most sensitive and reliable commercially available biodetection instrument designed for field use and utilizes the same polymerase chain reaction (PCR) technology used in the Public Health labs.

The six other RRT's have procured this specific piece of equipment from Idaho Technology in order to be compatible with each other in case of a statewide emergency.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities. The Public Safety Committee has reviewed and approved this action.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses.
- This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

The Standardization of Equipment will have not fiscal impact on the City's current budget since it is funded entirely with grant proceeds. There will be maintenance and replacement costs for the equipment, which will be needed to be, included in future fiscal year budgets.

City staff recommends City Council adopt resolution authorizing the Asheville Fire Department to purchase Razor EX Instrumentation based on standardization needs with funding from State Homeland Security Grant Fiscal Year 2009.

RESOLUTION BOOK NO. 33 – PAGE 258

E. RESOLUTION NO. 10-247 - RESOLUTION AUTHORIZING THE ASHEVILLE FIRE DEPARTMENT TO PURCHASE THE QINETIQ TALON HAZARDOUS MATERIAL RESPONSE ROBOT FROM QUINETIQ NORTH CAROLINA

Summary: The consideration of a resolution authorizing the Asheville Fire Department to purchase the QinetiQ Talon Hazardous Material Response Robot based on standardization needs.

The Asheville Fire Department (AFD) has grant funds available for the procurement of equipment to be utilized by Hazardous Materials Regional Response Team 6 (RRT-6) Asheville with State Homeland Security Grant Fiscal Year (FY) 2008 and FY 2009. This item will be procured through a previously Council approved grant through the U.S. Department of Homeland Security and the Office of Domestic Preparedness State Homeland Security Grant Number: FY08 2008-GE-T8 0033 and FY09 2009-GE-T9 0033 to implement the State Homeland Security Strategy. The grant's approved the NC Hazardous Materials Response Team Asheville (RRT-6) to procure equipment to be better prepared and respond to manmade and natural emergencies and disasters. The Hazardous Material Response Robot to be procured through these grants will be used in the field to detect and identify unknown and potentially hazardous conditions during a hazardous material response and to ensure the safety of emergency responders. The hazardous material response robot will be utilized in high risk scenarios to investigate dangerous situations giving emergency responders the tactical advantage. In certain situations the hazardous material response robot could be utilized to collect sensitive samples that in other situations placed the emergency responder in warms way.

The five other RRT's have procured this specific piece of equipment from QinetiQ Talon in order to be compatible with each other in case of a statewide emergency.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses.
- This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

The Standardization of Equipment will have not fiscal impact to the General Fund since it is fully funded with grant proceeds. There will be maintenance and replacement costs for the equipment, which will be needed to be, included in future fiscal year budgets.

City staff recommends City Council adopt resolution authorizing the Asheville Fire Department to purchase QinetioQ Talon Hazardous Material Response Robot based on standardization needs with funding from State Homeland Security Grant FY08 and 09.

RESOLUTION BOOK NO. 33 – PAGE 259

F. ORDINANCE NO. 3925 - BUDGET AMENDMENT FOR EMPLOYEE & RETIREE HEALTH CARE CONTRIBUTIONS

Summary: The consideration by City Council of a technical budget amendment to reduce the General Fund budget by $3,553,000 to allow for more efficient and effective accounting and reporting of employee and retiree contributions to the health insurance program.

In FY 2007-08, the City created an Insurance Fund to account for all revenues and expenses associated with the City's self insurance programs for health care, workers compensation, and liability. Prior to that time, these programs were accounted for in the City's General Fund. When the Insurance Fund was created in FY 2007-08, staff decided to continue initially recording employee and retiree contributions to the health insurance program as a revenue in the General Fund and then transfer those amounts to the Insurance Fund. This accounting process created additional work for staff, however it allowed for a more consistent presentation of General Fund revenues and expenses across fiscal years.

Staff has recently revisited this issue and decided that the efficiency gains from reducing the number of accounting transactions as well as the transparency improvements from eliminating the "double counting" of employee and retiree health care contributions in multiple funds outweigh concerns about reporting consistency across fiscal years. With the pending transition of payroll from H.T.E. to MUNIS, staff would like to execute this budgeting and accounting change during the current fiscal year. The technical impact of this change is a reduction in the FY 2010-11 General Fund revenue and expense budget of $3,553,000. There is no impact to the Insurance Fund budget.

This action complies with the City Council Strategic Operating Plan Operate by ensuring that the City of Asheville's organization operates at the highest fiscal responsibility.

Pros:

- Will reduce the amount of accounting transactions.
- Eliminate the double counting of revenues in two separate funds.

Con:

- Makes comparisons with prior fiscal year budgets more challenging.

As noted above, the FY 2010-11 General Fund budget will show a reduction of $3,553,000. However, there will be no net fiscal impact to the City's overall budget since employee and retiree health care contributions will still be recorded in the Insurance Fund.

City staff recommends City Council approve the technical budget amendment.

City Manager Jackson responded to Vice-Mayor Newman regarding the technical budget amendment.

ORDINANCE BOOK NO. 26 – PAGE 364

G. ORDINANCE NO. 3926 - BUDGET AMENDMENT FOR THE ACQUISITION OF DOWNTOWN PROPERTY LOCATED OFF OF EAGLE STREET

Summary: The consideration of a budget amendment, in the amount of $605,000, from the Parking Services Fund's fund balance for the acquisition of approximately 0.36 acres of downtown property located off of Eagle Street.

This budget amendment establishes a budget within the Parking Services Fund for the purchase of 0.36 +/- acres of property located off of Eagle Street, , further identified as PIN # 9649-50-1164-00000. The parcel is owned by the William and Charlotte Harrison Living Trust. The City has leased this parcel for a number of years for use as secured parking for Asheville Police Department specialty vehicles, cruisers and storage. At this point in time, the City has the strategic opportunity to purchase at a price below the appraisal value and assemble the parcel to adjoining city-owned property. This acquisition will benefit the City by eliminating the annual operating expense of leasing this parcel and maximizing the value of the parcel through assemblage.

For budgeting purposes, a total estimated project budget has been set at $605,000 to include cost of acquisition, survey, phase one environmental review and legal fees.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through eliminating ongoing operating costs, while maximizing the value of real property assets.

Pros:

- Eliminates annual operating costs in the Parking Services Fund associated with leasing the parcel (est. $30,000 per year)
- Maximizes value via assemblage
- Buyer's real estate market has allowed for a favorable purchase price

Con:

- Requires an appropriation from the Parking Services fund balance

The City's funding for this project will come from Parking Services Fund's fund balance. The Fiscal Year 2009-10 audit is not yet complete, so the June 30, 2010 fund balance number for the Parking Services Fund has not been finalized. However, based on staff's current estimate,

available fund balance in the Parking Services Fund on June 30, 2010 was approximately $2.5 million. This budget amendment will reduce the fund balance to approximately $1.9 million.

City staff requests City Council to adopt a budget amendment of $605,000 for the acquisition of 0.36+/- acres of property located off of Eagle Street.

ORDINANCE BOOK NO. 26 – PAGE 366

H. RESOLUTION NO. 10-248 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PAUL HOWARD CONSTRUCTION COMPANY FOR THE DEAVERVIEW ROAD BRIDGE REPAIR PROJECT

ORDINANCE NO. 3927 - BUDGET AMENDMENT FOR THE DEAVERVIEW ROAD BRIDGE REPAIR PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Paul Howard Construction Company, Inc. for the project known as Deaverview Road Bridge Repairs; and 2) a budget amendment, in the amount of $142,000, from savings in other capital projects to fund the contract.

The Engineering Services Division of Public Works has opened bids to do repair work the Deaverview Road Bridge. The bridge carries Deaverview Road over the Norfolk – Southern Railroad, and is adjacent to the City's Roger Farmer Park. The structure has severe corrosion on the main steel beam supports. The proposed repairs should keep the structure in service for many years to come.

The initial low bid was rejected, as there was only one bidder. The project was re advertised, and again, only one bidder submitted. The City and Contractor will share the costs for Norfolk-Southern safety personnel required when working within the Railroad Right of Way.

This action complies with the City Council Strategic Operating Plan in fully leveraging internal partnerships for pursuing capitol improvements and infrastructure projects.

Pros:

- Will repair an existing bridge to current standards.
- Provides long term investment in the City's infrastructure.
- Improves vehicular safety.
- Prolongs the useful life of a valuable City asset.

Cons:

- Project management and contract administration will consume staff time.
- A travel lane on this section of roadway may be required to be closed for a short time during the construction of the project.
- Financial obligations to Norfolk-Southern for project administration.

As a part of the FY 2010-11 adopted Capital Improvement Program (CIP), City Council approved a project budget of $158,000 for the Deaverview Road bridge repairs. Based on the bid amount for the project, the budget needs to be increased by $142,000 to a total project budget of $300,000. As noted in the 1st Quarter Financial Report, during its year-end review of existing capital projects, staff identified approximately $500,000 in savings from projects in the General Capital Projects Fund that were complete and that came in under budget. These savings have been moved to the General Capital Projects Fund's reserve account. This addition brings the total amount available in the capital reserve account to $625,000. Staff is proposing that the $142,000 needed for this project be taken from the reserve account. This will leave

approximately $483,000 in the capital reserve account. Staff is recommending that the money remaining in the capital reserve be allocated for the FY 2011-12 CIP during the upcoming budget process.

City staff recommends City Council adopt (1) a resolution awarding the contract to Paul Howard Construction Company, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount; and (2) the associated budget amendment in the amount of $142,000.

RESOLUTION BOOK NO. 33 – PAGE 260
ORDINANCE BOOK NO. 26 – PAGE 368

I. RESOLUTION NO. 10-249 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE TOWN OF BLACK MOUNTAIN FOR SNOW FIGHTING MATERIALS

Summary: The consideration of a resolution authorizing the Mayor to enter into an interlocal agreement with the Town of Black Mountain for salt and sand materials.

The Town of Black Mountain desires to partner with the City of Asheville on the procurement of snow fighting materials. Specifically, the Town desires that the City incorporate in the City's annual bid for snow fighting materials the needs of the Town. By utilizing Asheville's purchasing power, the Town will be able to reduce its overall costs.

The Town of Black Mountain would reimburse the City the full cost of materials transferred based on that current year's bids.

This action complies with the City Council Strategic Operating Plan in creating more collaborative and effective working partnerships between the City of Asheville and other key organizations.

Pros:

- Provide materials to a sister local municipality using Asheville's economy of scale bidding advantage.
- Create common goal partnerships with other key organizations.
- Increase in bid quantities could potentially leverage overall reduced costs of materials.
- Similar in scope to existing arrangement with UNCA and Mission Hospitals.

Cons:

- Mid-storm deliveries would necessitate sensitive communications to sort out needed logistics.

As a part of the FY 2010-11 adopted budget, the Public Works Department, Street Division, budgets for snow materials. There would be an additional cost in procuring the additional material; however, the corresponding revenue would offset any increase.

City staff recommends City Council adopt a resolution authorizing the Mayor to enter into an interlocal agreement with the Town of Black Mountain for salt and sand materials.

RESOLUTION BOOK NO. 33 – PAGE 261

J. RESOLUTION NO. 10-250 - RESOLUTION AUTHORIZING SUPPORT FOR COUNTY'S GRANT APPLICATION TO THE METROPOLITAN PLANNING ORGANIZATION TO FUND AN UPDATE TO THE BUNCOMBE COUNTY GREENWAY AND TRAILS MASTER PLAN

Summary: The consideration of a resolution authorizing support for Buncombe County's $50,000 grant application to the Metropolitan Planning Organization to fund an update to the Buncombe County Greenway and Trails Master Plan.

Buncombe County through Parks, Greenways and Recreation Services Department is updating the Buncombe County Greenway and Trails Master Plan as a comprehensive system of interconnected trails and greenways. The update process is expected to cost $100,000. To date Buncombe County has $50,000 in hand to support the project. Buncombe County has applied to the Metropolitan Planning Organization for a $50,000 grant to assist in the support of the master plan. If awarded, the grant will complete the funding needed for the plan update.

Once complete, the master plan update is designed to 1) coordinate current and future greenway development with municipalities within Buncombe Counties jurisdiction and neighboring counties, 2) provide all jurisdictions within Buncombe County with working documents to assist with prioritization and implementation of a regional greenway plan, and 3) better position all jurisdictions within Buncombe County for state and federal funding opportunities for greenways.

Buncombe County is requesting local governments located in Buncombe County to support its efforts to update its master plan by expressing their support of its application to the Metropolitan Planning Organization for funding. The City's resolution of support will not commit the City to any actions or financial expectation.

At its meeting on November 11, 2010, the Greenway Commission recommended to City Council to approve a resolution to support Buncombe County's grant application to the Metropolitan Planning Organization to fund an update to the Buncombe County Greenway and Trails Master Plan.

This action complies with the following City of Asheville master plans: (1) Asheville City Development Plan 2025 in that it demonstrates cooperation with other government agencies for recreation facilities as effective and efficient as possible; (2) Parks, Recreation, Cultural Arts & Greenways Master Plan in that it continues efforts for cooperation between the City and Buncombe County to find opportunities for partnerships; (3) Pedestrian Thoroughfare Plan in that is supports comprehensive, multi-modal transportation and congestion management program by improving connectivity of overall sidewalks and greenways; and (4) Comprehensive Bicycle Plan in that it supports future greenway development efforts as greenways have potential to provide connections with on-road bicycle facilities.

Pro:

- Demonstrate the City's support to the Metropolitan Planning Organization regarding Buncombe County's effort for developing the Buncombe County Greenway and Trails Master Plan.

Con:

- None

This action does not commit the City to any fiscal expectation or obligation.

Staff and the Greenway Commission recommends to City Council adopt a resolution to support Buncombe County's $50,000 grant application to the Metropolitan Planning Organization for funding to update to the Buncombe County Greenway and Trails Master Plan.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. NOISE ORDINANCE APPEALS BOARD UPDATE

Chairman Jim Fink said that the mission of the Board is that people of Asheville have the right to a peaceful environment. Their goal has been to keep it that way.

Their goal will not change and he will serve as long physically possible. He said that there has been talk that the Board may be discontinued; however, to serve the City, they must keep the Board and not waste the courts time. Mayor Bellamy assured Mr. Fink that City Council acknowledges the importance of the Board and there has been no discussion to dissolve the Board.

At the request of Mayor Bellamy, it was the consensus of Council to have the Noise Ordinance Appeals Board review the usage of "Jake Brakes" in the City limits. City Attorney Oast said that when the Board meets, he will have City staff present in order to participate in the discussion.

On behalf of City Council, Mayor Bellamy thanked Mr. Fink for his service on this Board along with the service of the other members.

B. QUARTERLY REPORTS

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2010 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurement through the Fiscal Year 2010-11. In addition, staff provided Council with the Economic Development Key Indicator Report.

He then showed Council a video showing the staff's progress on the key strategic areas for this quarter.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

Financial Report

Budget Manager Tony McDowell provided Council with the City's overall financial position for the fiscal year through September 2010.

The executive summary is as follows:

Amendments. The General Fund budget presented in this first quarter report reflects the adopted budget of $91,635,962; along with two budget amendments approved by Council during the first quarter that totaled $616,757. The first amendment was a $450,000 appropriation from fund balance for City Hall repairs. The other amendment, which totaled $166,757, was to appropriate revenue and expenses associated with the annexation areas that became part of the City on September 30. In addition to these two amendments, the General Fund budget presented in this report reflects the $3.5 million technical adjustment to the City's health care accounting. A summary of the budget changes since July 1 is presented below.

Adopted Budget	91,635,962
Health Care Technical Adjustment	(3,553,000)
Budget Amendments:	
City Hall Repairs*	450,000
Annexation Revenue & Expenses	166,757
9/30/2010 Budget	$88,699,719

* Fund balance appropriation

Revenues. Through September 30, 2010, the City has collected $9,995,081 in General Fund revenue, which represents approximately 11.3% of the total General Fund revenue budget. There is no change in property tax estimates to report. Staff will receive updated property tax data in late December or early January. Sales tax estimates also appear to be on track to meet budget. The only major revenue variance to report is in the investment earnings category, where low interest rates are having a significant impact. Because of this shortfall in investment earnings, staff is currently projecting that ***total FY 2010-11 General Fund revenue will come in under budget by $786,000.***

Expenditures. General Fund expenditures through September 30, 2010 total $18,811,826 or 21.2% of the budget, which is typical for this point in the fiscal year. One area to note on the expenditure side is the trend in health care expenses. Although expenditure growth in this area has slowed compared to previous years (about 6% during the first quarter compared to last year), the rate of growth may still result in expenses exceeding budget estimates. The city has implemented several management strategies to curb expenditure growth throughout the year, and the full impact of those strategies may not be realized until later in the year. Nonetheless, in order to conservatively manage expenses and address any potential under performance in revenues, the city is actively identifying additional savings in the current year budget. ***These savings, representing roughly 1% of the overall budget, are expected to come from a combination of strategies that have minimal impact on public services. These strategies include further selective hiring, line item reductions, deferring capital expenses where possible, and seeking opportunities to maximize efficiency in operations.***

Fund Balance. Until the FY 2009-10 audit is complete, staff must rely on unaudited estimates for the final year end available fund balance figure for FY 2009-10. Based on current data, staff is estimating that available fund balance on June 30, 2010 was approximately $11.9 million. ***With implementation of the savings strategies mentioned above, FY 2010-11 expenditures are expected to equal revenues, which means available fund balance will remain at $11.9 million or 13.6% of estimated expenditures.***

Mr. McDowell, Economic Development Director Sam Powers, Assistant City Manager Jeff Richardson and City Manager Jackson responded to various questions/comments from Council (noting that questions not readily answered will be followed-up in memo form), some being, but are not limited to: explanation of the Fund Balance analysis; is the reduction in license and fees causing a workforce reduction in the Inspections Division; more statistics on the unemployment rate (U-6 and U-3) and the rate of rental prices for housing in Asheville; when will the audit be complete; when will staff bring to Council more saving strategies; and what is

causing the high health care costs and what kind of incentives can we use to entice people with high risk to participate in our programs.

Mayor Bellamy noted that in June she suggested that if there were any cost savings she would like to put some of it toward sidewalks. Mr. McDowell recommended that Council wait and appropriate any cost savings projected as part of next year's budget process.

Mayor Bellamy said at Council's retreat it will be good opportunity to talk about some of the immediate needs we see in the community and the community's outcry for sidewalks.

In response to Mayor Bellamy, City Manager Jackson explained the status of the vacant Chief Financial position and introduced Interim Chief Financial Officer Kai Nelson, who in turn explained 2-3 areas of major focus in the Finance Department.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED IN THE AIRPORT ROAD AREA TO HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3928 - ORDINANCE ZONING PROPERTY LOCATED IN THE AIRPORT ROAD AREA TO HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:51 p.m.

Urban Planner Julia Fields said that this is the consideration of an ordinance to zone property located in the Airport Road area to Highway Business District and Commercial Industrial District. This public hearing was advertised on November 12 and 19, 2010.

The property presented to you for initial zoning is property annexed by the City of Asheville effective September 30, 2010. The properties (a total of 17 parcels and a portion of another parcel) are located in the Airport and Rockwood Road areas. The land uses on these properties are varied with a mix of commercial, industrial, and office uses. There are also vacant parcels. The zoning on these parcels is Buncombe County Zoning (Employment District).

The Planning and Development Department recommends initial zoning in this area of Highway Business (HB) for all but one parcel for which the Department is recommending Commercial Industrial (CI) zoning. Staff has noted no nonconforming uses that would be created with the proposed zoning but recognize that some development standards will not be met with the existing development.

Pros:

- Supports the *Asheville City Plan 2025* goals for regional commercial corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.
- Staff has noted no nonconforming uses that would be created with the proposed zoning.

Con:

- Some existing development many not meet all the city standards for the proposed zoning districts.

At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission voted unanimously (6-0) to recommend this initial zoning to the Asheville City Council.

Staff recommends approval of the proposed initial zoning of the properties shown on the proposed maps and known as the Airport Road Annexation Area. Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Mayor Bellamy closed the public hearing at 5:52 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3928. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 376

B. PUBLIC HEARING TO CONSIDER A SUBSTANTIAL AMENDMENT TO 2009 AND 2010 CONSOLIDATED ANNUAL ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS

RESOLUTION NO. 10-251 - RESOLUTION AUTHORIZING SUBSTANTIAL AMENDMENT OF THE CITY'S CONSOLIDATED ACTION PLANS FOR 2009 AND 2010

Mayor Bellamy opened the public hearing at 5:53 p.m.

Community Development Director Jeff Staudinger said that this is the consideration of resolution authorizing substantial amendment of the City's Consolidated Annual Action Plans for 2009 and 2010. This public hearing was advertised on November 12 and 19, 2010.

When projects approved for CDBG or HOME funding change, the Annual Action Plan that detailed the project must change. The HOME program has one 2009 and one 2010 HOME Project needing amendment.

1. Asheville Area Habitat for Humanity was granted $130,000 of HOME funds in the 2010 Action Plan to support hard costs for a new housing development on Dennis Street in Swannanoa. The site is located near to Interstate 40, and without significant and costly noise mitigation does not meet minimum noise standards to meet HUD environmental regulations. Habitat will build this project, but will not use HOME funds in doing so. The Housing and Community Development Committee and the Asheville Regional Housing Consortium agree that these funds be allowed to be used for another Habitat project in Asheville. The 2010 Action Plan should be amended to cancel this project, and enable these funds to be used for another project, subject to Consortium approval.

2. The Community Housing Coalition of Madison County (CHCMC) was granted $50,000 of HOME funds in the 2009 Action Plan for the construction of single-family housing. CHCMC has not been able to perform this activity, and therefore are relinquishing this grant. CHC is receiving technical assistance through a technical assistance grant funded by the USDA, and expects to bring forward development projects in the future. The 2009 Action Plan should be amended to cancel this project, and reallocate the funds to Unallocated Funds.

The Housing and Community Development Committee and Asheville Regional Housing Consortium concur with approval of the amendments.

The draft Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable."

Pro:

- Because the funds cannot be used as originally intended, this amendment allows for the funds to be returned to the pool of funds available for HOME eligible projects.

Con:

- There are no cons to this action.

By keeping the Action Plans current, funds that are able to be used for their original purposes become available for other eligible activities.

Staff recommends that Council approve the amendments to the 2009 and 2010 Consolidated Annual Action Plans.

Mayor Bellamy closed the public hearing at 5:56 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 10-251. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33– PAGE 263

C. PUBLIC HEARING RELATIVE TO UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN

ORDINANCE NO. 3929 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN

ORDINANCE NO. 3930 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING REVIEW PROCESS ELEMENTS AS RECOMMENDED IN THE DOWNTOWN MASTER PLAN

Mayor Bellamy opened the public hearing at 5:56 p.m.

Urban Planner Julia Fields said that this is the consideration of an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan.

Almost three years ago, the Asheville City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by the Asheville City Council in May 2009. The Council directed staff to work with stakeholder groups moving forward to prepare the changes to the Unified Development Ordinance (UDO) necessary to implement the plan recommendations and other implementation strategies.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to evaluate the processes for the review of downtown projects. The

proposals on processes have been on a different track from those for design standards. All ordinances are being presented to the Asheville City Council at the same time.

This ordinance details the necessary changes to the UDO concerning processes for development occurring on parcels zoned Central Business District (CBD) and located within the boundaries of the Design Review Overlay District. It adds a new section to Article V ("Development Review Procedures") that outlines the procedures for reviewing projects proposed on parcels zoned CBD and located within the boundaries of the Design Review Overlay District (CBD/DDR). Changes that are recommended reflect the goals of the Asheville Downtown Master Plan (DTMP) and the recommendations of the Urban Design Action Committee. These changes are directly related to Strategy 6 of the plan: *Make downtown project review, transparent, predictable, and inclusive of community input.*

The new section in Article V sets forth the procedures for Level I, II and III project review in the CBD/DDR. These procedures differ from the procedures in other parts of the City's jurisdiction as follows:

- The project level thresholds for development review in the CBD/DDR are different. Level III review will apply to those projects above 175,000 square feet or above the Intermediate Height Zone (145 feet). Level II review will apply to those projects between 20,000 and 175,000 square feet in size and up to the Intermediate Height Zone. All other projects are subject to Level I review.
- The order and format of the review process is different in the CBD/DDR except for Level I projects which are handled at staff level. Level III projects that are in the traditional downtown core go to the Technical Review Committee (TRC), the Downtown Commission (DTC), the Planning and Zoning Commission (P and Z) and to Asheville City Council through a conditional zoning process. Level III projects outside of the core follow the same review process except Council is only considering these projects for compliance with applicable standards and regulations. Level II projects go to the TRC, DTC, and P and Z for approval.
- Early developer sponsored meetings are required for the Level II and Level III projects. Such meetings are strongly recommended for Level I projects.
- All meetings where project proposals in the CBD/DDR are reviewed shall provide notification through publication in a newspaper, mailed notice and posted notice.
- Level II project approvals are valid for two (2) years.
- Large phased developments must submit a master plan.
- Variance requests for projects proposed in the CBD/DDR shall be granted by the Planning and Zoning Commission (acting as the Board of Adjustment) with a recommendation from the Downtown Commission except for landscaping requests. Alternative landscaping requests must be reviewed and approved by the Asheville Tree Commission. Planning and Development Department staff may flex up to ten (10) percent on standards concerning openings and expanses of wall.
- Appeals from decisions of the Planning and Development Department or the Downtown Commission shall be heard by the Planning and Zoning Commission (acting as the Board of Adjustment). Appeals from the decisions of the Planning and Zoning Commission shall be heard by the Asheville City Council.

At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council.

The Asheville City Council has held two work sessions on the Downtown Master Plan draft ordinances and has requested no changes to the process elements that were first presented to Council in November of last year.

Regarding compliance with the City Council Strategic Operating Plan, this wording amendment reflects proposals set forth in the Asheville Downtown Master Plan adopted by the Asheville City Council on May 26, 2009. Specifically, it implements elements of Strategy 6 of the plan. Some changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved.

At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council. The Downtown Commission also recommended approval in the fall of 2009.

Pros:

- Implements a community developed master plan.
- Sets forth a process that provides greater certainty to developers on projects in the CBD/DDR.
- Provides for a more transparent review process for projects in the CBD/DDR.

Cons:

- Some may be concerned over the elimination of City Council discretionary approval for all but the largest of projects.
- Some may be concerned that the requirement for developer sponsored meetings for Level II and Level III projects is burdensome.
- Some may feel that City Council review of Level III projects outside of the traditional downtown core (only reviewing for compliance with standards) is an unnecessary step as this review has already been conducted by the Planning and Zoning Commission.

Additional cost associated with notification of property owners for projects being considered by the Asheville Downtown Commission. First class postage for property owners within two hundred (200) feet is the proposed requirement. Actual amount will be dependent on the number of Level II and Level III projects proposed and the number of property owners to be notified.

City staff recommends approval of this wording amendment regarding the review process elements as recommended in the Downtown Master Plan.

City Attorney Oast asked for a minor amendment to the process ordinance having to do with the manner in which these decisions by the Council are appealed. He suggested the appropriate language in subsection (12) be changed to appeal to "Superior Court of Buncombe County in the manner provided by law."

Urban Planner Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan. This public hearing was advertised on November 12 and 19, 2010.

Mr. Glines said that two years ago City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by City Council in May 2009. The Council directed the staff to work with stakeholder groups to prepare the changes to the UDO necessary to implement the plan recommendations, and other implementation strategies.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to determine the best way to implement the recommendations in the plan. After over 20 meetings they concluded their work, and their final proposals for the Central

Business District were presented to the Downtown Commission. At their June 2010 meeting, the Commission voted to approve the changes as recommended by the Committee. The Planning and Zoning Commission after a series of meetings to review the proposals voted on September 1, 2010 to approve the wording amendment. Other stakeholder groups continue to work on implementation elements that do not require UDO changes.

The proposed UDO text amendment replaces the current development standards for the Central Business District (CBD) with new text and maps that reflect the goals of the Asheville Downtown Master Plan. Changes to the UDO are directly related to *Strategy 4: Shape building form to promote quality of place* and *Strategy 5: Update downtown design guidelines* from the master plan.

The master plan introduces regulations that are form-based rather than use-based. They focus on the basic building design elements to strengthen compatibility, ensure pedestrian orientation, and enhance the character of the skyline. The existing ordinance provides minimal direction to ensure that new building construction is compatible with neighboring properties and with downtown in general. The plan introduces concepts for the CBD that include new definitions for how height is measured, building height maximums based on location in downtown, a context transition edge adjacent to residentially zoned properties, shadow protections for certain parks, a street wall requirement, and building step-backs. The plan also provides new development requirements for the portions of new structures that exceed 75 feet in height including a maximum floor plate, and a limit on the longest dimension of the tower portion of a building. All structures will be required to include a building cap, a primary entrance along a frontage line, and requirements for windows and other openings at the ground level and upper stories.

The charge of the Council to the Urban Design Action Committee was to study how each master plan concept would work and realistically function in downtown, and to avoid any "unintended consequences" from implementation. With that charge, some changes are proposed that slightly modify the master plan recommendation while maintaining the goals of the plan. Using master plan concept maps, he explained the changes recommended for the master plan summarized below:

Front Setback – The master plan suggested averaging front setbacks based on street context. The Committee instead recommends retaining current requirements in the CBD for zero-foot setback from the right-of-way-line with limited exceptions to emphasize urban form in new construction and not allow master plan suggested setback averaging because many areas in downtown currently have a suburban form.

Measurement of Building Height – The Committee found that there are practical difficulties with the master plan recommendation to re-measure/ re-assess the height of a building based on the grade change across the site and instead recommended establishing a single height reference point at the primary pedestrian entrance.

Height Zone Locations – The Committee suggested adjustments to the height zone maps to reduce the locations of the tallest height zones based on compatibility with the traditional downtown core. Specifically, this reduction is in three locations – surrounding the Grove Arcade and areas below Hilliard Avenue along Church Street and Biltmore Avenue.

Applicability – The Committee recommends applying the master plan requirements and standards only to areas zoned Central Business District and not to other zoning districts surrounding downtown, as is shown on several maps within the plan. This will simplify implementation and aligns with community expectations to focus on downtown regulations.

Context Transition Edge – The Committee recommends that the Context Transition Edge be adjusted to apply only to the CBD areas most sensitive to changes in height (immediately adjacent to residentially-zoned properties) and limiting the application of the height buffer to 100 feet wide (instead of 300-400 feet wide as proposed in the plan).

Shadow Restrictions – Due to continuing concern about the impact of shadow requirements on building near very small parks, the staff proposed adjusting the building shadow limitations for parks and open spaces to only apply to larger park areas and exclude small pocket parks, private parks and plaza spaces, with definitions created for these uses. Additionally, the Committee recommended removing the shadow limitations on historic structures because other protections could be developed for them involving input from preservation professionals.

Street Wall – Because of its complexity, the committee recommends maintaining the street wall concept but reworking it to simplify understanding and provide some additional options that more completely reflect the historic fabric of downtown. City Council has also expressed interest in expanding the options for a variance from a street wall step-back for any new building. Using pictures, he showed examples of existing buildings.

Air Rights – The Committee, reflecting a staff recommendation, recommend removing the air rights option for side step-backs for upper stories of buildings because of legal concerns.

Building Cap – The Committee included clarification of the building cap requirements to measurable standards. Originally the master plan provided a number of subjective design recommendations that will be more appropriate in the Downtown Design Guidelines rather than placed in this ordinance.

Key Pedestrian Streets – The Committee suggested some modifications of the Key Pedestrian Streets map and requiring the primary pedestrian entrance to be placed on these streets if the option is available.

Tower Floorplate – The plan recommended limiting the allowable floorplate dimension for towers over 75'. The Committee agreed with this recommendation but suggested increasing the allowable square footage to 8,000 square feet or 40% of lot area as a more practical number.

The new amendment will include a type of form code that is similar in look to the other ordinances in the UDO but which introduces building envelope concepts and appropriate illustrations to convey the new standards. Maps will also be a part of the ordinance to easily identify boundaries for specific requirements in the ordinance.

West Asheville UDO Changes to CBD Zone

A related amendment has been finalized that proposes wording changes that will apply to the west Asheville CBD areas. There are two CBD sections along Haywood Road that cover about 60 parcels totaling approximately 18 acres. The proposed changes recommend a substantial height reduction for west Asheville, as there appears to be a general belief that very tall buildings are not appropriate along Haywood Road, and should be limited to the downtown CBD. Landscape buffer options are also proposed for the west Asheville CBD areas based on the scale of a specific development adjacent to residential areas. If these buffer options are adopted, these could provide a useful alternative for other areas in the city where commercial zones are directly adjacent to residential zones. These changes were worked out with the west Asheville property owners and interested residents at a series of meetings.

There are also two other isolated Central Business District-zoned parcels in Biltmore Park in south Asheville. There are no development plans for these parcels and future development will likely require rezoning as a part of a new development plan, so there is no plan for modifying them, although they will be affected by the changes to the CBD district.

The Urban Design Action Committee identified a number of items that they felt should receive additional attention but which were beyond the specific scope of their work, and not essential for the implementation of the majority of the master plan recommendations. They asked that this list be presented as unfinished items that may be studied by the Downtown Commission or other appropriate groups:

1. View Corridors to be reviewed again for specific locations
2. External Vista Points ("Vista Trail") development providing vistas into downtown
3. Expansion of the CBD along Ashland and Biltmore Avenues
4. Incentives or trade-offs for new parks, green features, etc.
5. Shadow Impacts on sunlight-dependant historic resources or sunlight-dependant "green" features
6. Transfer of Development Right possibilities
7. Protection for historic structures

The Planning and Zoning Commission considered the following clarifications based on public comments received during the review and recommended their inclusion into the proposal:

1. The ordinance will apply to all new construction and/or changes that modify the exterior walls and/or roof of an existing building. There was additional clarification that the ordinance will not apply to routine maintenance, repair or replacement of the same or similar materials on existing buildings.
2. Requests for variances will rest with the official or agency responsible for project approval and with all variance requests, the Downtown Commission will provide a recommendation as a part of the process.
3. The descriptions of several sections were edited to clarify the meaning and requirements.

During two work sessions with City Council on October 12, 2010 and November 9, 2010, staff was directed to look into a number of considerations including incentives for affordable housing and commercial units, sustainable building features for new construction, and a broader variance option for buildings seeking an alternative to the step-back requirements at the height of the street wall. After consideration of the options, the City Council decided to postpone the sustainability option. The Council then directed the staff to pursue the step-back alternative to ensure that a variety of options will be in place for new buildings and in recognition of the many existing downtown buildings that do not provide a physical step back.

Based on the comments from the Council during the work session, staff is now proposing a broader variance option for buildings seeking an alternative from the step back requirements. Originally the variance provision was limited to shorter buildings (below 75 feet) because of the need to protect the pedestrian environment at the sidewalk level. Step-backs are designed to allow air and light to reach the sidewalk and to maintain the historic character for buildings, especially in the downtown core. Factoring into the proposed change is the reality that many existing iconic downtown buildings do not 'step back' but rather provide a strong visual transition from the base of the building to upper floors by way of color and material changes and sometimes by the size and scale of entryways and windows at the base. This proposed modification will allow a building of any size to apply for the variance by showing a design that provides a clear transition between the lower portions of the building and upper floors at the street wall height.

This proposed variance option was reviewed with the Downtown Commission along with City Council's conversation about the *Transformational Projects Policy and Incentives.* The Commission did have some concerns about the change but noted that they will be involved in

reviewing the variance requests. The Downtown Commission also indicated that they would appreciate the opportunity to provide ideas relating to the Central Business District for the *Transformational Projects Policy and Incentives* when City Council is ready to consider these details.

Regarding compliance with the Strategic Operating Plan, the wording amendment being considered is in direct support of the Asheville Downtown Master Plan adopted by City Council on May 26, 2010 (Resolution 09-102) The wording amendment represents the implementation of Strategies 4 and 5 focusing on the character and scale of the built environment. Some minor changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved. The adoption of the wording amendment is also in alignment with the goals of the Strategic Plan 2010-11 which emphasize fiscal responsibility by implementing an approved master plan. The plan has represented a strong partnership with supporters and stakeholders of downtown who were heavily involved in developing the strategies in the master plan and continue to meet to implement the plan.

Pros:

1. Implements a community developed master plan.
2. Provides a recommended form-code framework for designing new structures.
3. Assures adequate air and light at the sidewalk level and promotes compatibility with the existing historic context.
4. Encourages views between tall buildings and enhances the skyline vistas of downtown.
5. Improves the compatibility for the two areas of Central Business District zoned property located along Haywood Road in west Asheville with the single-family neighborhoods that adjoin that property.

Cons:

1. The code is more complex and may be difficult to explain and understand for the layman.
2. Developable area per lot is reduced above the height of 75 feet (may be considered a pro).
3. As with any change to the UDO regulations, the impact of the new ordinance may not be fully understood until new developments are proposed.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment at their meeting on 9-1-10. The wording amendment was reviewed with the Commission over four meetings to carefully consider the details of the ordinance. The Commission recommended some clarifications to the ordinance which have already been reviewed in this staff report and are part of the proposed ordinance being considered by City Council.

The Urban Design Action Committee endorsed the wording amendment and sent it forward to the Downtown Commission for consideration. The Downtown Commission after adjustments to the height map voted to approve the amendment on June 10, 2010 and recommend it moving forward to the Planning and Zoning Commission.

This proposal has also been shared with interested stakeholders along Haywood Road and with Biltmore Farms and new concepts for landscape property-line buffers were reviewed with the Coalition of Asheville Neighborhoods (CAN).

The Planning and Development Department staff recommends approval of this wording amendment according to the recommendations of the Downtown Master Plan.

Mr. Pat Whalen, former Chairman of the Downtown Commission, hoped that Council would continue to honor all the public participation in the Downtown Master Plan to get to this point. He supported the amendments, noting that it could be fine-tuned in the future.

Mr. Steve Rasmussen, member on the Urban Design Action Committee commented on some loose ends as follows: (1) the need to find better ways to protect historic properties downtown; (2) more protection for the mountain views, view corridors and vista parks; (3) and ensure public input by keeping the Level III project thresholds at 100,000 square feet.

Ms. Raelin Hanson, resident of Battery Park Apartments, felt the Level III project threshold should reduced to allow public comment before City Council; and was opposed to modern building caps.

Mr. Joe Minicozzi, interim Executive Director of the Asheville Downtown Association, urged Council to adopt the ordinances which create a better, more transparent and predictable process.

Ms. Susan Griffin, downtown resident, supported the changes in that this is a reasonable and organized way to look at future growth.

Mr. Larry Holt, downtown resident, spoke about the culmination of hundreds of hours of work by hundreds of volunteers. He was concerned about the public participation in the review of plans once the threshold is raised because public comment becomes even more important. He hopes that is addressed; however, he felt we needed to move forward because when development starts again we need to have a good review process in place.

Ms. Karen Van Ammon, City resident, felt we should put language in to protect the historic buildings now because once they are torn down, it will be too late.

Mayor Bellamy closed the public hearing at 6:32 p.m.

Ms. Fields said that there are a number of buildings in downtown that are designated local landmarks and they are protected, to a certain extent. They can still be torn down, but you have to go through a lot of red tape and there is a waiting period. The only other thing you can do to protect historic buildings is to create a local historic district; however, the times that has been suggested there has been concern from the downtown property owners and not an interest in seeing that happen.

Vice-Mayor Newman moved to adopt Ordinance No. 3929, an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan. This motion was seconded by Councilwoman Manheimer.

All of Council commended the hundreds of volunteers across the spectrum (business, architects, renters, City residents, County residents, etc.) for the thousands of hours of work on this process.

Vice-Mayor Newman said that we have tried to create a set of policies that encourage investment and growth in downtown, rather than sprawl development across the countryside and on our mountains. When new buildings are built in our downtown, we want them to be buildings that future generations will be proud of in the same way we are very proud of the architectural legacy we have inherited from past generations. That is the intent of this plan. This is not a plan that any one person would have written - it's the work of the community. We have created much stronger design rules that developers have to adhere to build in the downtown, while Council will still be involved in the very large projects in the traditional part of downtown.

Councilman Smith too noted that consensus on 19 strict design rules were achieved by the hundreds of volunteers.

Councilman Russell did not support this process in the beginning due to questions regarding property rights, but since this process has resulted in a more objective and less political process he could support it.

Councilwoman Manheimer stated that whole concept of the Downtown Master Plan was to have a massive collaboration of citizenry come up with a uniform set of rules that reflect what our community wants - not a case by case basis, but rather put a set of rules in place so when the economy picks up, Council is not having to make a decision each time about what is best for our community. Before this Plan, we didn't have height limitations or restrictions to what a building might look like. This Plan basically covers what a building should look like down to pretty minute details. And, if you are willing to build exactly what we want and what these volunteers have decided what is best for Asheville, in exchange, you can build your project. She felt that the ordinance can be amended in the future if need be. But, in the end, this represents our best efforts.

Councilman Davis felt Council should either do away with Council review of the Level III projects outside of the traditional downtown core (since it is only reviewing for compliance with standards), or make it the same review of all Level III projects inside the traditional downtown core area.

Mayor Bellamy reiterated that the Downtown Master Plan was a comprehensive endeavor to plan for the future with public input upfront. This process was built upon other plans, including the 2025 Plan (which received a lot of community input), as well as the Council's smart growth policies. She agreed with Councilwoman Manheimer that this plan addresses specific and minute details on the building, e.g., mechanicals on the buildings. She felt that if people review the ordinance in detail, they would appreciate what Council is trying to do.

The motion made by Vice-Mayor Newman and seconded by Councilwoman Manheimer to adopt Ordinance No. 3929, an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan carried unanimously.

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Councilwoman Manheimer moved to adopt Ordinance No. 3930, an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan, with the amendment outlined by City Attorney Oast. This motion was seconded by Vice-Mayor Newman.

Councilman Bothwell agreed with Councilman Davis in that Council should have the same review of the Level III projects inside or outside of the traditional downtown core. He questioned how the 175,000 sq. ft. Level III threshold was picked. He felt it was arbitrary to almost double the size of the Level III developments from the current 100,000 sq. ft. to the proposed 175,000 sq. ft. He suggested we have a 125,000 sq. ft. threshold for Level III projects and increase it through incentives. He pointed out that former Mayor Leni Sitnick felt the 100,000 sq. ft. threshold was extremely high when the current ordinance was adopted and has regretted that the Level III threshold was not lower back then. The Master Plan group started at 100,000 sq. ft. and they compromised up. City Council is the level where citizens get to have a voice in shaping our community. He felt we should keep the threshold for Level III projects at 100,000 sq. ft., or increase it in small increments. If we increase the threshold to 175,000 sq. ft. now, it will be difficult to reduce it in the future.

When Councilman Bothwell asked for a friendly amendment to keep the Level III threshold at 100,000 sq. ft., Vice-Mayor Newman explained why he did not accept it.

Councilman Smith suggested a compromise of 137,500 sq. ft. for the Level III threshold, and incentivize up to 175,000 sq. ft. for LEED certification.

Councilman Bothwell moved to amend the main motion to reduce the Level III threshold from the proposed 175,000 sq. ft. to 137,500 sq. ft. This motion was seconded by Councilman Smith and failed on a 2-5 vote, with Councilman Bothwell and Councilman Smith voting "yes."

Councilman Smith questioned if Council was open to pursuing incentivizing within this process and felt this could be an item Council could review at their retreat.

Councilman Bothwell moved to amend the main motion to have the same review of the Level III projects inside or outside of the traditional downtown core. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Councilman Bothwell, Councilman Davis and Councilman Smith voting "yes."

Mayor Bellamy explained that what is proposed is for those who invest in downtown will have strict rules to follow and if all those standards are met, the project will be approved. She noted that several of the e-mails she has received contain misinformed comments. Council is not abdicating their responsibilities for Level III projects. Notifications will still be sent and public comment will be accepted. This is the culmination of pretty strong ordinances and when development restarts, it will respect who we are in the City of Asheville and the mountains of western North Carolina.

At Mayor Bellamy's suggestion, it was the consensus of Council to have staff put on the City's website information and maps to help them understand how this will ordinances will benefit the downtown.

The motion made by Councilwoman Manheimer to adopt Ordinance No. 3930, an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan, with the amendment outlined by City Attorney Oast, and seconded by Vice-Mayor Newman carried on a 6-1 vote, with Councilman Bothwell voting "no."

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At 7:16 p.m., Vice-Mayor Newman moved to excuse Councilman Russell from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

At 7:16 p.m., Mayor Bellamy announced a short recess.

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS US CELLULAR TELECOMMUNICATION TOWER, LOCATED AT 415 BEAVERDAM ROAD, FOR CONSTRUCTION OF AN 80' MONOPOLE TOWER

Mayor Bellamy said that it has been determined by the Planning and Development Director that the City's Zoning Ordinance does not allow telecommunications towers to be located on the property that is the subject of this Conditional Use Permit application, and that this application is ineligible for consideration. This public hearing will not be held.

E. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Urban Planner Julia Fields said that in November 2007, the Asheville Planning and Zoning Commission reviewed a rezoning petition for the Horizons Urban Village project located on an 8.54 acre site on Merrimon Avenue. The Commission voted to recommend rezoning (7-0) and the conceptual site Plan (5-2) presented by the developers/property owners of the project, and the matter was scheduled to be heard by Asheville City Council in January of 2008. At that time, the developers requested a six (6) month continuance in order to review the site design particularly as it related to the height of some of the buildings. Building height was a significant concern for the adjoining neighbors of this project. In June of 2008, the property owners requested an additional three (3) month continuance primarily due to economic conditions. In October of 2008, and again in 2009, the property owners requested and obtained an additional twelve (12) month continuance from the Asheville City Council.

The property owners (F. Foster Shriner, AVN Developers, Member, Jasmine Development, LLC, Manager and CS Merrimon Group, LLC, Manager, submitted the following letter on November 16, 2010, withdrawing the rezoning petition "Please accept this notification that the property owners of the former DEAL property and the proposed Horizons project wish to withdraw our application. Current economic conditions have required that we abandon this project. We regret this decision and thank you and all of the staff for your patience and assistance throughout this process."

Since an Urban Village rezoning can only be done in response to a petition of the owners of the property included, this withdrawal has the effect of taking the petition out of consideration. Should the property owners wish to have the rezoning/project considered again, a new application will be required, with payment of all requisite fees. A new petition would be required to go through all steps in the process as before.

A valid protest petition for this rezoning has been submitted. The withdrawal of the project makes the protest petition of no effect.

A pre-application conference has been held concerning a proposal for a new project on this site. It is expected that there will be an application submitted for project review for this new proposal in December of this year.

Council need take no action on this matter.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-252 - RESOLUTION ADOPTING CODE OF ETHICS FOR THE CITY COUNCIL

City Attorney Oast said that this is the consideration of a resolution adopting Code of Ethics for the City Council.

: In 2009, the N.C. General Assembly adopted N.C.G.S. 160A-86 and 160A-87. N.C.G.S. 160A-86 requires adoption of a Code of Ethics; N.C.G.S. 160A-87 requires that Council members receive regular ethics training. Council members have been fulfilling their ethics training requirement through programs by the School of Government.

N.C.G.S. 160A-86 provides for certain minimum content a Code of Ethics, to include:

(1) The need to obey all applicable laws regarding official actions taken as a board member.
(2) The need to uphold the integrity and independence of the board member's office.

(3) The need to avoid impropriety in the exercise of the board member's official duties.
(4) The need to faithfully perform the duties of the office.
(5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

The proposed Code of Ethics draws from publications by Institute/School of Government at UNC, the ethics codes and policies of other North Carolina local governments, and other sources. The proposed code covers the minimum required content, but also draws directly from applicable statutes, and covers other relevant and recurring issues.

Section 1 of the code contains definitions.

Section 2 covers the duty of Council members to know the law, and to make appropriate inquiry in the case of questions or uncertainty. The statutes are directory and cover those things that Council members must (or must not) do.

Section 3, 4, and 5 establish expected standards of behavior in meetings, on official business, and at other times. These are not mandatory or minimum standards, but rather are guidance for interacting with each other and with the public.

Section 6 is a special recognition of the open meetings and public records laws, and the importance and effect of those laws on Council's business.

Section 7 clarifies in broad terms the relationship between the Manager and Council on the Council-Manager form of government, as prescribed in the City's Charter and the General Statutes.

Section 8 codifies the manner for determining where a conflict of interest exists, and what to do if a conflict develops. Not every interest will be a conflicting interest, requiring recusal; different standards may apply to different situations, with different results.

Section 9 draws heavily on statutes regulating gifts and favors. Though not as detailed as the State Government Ethics Act, that law is cited as general guidance for appropriate conduct.

Section 10 Clarifies that Council members are responsible for knowing elections laws, and further provides that they not engage in political activity on City premises. This is drawn from a statute, N.C.G.S. 160A-169 that governs political activity.

Section 11 is a reminder of the limitations and the use of confidential information. This is likewise drawn from a statute, N.C.G.S. 14-234.1.

Section 12 describes a censure process for handling violations of the ethics policy; State law does not provide any process for enforcing the ethics policy or sanctioning violations of it. This is an optional provision, and a much more detailed process is available.

Council must adopt a Code of Ethics before the end of the year, except to maintain the required minimum content the Code may be amended as often as needed.

Adoption of a Code of Ethics is required by law.

Pros:

- Satisfies legal requirement
- Codifies and assembles in one place the legal and other provisions for Council conduct

Con:

- None noted.

The fiscal impact is negligible; cost of receiving periodic training.

He asked that the policy be revised as follows: (1) in Section 7, "Except for purposes of requesting or receiving assistance of a clerical or administrative nature from those employees assigned to provide such assistance, or for purposes of inquiry, Council members should deal with City staff only through the City Manager or his designee."; (2) further clarification in Section 9 regarding Gifts and Favors that N.C. Gen. Stat. sec. 133-32 is a regulation that applies only in situations where you are dealing with someone who is under contract with the City or anticipates being under contract with the City; and (3) deletion of subsection 1 in Section 9 regarding honoraria and re-number the following paragraphs.

Adoption of the revised resolution, and the Code of Ethics is recommended.

In response to Councilman Bothwell, City Attorney Oast said that "living as an elected official" means being aware that you are an elected official, which carries certain responsibilities. It is an expectation that you not act in such a way as to bring shame to the city.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 10-252. This motion was seconded by Councilman Davis and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Bothwell thanked all the volunteers who came out on November 20 for the City-wide clean-up day. He reminded people who are physically limited in their ability to do the work that volunteers are available to help out and to contact him for that assistance. Mayor Bellamy thanked Councilman Bothwell for his leadership on this effort.

Councilman Smith announced the November 30 community meeting at W.C. Reid Center at 133 Livingston Street, at which time staff will update the community on activities taking place in their area and Council will hear from residents as well.

City Attorney Oast said that the N.C. League of Municipalities representatives wanted to meet with representatives from some of the larger cities in North Carolina to discuss their legislative agenda for this coming year. They tentatively suggested December 6 in Asheville. He asked Council to let him know if they would be interested in meeting.

Mayor Bellamy reported on her trip to Washington, D.C., as a member of the Local Government Advisory Committee. She explained what a good opportunity it was to hear the priorities of the Environmental Protection Agency on a national and regional level and for them to hear our needs on a local level.

Mayor Bellamy wished everyone a happy and safe Thanksgiving holiday.

VIII. ADJOURNMENT:

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Mayor Bellamy adjourned the meeting at 7:35 p.m.

Magdalen Bouleson
CITY CLERK

Ingrid Bellamy
MAYOR

Tuesday – November 30, 2010 – 6:30 p.m.
W.C. Reid Community Center

Community Meeting – Central Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; and City Attorney Robert W. Oast Jr.

Absent: None

Mayor Bellamy opened the meeting and welcomed the audience. She then introduced City Council members and explained the questions and answer process.

Mr. Robert Hardy, President of the Southside Neighborhood Association, thanked City Council for meeting at the Reid Center. He expressed several concerns, some being, but are not limited to: potential traffic alleviation plans and how that might impact Walton Street Park, inadequate notice of meeting; new aquatic center replacing Walton Street pool and the need for neighborhood children to use the facilities consistent with how they currently use available facilities; and safety, security and stability of area. Mr. Hardy said that (1) he has a proposal for an option that would leave the park intact and would like to share that idea when the topic is addressed again; (2) the community wants to ensure they are included in all plans and can provide input; (3) the community would like replacement facilities if plans fall through after the existing facilities are demolished; and (4) the community would like to engage in conversation via forum with A-B Technical Community College regarding potential and alternate routes for projects that will impact their neighborhood.

Mr. Hank Dunn, President of A-B Technical Community College, pointed out that they are a part of the community and they are concerned about safety for everyone, not just those on campus. They have on-campus traffic challenges and are exploring options, noting they would like to collaborate with the surrounding community to find something that works for everyone. They are looking for ways to make AB-Tech campus and the community safer.

Director of Parks, Recreation & Cultural Arts Roderick Simmons explained the vision for the Livingston Street Park redevelopment including multi-modal transportation, community center, outdoor play with water feature, etc. He said that this is the highest ranking project in the Master Plan process. He explained the following three phases which are planned for this project: Phase 1 – Community Center/Auditorium; Phase 2 – Gymnasium; and Phase 3 – community involvement for determining the highest and best use of undersigned program space.

Director of Administrative Services Lauren Bradley explained the City's strategic goals and financial realities. She then explained the constraints to which the City is subject, as well as the level of service delivery we provide and the volume of citizens and visitors to whom we provide them.

Mayor Bellamy then opened up the meeting for questions and answers explaining that all answered questions would be delegated to City staff for response and posting on the City's website.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 8:15 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – December 14, 2010 – 3:00 p.m.
Worksession
1st Floor North Conference Room

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Brownie W. Newman and Councilman William A. Russell Jr.

Annexation Policy Direction

Urban Planner Blake Esselstyn said that in October of this year, in reviewing two annexation areas, the Asheville City Council decided to forego one of the annexations. At that time, Council expressed an interest in conducting a worksession to examine the City's annexation policies and related legislative objectives.

Annexation is the methodical extension of a city's boundaries into adjacent unincorporated areas, and the corresponding extension of that city's services to the areas encompassed by the new boundaries. As a matter of policy, annexation is permitted in North Carolina subject to statutory requirements because the State has found that "sound urban development is essential to the continued economic development of North Carolina" and that "municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development." [NCGS § 160A-47]

Annexation is seen as a way to ensure fairness amongst those living in an urbanized area and as a way to maintain the strength of North Carolina cities. Several studies have shown that allowing for "elastic" cities helps to reduce sprawl, maintains population growth, and promotes financial stability of the municipalities in the State (bond ratings, tax base, etc).

The use of the tool of statutory, or city-initiated, annexation is perhaps more important to Asheville as a growth management tool than other cities because our local government has been deprived of both the traditional annexation incentives other cities have to ensure steady growth and other traditional revenue sources such as hotel/motel fees. The Sullivan Acts are the most egregious example of this situation in that they restrict the ability of Asheville to grow with water line extensions and to charge differential water rates. Thus, Asheville taxpayers must absorb operation cost deficits for water customers not within the City.

The City of Asheville's approach to annexation since 1999 has been to conduct city-initiated annexation in a conservative fashion [see comparative information]. The characteristics of this approach have been:

- Undertaking the annexation of properties that are clearly urban (i.e. meeting density or development thresholds) in nature.
- Annexing areas that are carefully defined from a rational service provision standpoint – omitting areas where service provision is infeasible.
- Annexing areas that enhance our ability to provide efficient and effective municipal service.
- Annexing relatively small areas unless such areas incorporate a road corridor or a large subdivision.
- Evaluating potential annexation areas adjacent to all quadrants of the City.
- Per Council direction, we have avoided annexation of industrial areas, primarily in the southern part of Buncombe County.

Staff has continued to follow this approach in presenting proposed annexations to the Asheville City Council once or twice each year.

To assist Council in policy review, staff provided Council the following materials: (1) Comparative Annexation Information – From City of Raleigh; (2) Comparative Municipal Growth Table; (3) Brookings Institute Report; and (4) Baltimore Magazine Article.

Using the map for the resolution of consideration (adopted by City Council in February of 2010 and effective until February of 2012), Mr. Esselstyn reviewed the methodology on why we annex certain areas of the community.

Throughout discussion, Mr. Esselstyn, City Attorney Oast and Director of Public Works Cathy Ball responded to various questions/comments from Council, some being, but are not limited to: why have we not annexed the I-26 corridor; why wasn't more of the Royal Pines area included in the earlier annexation proposal; since the City is not in the sewer business and it is a huge expense, why do we have to install sewer lines; does the Town of Woodfin provide sewer service as they seem to be annexing aggressively; how does Asheville compare in annexing with other cities over the last five years; and can Asheville charge new water customers a differential rate.

Mayor Bellamy supported providing sidewalk service in our future annexation plans.

It was Councilman Bothwell's opinion that we should annex areas in our resolution of consideration which are particularly likely to change in use or development of commercial areas in the future.

Noting that if the legislature moves forward with any iteration of the annexation bills that would effectively eliminate Asheville's ability to annex at all, City Attorney Oast explained the number of technical revisions to the act that municipalities were okay with. One major point of debate was the inclusion of a requirement of a referendum involving the area to be annexed, which was what caused the bill to fail. He said that the 2009 one version of the legislation would have stopped annexations in process and at the time we had two that were in the Court of Appeals. It was scaled back that it only applied to annexations on a going forward basis and the changes would have only applied to annexations to which a resolution of intent had been adopted before October 1, 2009. There was a lot of objection to stopping the annexations in process.

Mayor Bellamy said we need to look at the Sullivan Acts not just from the perspective of differential rates for Buncombe County and City of Asheville residents, but the future of this area because counties adjacent to our area need this resource and if we are not planning for our community to benefit financially, we are doing our City a disservice.

City Attorney Oast said that in the law proposed in 2009, there was a section that provided for annexation agreements, which is along the lines of what we have been talking about with the Sullivan Acts. It says a city may enter into a contract under which the city agrees to extend water service, sewer service or both to specific property and in return the owner or owners of the property agree to the following ... to petition the city for annexation and not to join in any appeals. When Councilwoman Manheimer asked if that would supersede the Sullivan Act restriction specific to Asheville, City Attorney Oast said this appears to be new language.

Mayor Bellamy felt that if residents of the proposed annexation areas are allow to vote whether to become a part of the city, then she would support city residents having the ability to vote on the expansion of their boundaries.

Councilman Bothwell felt we should entice people to want to become City residents and suggested ways to create a dollar differential for those that live in the City from those that live in the County, e.g., discount to City residents in our parking deck rates.

At Mayor Bellamy's request, City Attorney Oast said that he would provide Council the bill which the League supported, until the referendum revision was added.

Mayor Bellamy stressed that we need a plan to talk with our legislators about if the legislature eliminates cities to annex, as it is an equity issue for not just now but in the future because there is no way to grow Asheville and people will continue to tap into our water system. Said plan could include some negotiation/compromise tools, e.g., letting Asheville continue with their annexations in progress, an annexation contract to require voluntary annexation of developers that develop adjacent to the City limits; our willingness to have a 5-year delay for annexations to become effective; phasing services; phasing taxations; etc. City Attorney Oast said that he will also provide Council the information he compiled in 2009 when this issue was last discussed.

It was the consensus of Council to have a subcommittee made up of Mayor Bellamy, Councilwoman Manheimer and Councilman Smith discuss the negotiation/compromise tools, some outlined above, that Asheville would be willing to support of the ability for cities to annex is eliminated.

With all the factors in play, it was the consensus of Council to postpone any specific annexation proposals for the next few months.

At 4:20 p.m., Mayor Bellamy adjourned the worksession and to reconvene the formal meeting at 5:00 p.m. in the Council Chamber.

Tuesday – December 14, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Manheimer gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Francois de Clarens, first year Engineering Student in Polytech 'Orleans France. His home town is Saumur, France a sister city of Asheville. From October 4 until January 1 Francois is working with the City of Asheville in the position of

Engineering Services Internship. In this role he is being exposed to Land Surveying, Computer Aided Drafting and design on our Civil Engineering projects. In the short time that he has been here, he has worked on the ongoing projects with sidewalk, bicycle and pedestrian design, bus stop shelters, retaining wall design and construction. Francois's mentor for the Internship is John White the Survey Coordinator for the City of Asheville. ; (2) Assistant Fire Marshal Kelly Hinz - Assistant Fire Marshal Kelly Hinz of the Asheville Fire Department has successfully completed the process that awards her the professional designation of "Fire Officer" (FO). The Commission on Professional Credentialing (CPC) met on November 16, 2010, to officially confer the designation upon Kelly Hinz. Kelly is one of only 20 FO's worldwide. The CPC awards the FO designation only after an individual successfully meets all of the organization's stringent criteria. The process includes an assessment of the applicant's education, experience, professional development, technical competencies, contributions to the profession, and community involvement. In addition, all applicants are required to identify a future professional development plan. Assistant Fire Marshal Kelly Hinz has been a member of the Asheville Fire Department for 10 1/2 years; and (3) Firefighter Combat Challenge World's Competition - Ruth Olson; Joy Ponder; Kelley Webb; Ashley Hamilton; and Maureen Casey– From Reem's Creek Fire Department. Local female firefighters returned home with a bronze medal after competing in the Scott Firefighter Combat Challenge®- World's Final Competition, held in Myrtle Beach, SC this past week. Four members from the Asheville Fire Department, Ruth Olson, Joy Ponder, Kelley Webb and Ashley Hamilton along with team member Mo Casey from Reem's Creek Fire Department, joined forces to create an Asheville team, better known as FUEL. In 2008 the team finished second in the world and this yearly proudly finished third. Each year the competition gets tougher as more women come out to compete. The Challenge annually attracts hundreds of U.S. and Canadian municipal fire departments at more than 25 locations and is now expanding to countries around the world, including New Zealand, Germany, Argentina, Chile, and South Africa. The Challenge seeks to encourage firefighter fitness and demonstrate the profession's rigors to the public. Wearing "full bunker gear" and the SCOTT Air-Pak breathing apparatus, pairs of competitors race head-to-head as they simulate the physical demands of real-life firefighting by performing a linked series of five tasks including climbing the 5-story tower, hoisting, chopping, dragging hoses and rescuing a life-sized, 175 lb. "victim" as they race against themselves, their opponent and the clock. Through support of the Asheville Fire Department, Reem's Creek Fire Department, Asheville Firefighters Association, and through assistants of local grants and fundraisers the team was able raise money in order to attend several training events and competitions throughout the season conditioning them for the final event.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

B. RECOGNITION OF BILTMORE FARMS' EASEMENT DONATION FOR DINGLE CREEK WETLANDS PROJECT

Mayor Bellamy was pleased to recognize Mr. Paul Szurek, Chief Financial Officer of Biltmore Farms, LLC, for Biltmore Farm's easement donation for the Dingle Creek Wetlands Project. Mr. Szurek also spoke about how two of their buildings have reached a LEED certification level.

C. PROCLAMATION PROCLAIMING JANUARY 10-17, 2011, AS "DR. MARTIN LUTHER KING JR. WEEK"

Mayor Bellamy read the proclamation proclaiming January 10-17, 2011, as "Dr. Martin Luther King Jr. Week" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons, who briefed City Council on some activities taking place during the week. City Manager Jackson said that he would add a link to the City's website to find all the activities that will be taking place during the week.

D. RECOGNITION OF NEW HUMAN RESOURCES DIRECTOR

Assistant City Manager Jeff Richardson was pleased to introduce Ms. Kelley Dickens, the new Human Resources Director. Mayor Bellamy said that the City will look forward to learning from her experience.

II. CONSENT AGENDA:

Mayor Bellamy asked that Consent Agenda Item G be removed from the Consent Agenda.

Councilman Smith asked that Consent Agenda Item B be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 23, 2010; AND THE COMMUNITY MEETING HELD ON NOVEMBER 30, 2010

B. RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 11, 2011, TO CLOSE SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 10-254 - RESOLUTION AUTHORIZING SETTLEMENT OF A PROPERTY DAMAGE CLAIM FOR THE HAYES & HOPSON BUILDING

Summary: The consideration of a resolution authorizing settlement of a property damage claim for the Hayes & Hopson Building.

In the course of construction of the Pack Square Park, surface water that previously had been collected in the storm drainage system of the Court Plaza roadway was directed to the North wall of the Hayes & Hopson building, and entered the basement and sub basement of the building. The intrusion incurred in two locations, one on the Northwest corner, and one midway along the North wall, where a manhole is.

The water intrusion resulted in recurring damage to the finish work in the Hayes & Hopson building, requiring replacement and repair of the work, mold remediation, and extensive use of dehumidifiers. The cost of this work was $35,150.54.

The problem has been corrected by the installation of a shallow drainage system in the area between the North wall of the building and the southern walkway through the park, which was tied into the storm drain collector in South Spruce Street. The Pack Square Conservancy was responsible for the design and installation of the drainage system in the park area; the City installed the improvements on Spruce Street. The corrective measure appears to have been effective.

The Asheville Claims Corporation and our engineers monitored this situation while construction of the park was in progress, and confirmed the source of the water intrusion, the extent of damage, the cost of repairs, and efficacy of the redesigned drainage system. We were initially concerned that the cost of correcting the problem might involve waterproofing the building, a far more expensive proposition.

The owner of the building has agreed to a complete release of the City from liability for damage resulting from water intrusion. Because the adjacent property is owned by the City and

Buncombe County as tenants in common, the County was requested to participate in this settlement, but declined. Accordingly, the release will apply only to the City.

Approval of the City Council is required because the amount of the settlement exceeds the settlement authority of the Asheville Claims Corporation.

Pros:

- Forecloses potential litigation
- The City is released from liability for damage

Con:

- Cost to the City's Insurance Fund

The $35,150.54 cost to settle this claim will be paid from the existing claims budget in the City's Insurance Fund.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 279

D. RESOLUTION NO. 10-255 - RESOLUTION ADOPTING THE 2011 CITY COUNCIL MEETING SCHEDULE

RESOLUTION BOOK NO. 33 – PAGE 280

E. ORDINANCE NO. 3931 - ORDINANCE ESTABLISHING A 25 MPH SPEED LIMIT ON MORRIS STREET FROM TALMADGE STREET TO BREVARD ROAD IN WEST ASHEVILLE

Summary: The consideration of an ordinance to enact and/or change a speed limit on Morris Street in West Asheville to 25 mph.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

The City Traffic Engineer recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on Morris Street from Talmadge Street to Brevard Road. The subject street primarily serves residential properties in a well established neighborhood. Daily traffic volumes are less than 400 vehicles per day and the 85th percentile speed equals 23.3 mph.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a medium commercial corridor.

Pros:

- City staff has been able to respond favorably to a citizen's request.

- Based on the 85th percentile speed, most drivers are in compliance with the recommended change.

Cons:

- The initial cost to install the appropriate speed limit signs is about $500.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $500 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Morris Street from Talmadge Street to Brevard Road in West Asheville.

ORDINANCE BOOK NO. 26 - PAGE 402

F. RESOLUTION NO. 10-256 - RESOLUTION AUTHORIZING CHANGES IN THE CITY OF ASHEVILLE WATER RESOURCES DESIGN AND CONSTRUCTION MANUAL

ORDINANCE NO. 3932 - ORDINANCE APPROVING AMENDMENTS TO THE CIT OF ASHEVILLE WATER POLICIES

Summary: The consideration of (1) a resolution authorizing changes in the City of Asheville Water Resources Design and Construction Manual and (2) an ordinance authorizing changes in the Water Policies.

The Water Resources Design and Construction Manual (herein "Manual") was last updated and adopted by City Council on February 23, 2010, to be effective on March 1, 2010. The Manual must be revised to maintain compliance with federal and state regulations and to reduce maintenance and repair costs by providing a higher level of protection for the City public water system. Along with some grammatical revisions, the substantive revisions to the Manual include but are not limited to a requirement for backflow protection device installations associated with Fire Department Connections (FDCs).

The revised Water Policies were adopted by City Council by ordinance on January 26, 2010. Along with some grammatical revisions, the substantive revisions to the Water Policies include but are not limited to there being a reference in Section VI of the Policy for Cross-Connection Control relative to the backflow protection device installations associated with FDCs.

This is in compliance with the City Council's Strategic Operating Plan to provide safe drinking water to area residents and to ensure compliance with state and federal laws.

Pros:

- Adoption of the changes in the Water Design and Construction Manual will ensure that the design and construction standards are compliant with State and federal laws.
- Changes will provide a higher level of protection to the public water system.
- Changes will help reduce maintenance and construction costs to water customers and developers, respectively.
- Changes will help clarify language.

Cons:

- Failure to adopt the change in the Water Design and Construction Manual will result in standards that are not compliant with state and federal laws and industry standards.
- Failure to adopt the changes in the Water Polices may cause confusion about interpretation.

There is no fiscal impact.

Staff recommends City Council adopt (1) a resolution authorizing changes in the City of Asheville Water Resources Design and Construction Manual and (2) an ordinance authorizing changes in the Water Policies.

RESOLUTION BOOK NO. 33 – PAGE 281
ORDINANCE BOOK NO. 26 – PAGE 403

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD SALE OF CIVIC CENTER ICE RINK AND EQUIPMENT TO THE HIGHEST BIDDER

This item was removed from the Consent Agenda.

H. RESOLUTION NO. 10-257 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CANDLER CONCRETE WORKS INC. FOR THE DOGWOOD GROVE AND NORTHWOOD ROAD CURBING PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Candler Concrete Works Inc. for the project known as Dogwood Grove and Northwood Road curbing project in the amount of $123,456.78.

The Dogwood Grove Development has existing curb that has deteriorated over the years and is in need of replacing. Northwood Road has curbing on one side of the road and has several areas that are broke. These two areas are going to be resurfaced after the curbing has been installed. The Adopted Capital Improvement Program (CIP) includes a budget of $87,440 for the Dogwood Grove project and a budget of $225,000 for the Northwood Road project. Funding for both projects came from Sullivan Act proceeds that were transferred from the Water Services Fund.

The initial contractor defaulted on the project and that contract was successfully terminated. The project was re-advertised and Candler Concrete Works, Inc. was the lowest responsive/responsible bid.

This action complies with the City Council Strategic Operating Plan in fully leveraging internal partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Will repair an existing curbing to current standards.
- Provides long term investment in the City's infrastructure.
- Improves vehicular safety.
- Helps with Storm Water run-off.
- Prolongs the useful life of a valuable City asset.

Cons:

- Project management and contract administration will consume staff time.
- A travel lane on this section of roadway may be required to be closed for a short time during the construction of the project.

The initial contract amount for the curbing portion of these projects totals $123,456.78. As noted above, funding for this contract will come from existing CIP budgets that were previously approved by City Council.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a contract with Candler Concrete Works, Inc. and any change orders, within the budgeted amount of $123,456.78.

RESOLUTION BOOK NO. 33 – PAGE 283

I. **RESOLUTION NO. 10-258 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT AND TRAINING/EXERCISE FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE**

ORDINANCE NO. 3933 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT AND TRAINING/EXERCISE FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a non-matching grant from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, for the procurement of equipment funds to be used by Hazardous materials Regional Response Team 6 – Asheville; and (2) the associated budget amendment, in the amount of $51,429.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2010-SS-T0-0075 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters.

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated Level A Personal Protective Equipment (PPE) and other equipment for training.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $51,428.57 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.

- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council (1) authorize the City Manager to accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFD's capabilities to protect Asheville and Western North Carolina; and (2) adopt the associated budget amendment.

RESOLUTION BOOK NO. 33 – PAGE 284
ORDINANCE BOOK NO. 26 – PAGE 408

J. RESOLUTION NO. 10-259 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AN IBM SMARTER CITIES GRANT

Summary: The consideration of a resolution authorizing the City Manager to apply for an IBM Smarter Cities Grant on behalf of the City of Asheville.

IBM Corporation is currently accepting grant applications for up to $400,000 of technology and services to solve urban issues through the use of technology.

The grant is primarily aimed at cities with populations greater than 100,000. Due to Asheville's status as a regional hub, and due to Asheville's daytime population of nearly 120,000, staff feels that Asheville is well positioned to apply for this grant. Additionally, due to citizen interest, staff feels that significant support is available in the community, which may translate into increased exposure and awareness of Asheville's application on social media sites.

With Council or City Manager direction, staff can choose proposed problems to focus upon.

Key considerations for grant proposal success include:

- 1-3 problems or issues for the grant award to focus upon. These should be "pressing concerns" of the City.
- Demonstrate City's "commitment to publicly available data"
- Demonstrate City's "track record of innovative problem solving", "including any initiatives to implement new technologies or open data policies"
- Provide "clear, compelling evidence" that the city is well positioned to utilize the resources.

Staff feels that the City of Asheville has an excellent chance of capturing this grant, given the City's track record in the past few years of investing in technology (notably $2M on BTIP), and engaging citizens in technology decisions, notably mapAsheville's citizen engagement and the Google Fiber grant proposal.

Applying for this grant would align with City Council's "Fiscal Responsibility" goal from Council's 2010-2011 Strategic Plan, notably to "leverage internal and external partnerships for pursuing capital improvements and infrastructure projects". Other City Council goals, such as

"Green & Sustainable" or "Safe", could also be positively affected, depending upon which issues are chosen for the grant.

Pros:

- Potential to have greater ability to enhance the City's technology offerings to citizens and line department
- Citizen outreach will engage citizens in a positive manner
- Ability to engage IBM's best thinkers to apply cutting-edge technology to local issues

Cons:

- Time and effort spent on a grant application may not yield the desired result
- Given scarce resources, City must be careful to select service areas that will have fiscal and operational support

The grant would provide up to $400,000 in services and technology with no impact on the City's General Fund budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for an IBM Smarter Cities Grant on behalf of the City of Asheville.

In response to Mayor Bellamy about obtaining Council's direction on problems to focus on, City Manager Jackson said that Council can e-mail their comments to him via e-mail.

RESOLUTION BOOK NO. 33 – PAGE 285

K. RESOLUTION NO. 10-260 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH KEVIN T. AND LISA A. FOX FOR A HEALTH SERVICES OFFICE AT 155 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing a lease agreement between Kevin T. and Lisa A. Fox for a Health Services Office at 155 Biltmore Avenue.

The City of Asheville is recommending expansion of the existing Health Services Clinic to provide primary medical care to city employees and dependents over the age of 15, in an effort to reduce the city's medical costs.

As one strategy to lesson health care costs to the City of Asheville, analysis of clinic expansion and services offered has been explored with a hopeful implementation date of February, 2011. Expansion of the primary health services provided by the City of Asheville at its clinic will increase the number of visits by employees, covered dependents, and retirees for episodic care. Plan design of the clinic services will include financial incentive for access/use of clinic services. City staff has visited other municipality-operated health clinics for benchmarking comparison and has been pleased with analysis on cost-savings generated by this concept.

There are several downsides to expanding Health Services in its current location in City Hall to include: 1) lack of ADA accessibility in the building, 2) lack of parking, and 3) lack of confidentiality to access city hall and lack of feel of a primary health care clinic.

Examination of other city facilities did not yield a possible site at the current time, which has led staff to explore leasable medical space in close proximity to downtown. Several locations have been considered. The current best potential option is leasable space at 155 Biltmore Avenue. This 3,422 square foot space is almost move-in ready and requires minimal construction/remodeling in order to operate the city's health clinic.

Staff has presented this analysis and clinic expansion to the City Council Health Care Blue Ribbon Task Force at its November 30, 2010, meeting and received unanimous endorsement for City Council consideration.

This action aligns with City Council's Strategic Operating Plan under fiscal responsibility - Operate the City of Asheville to the highest levels of fiscal responsibility. As outlined in the staff report, staff and consultant analysis of clinic expansion projects significant savings to the city's self-funded Health Insurance Fund, which should provide opportunity to build the fund's current fund balance level.

Pros:

- Clinic expansion should generate reduction in medical claims costs to the Health Plan.
- Employees and other covered dependents will be provided with expanded primary care services at nominal costs.
- Employees should see clinic expansion as a welcomed benefit in the face of rising employee costs for service/premiums.
- Off-site location provides better accessibility and confidentiality to current location.

Cons:

- Initial up front investment cost.
- Lease cost of space.

There is a financial analysis for expenses and savings over a two year period. In summary, for the first year, anticipating a February 1, 2011, opening, there are nominal upfront costs to bring this clinic on-line. Beginning July 1, it is estimated that this expanded services clinic should reduce medical claims by $500,000 per year, which will generate a cost savings to the Health Fund of approximately $322,000 for the first full year that the clinic is in operation.

Staff recommends City Council support the resolution of a lease for $3,800 per month at 155 Biltmore Avenue for an initial term of three years, with the option of a two year renewal.

RESOLUTION BOOK NO. 33 – PAGE 286

L. ORDINANCE NO. 3934 - BUDGET AMENDMENT FOR THE SENIOR OPPORTUNITY CENTER AND THE HARVEST HOUSE FOR FACILITY IMPROVEMENTS AND EQUIPMENT

Summary: The consideration of budget amendments in the amount of $16,065 for Senior Opportunity Center and $15,230 for Harvest House for 1) appropriations from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding; and 2) transfers from the General Capital Projects Fund to provide the City's local match.

Funds will be used at the Senior Opportunity Center to 1) replace a unit within the HVAC system, 2) install ADA accessible drinking fountain, and 3) purchase program and facility equipment. The allocation requires a 25% local match which will be provided via capital improvement funds that were approved as a part of the FY 2010-11 adopted budget and in-kind services of staff time to manage the project.

Funds will be used at Harvest House to 1) repair the roof, 2) purchase program and facility equipment. This allocation also requires a 25% local match which will be provided via capital improvement funds that were approved as a part of the FY 2010-11 adopted budget and in-kind services of staff time to manage the project.

This action aligns with the City Council Strategic Goal of fiscal responsibility in that it 1) provides an alternative for enhancing the city's long-term financial commitment to infrastructure maintenance, and 2) leverages an external partnership for pursuing capital improvements. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will 1) increase the level of service for indoor facilities to bring older facilities up to date before building new facilities, 2) increase department funding with alternative funding via grants, and 3) enhance the department's means to respond to identified programming priorities.

Pros:

- Facility improvements will address existing major maintenance projects and improve accessibility.
- Equipment purchases will enhance the customer experience and expand programming opportunities provided

Cons:

- None

The allocation will increase the City's Grant Fund budget by $31,295 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through capital improvement funds that were approved as a part of the FY 2010-11 adopted budget and in-kind services of staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) $16,065 for Senior Opportunity Center, and 2) $15,230 for Harvest House for facility improvements and equipment.

ORDINANCE BOOK NO. 26 – PAGE 410

M. RESOLUTION NO. 10-261 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR ELECTRICAL POWER FACILITIES AT THE WNC AGRICULTURAL CENTER

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the Western North Carolina Agricultural Center (herein "WNCAC").

The land on which the WNCAC is located is owned by the City of Asheville. It is leased to the State of North Carolina, specifically, the Department of Agriculture and Consumer Services, which uses it for the WNCAC. Davis Arena, one of the major facilities at the WNCAC, is being expanded. In connection with this expansion, Progress Energy Corporation is upgrading the electrical service, and relocating the supply line. The proposed new line will be underground. The area of the easement will be 10 feet in width for its entire length (approximately 535 feet), with the power line located in the center of it. The existing power line and easement will be abandoned.

This installation has been approved by the Department of Agriculture, which requested it. Such improvements are within the scope of and contemplated by the lease.

This action complies with the City's Strategic Operating Plan in that it contributes to an existing partnership with the State for the operation of a regional facility, and promotes community education on agriculture.

Pros:

- Facilitates development and use of WNCAC
- Promotes community education on agriculture

Con:

- None noted

Regarding the fiscal impact, there is none directly for City; marginal impact on State.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 33 – PAGE 287

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 10-253 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 11, 2011, TO CLOSE SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Summary: The consideration of a resolution of intent to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes; an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened unnamed right of way located near Jason Street.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjoining property owners, Frontier Syndicate LLC; Rhesa Read Tull Jr., Dorothy Tull Mothershead, and Margaret Tull Davis (heirs of Farrar G. Parker) have requested the City of Asheville to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes; an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened Elizabeth Place. Adjacent property owners Asheville Board of Education and did not join the petition, a copy of this resolution of intent shall be sent by registered mail.

The Greenway Commission met on November 11, 2010. They voted unanimously to support the street closures and strongly recommended that any future development plan include the greenway connection as discussed in the site master plan.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use. The Strategic Plan Goals most closely aligned with the Montford Commons Development closure requests is the Job Growth and Community

Development Goal in that it will provide sustainable high density infill growth that makes efficient use of existing resources.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close several portions of unopened rights of way and City streets within the Montford Commons area.

Councilman Smith said that because he has not been in favor of moving forward with the Montford Commons project he would not support this action.

Councilwoman Manheimer moved for the adoption of Resolution No. 10-253. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Smith voting "no."

RESOLUTION BOOK NO. 33 – PAGE 277

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD SALE OF CIVIC CENTER ICE RINK AND EQUIPMENT TO THE HIGHEST BIDDER

Summary: The consideration of a resolution authorizing the City Manager to award sale of Civic Center ice rink and equipment to the highest bidder.

Pursuant to N.C. Gen. Stat. sec. 160A-266, City Council may dispose of personal property valued at $30,000 or more by private negotiation or sale. The Civic Center has requested the disposal of property for the ice rink and all related equipment as follows:

Refrigeration Plant with spare parts
Ice Resurfacer
Ice Edger
Hockey Goals, Nets and Pads
Ice Skates
Skate Sharpener
Jet Ice Paint System
Ice Floor Cover

This action complies with the City Council Strategic Operating Plan in that supports a fiscally responsible city government through identifying opportunities for revenue diversification.

Pros:

- Promotes City of Asheville fiscal responsibility by disposing of surplus property which generates revenue
- Space Utilization-eliminates the need to store large, bulky, unused equipment

Cons:

- None

Proceeds from the sale are estimated to be over $30,000. The net proceeds will be deposited in the Civic Center Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to award the ice rink and all related equipment to the highest sealed bidder.

Mr. Hutch Kerns, President of the Asheville Hockey League, looked forward to working with the City to discuss opportunities for the future of the ice rink in Asheville.

Councilman Davis felt it was important for the community to know that we have had a vibrant hockey community in Asheville for a long time, beginning with the Asheville Smoke. Last year City Council, with regret, accepted the Civic Center Commission's recommend to not have ice at the Civic Center due to the aging equipment and the many challenges associated with the ice. In addition, with the recent renovations to begin at the Civic Center, storage of the equipment has also become a concern, along with the amount of taxpayer dollars tied up with the ice and associated equipment. He hoped that the hockey community sees this as an opportunity to work with the City to see if there is a viable place to have ice in our community. Personally he would like to see the ice remain in the community.

When Councilman Bothwell asked about moving the equipment prior to the renovations, Economic Development Director/Civic Center Director Sam Powers aid that they are in the very beginning stages of reconfirming the design of the renovations. There is a sense of urgency in this process as the area where the equipment is stored is a connective tissue between the Arena and the Thomas Wolfe Auditorium and there are preliminary plans to benefit both areas. He felt the equipment should be out of the Civic Center within the next four months.

Mr. Powers noted that the value of the equipment is much more than $30,000 and that the $30,000 is only the threshold that requires a Council action to dispose of personal property by private negotiation or sale.

In response to Mayor Bellamy, City Manager Jackson said that still will need to research what, under State law, we can do, because this is disposal of a real asset. Staff will provide Council on the asset cost and how it ties into the Civic Center Financial Plan, noting that the Civic Center is an Enterprise Fund with an extensive list of capital improvements that need to be made. Staff will also provide Council with the pros and cons to a negotiated sale or an outbid bid over a donation of the property, in addition to the fiscal impact statements associated with the options.

It was the consensus of Council that this matter be reviewed by the City Council Finance Committee prior to coming back to the full Council.

III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF CROSSROADS PUBLICATION

Ms. Karen Loughmiller, Librarian, Buncombe County Public Libraries; Ms. Priscilla Ndiaye, Author, researcher, and community activist; Dr. Dwight Mullen, Political Science Dept.; UNC Asheville Deborah Miles, Director, Center for Diversity Education; Ms. Johnnie Grant, Owner and Publisher of the Urban News and Native Ashevillian; and UNC Asheville DeWayne Barton, Co-founder of Asheville Green Opportunities, President of the Burton Street Neighborhood Association, said that the Buncombe County Public Libraries, the Stephens-Lee Alumni Association, and the Center for Diversity Education at UNC-Asheville were invited by Dr. Harlan J. Gradin of North Carolina Humanities Council to create this issue of the Council's CROSSROADS publication.

In 2008, Ms. Andrea Clark, photographer and community activist, made a major contribution to this collection allow the Library to add over 1,200 over her black and white photographs of East End and other African American neighborhoods in Asheville taken just before urban renewal. The stunning photographs became the basis of a year-long research and local history project called "*Twilight of a Neighborhood: Asheville's East End, 1970*", (jointly sponsored by these organizations and the NC Humanities Council), this CROSSROADS is the word of local scholars, community historians, community leaders, and neighborhood residents. Technical and editorial assistance was provided by the staff of Buncombe County Public Libraries and by the North Carolina Humanities Council. The publication was financed jointly by the North Carolina Humanities Council and by significant donations from various Asheville residents, businesses, and institutions.

The project originally focused on the East End, but the project expanded as residents and former residents of other neighborhoods shared the impact of urban renewal on all of Asheville's historically African American communities, revealing a part of our common history that had been lost to many.

Approximately 3,000 copies of the publication will be distributed locally at no charge, with distribution targeted to Asheville neighborhoods adversely affected during urban renewal, their local neighborhood groups, and organizations and institutions partnering with them to promote sustainable living wage employment, affordable housing, environmental restoration, and some visible acknowledgement of their significant history (extension of the Urban Trail, for example, or historic markers or other memorials).

The presenters were pleased to present City Council with the publication and spoke about their ongoing efforts.

On behalf of City Council, Mayor Bellamy thanked the CROSSROADS working group for their efforts on this wonderful publication, and thanked Ms. Clark for the wonderful photographs. She suggested the City Manager have the City's Neighborhood Coordinator contact Ms. Miles and Ms. Ndiaye to see how the City can work together on some opportunities of partnerships to help people find homes, and to rebuild the torn fabric of our communities.

IV. PUBLIC HEARINGS: None

V. UNFINISHED BUSINESS:

A. REID CENTER PROPERTY UPDATE

Parks, Recreation & Cultural Arts Director Roderick Simmons said that the first phase of construction for the new community center at Livingston Street Park is set for completion in February 2011. Following completion, most of the current recreation programming at the WC Reid Recreation Center will vacate and transition to the new facility. When the new project was initially approved, City Council asked staff to research the property value of the current facility to determine if funds would be available to implement future phases of the project. This report examines the future use of the WC Reid Center once this transition has occurred, within the context of Council's Strategic Goals, community development opportunities and real property valuation.

Real Estate Manager Nikki Reid said that the Reid Center property is comprised of two parcels, both fronting on Livingston Street, and separated by Gaston Street. East of Gaston Street, the smaller of the two parcels contains an asphalt basketball court in poor condition and measure 0.40 acres in size. The larger parcel equals 2.27 +/- acres and is improved with a former public school facility, gymnasium and related improvements. The City of Asheville Parks, Recreation and Cultural Arts Department currently utilizes the WC Reid Center for recreation programming, such as the Therapeutic Recreation Program. It should be noted that while most of

the recreation programming will relocate to the new center, the City will continue to use the gymnasium until the gym at the new center is constructed.

In addition to City use, the City leases space at the Reid Center to outside agencies as outlined below:

Reid Center Tenants

- Partners Unlimited: According to a 1996 agreement between the City and Asheville City Schools, the City provides at no cost one classroom, utilities and janitorial services in the Reid Center for what was then known as Metro School. This entity, now known as Partners Unlimited, provides academic services to at risk youth ages 10 to 18 who are referred by school system, court system, etc. The agreement automatically renews annually unless either party wishes to terminate the agreement.
- Asheville Housing Authority (AHA): Lease agreement between City and Asheville Housing Authority for AHA office space in Reid Center began in 1976 in which AHA contributed $150,000 to assist city in making improvements to the center. Lease amended in 1994 to add additional space to house the AHA Youthful HAND Program at no additional cost to AHA. Lease expired Oct 1, 2010. No action has been taken to consider renewing this lease, and is considered to be on a month-to-month basis.
- Asheville Green Opportunities: One-year facility use agreement beginning April 27, 2010, between City and Green Opportunities to use 1 classroom and janitorial services as an administrative office, cafeteria as a workshop for client services at no cost.
- Community Action Opportunities (CAO): CAO has leased in the Reid Center Annex (Lonnie Burton Building) for 11 years for the operation of a Head Start program. The lease began in 1999 at which time the Reid Annex was in a significant state of disrepair. As part of the original lease agreement, CAO made the investment to complete a major building renovation and to design the building to meet the needs and requirements of the Head Start Program. In return, the city agreed to a multi-year lease agreement at $1.00 per year. CAO is currently replacing the roof on the Reid Annex at its own expense. The lease is set to expire October 2012.

Appraisal Review: When the Livingston Street project was approved, Council asked staff to obtain information on property values of the WC Reid Center at 133 Livingston Street and to discuss as a possible funding source for Phase II. Given the age and condition of the structures on the property, it appears that these improvements may be at or near end-of-life and would require significant renovation of core systems to continue use. The improvements are also constrained by considerable physical and functional obsolescence, for example, the lack of Americans with Disabilities Act (ADA) accessibility to all floors of the building and structural limits to interior redesign.

With the perceived cost to renovate being very high, staff requested that the appraiser approach the valuation of the property as if vacant, and to consider potential demolition costs as well. The appraisal yielded mixed results: the total value of the property, as if vacant, is estimated at $254,500, yet the perceived cost of demolition may equal or exceed this price point, given the presence of considerable amounts of asbestos and lead paint materials.

Upon review the appraisal data within the scope of the Council's strategic plan, the following options are available for further discussion:

1 – Dispose of property via upset bid process.

Per the appraisal, the highest and best use of the site as if vacant is residential compatible with the surrounding uses. The 0.40 acre portion (basketball court) is zoned RS8 for single family residential uses, and the 2.27 acre parcel is zoned Office II, and allows for a variety

of residential and non-residential uses, subject to height and scale limitations of the district. The current economic market indicates a modest demand for this type of property and the timing of a fee simple sale may be difficult to predict. With the perceived costs of demolition or renovation, there may be limits to net yield of a private transaction. The perceived benefit of this method is to place the property back on the tax rolls.

2 – Dispose property via public purpose for affordable housing.

If the stated intent of the reuse of this property is to achieve affordability with the residential uses listed above, this may also include the City acting in a financial lending capacity to support affordable development. This type of deal structure is very dependent on the partner developer, but there are recent examples of this type of financial partnership (Habitat for Humanity at Pisgah View, for example) that provide a pattern of success that could be examined specific to this property. More review is necessary on this option and the perceived benefit would be a specific number of affordable units available for sale and the property would be back on the tax rolls.

3 – Dispose of property via public purpose for community services

The current tenants of the Reid Center, Green Opportunities, Partners Unlimited, Community Action Opportunities and the Asheville Housing Authority, have expressed serious interest in continuing to use the facility after the City moves its recreation functions, in collaboration with the City and other local partners. The Housing Authority has brought to our attention a current grant opportunity through the HUD Office of Capital Improvements, as discussed below. Pending the success of a grant application, the perceived benefits may include a market-based sale of the property and furthering the Council strategic goal of supporting job growth and community development.

Staff is seeking City Council policy direction on future use of the Reid Center property once the second phase is completed.

Staff Report from Community Development Director Jeff Staudinger: The current users of the Reid Center are exploring a recently announced grant opportunity that would preserve and rehabilitate the building for community services. The US Department of Housing and Urban Development in the past month announced a national capital grants competition for public housing authorities. The Housing Authority of the City of Asheville is eligible to apply for as much as $5 million to purchase, construct or renovate property for a community education and training center.

The grant requirements directly align with the existing uses now at the Reid Center, and may represent a unique opportunity to meet Council, neighborhood, and community-wide public service goals. The grant funding is specifically for public housing authorities to develop facilities to provide early childhood education, adult education, and/or job training programs for public housing residents. Each of the current users of the Reid Center is directly engaged in those activities:

- Community Action Opportunities operates their Head Start program in the "annex" building;
- Green Opportunities now runs their green job training and placement program from the Reid Center;
- Partners Unlimited provides training and remediation services to keep students in school and for out-of-school youth.

The Housing Authority uses part of the Reid building space for management and maintenance of its public housing developments in the area. The Reid Center is located adjacent to or nearby Erskine, Walton and Livingston Street public housing communities, and residents of

those communities and other public housing communities directly benefit from the activities at the Center. All of these community partners would commit to a plan to renovate the Center, enhancing the energy efficiency and sustainability of the existing buildings, and using the renovation itself as a training opportunity for underemployed community residents.

From a community and neighborhood perspective, preserving the Center as an important historical resource has been voiced as a key community priority. The Housing Authority would incorporate Asheville's African-American heritage in its vision for the facility.

The use of the facility as a community education and training center would help meet Council strategic goals for sustainable development and job creation. Council currently funds- both through Outside Agency and through federal funds distributed by the City - Green Opportunities and the Housing Authority.

Additionally, if successful, the grant would allow the City to sell the property to the Housing Authority for its appraised value, potentially contributing significantly to the next phase of construction at the ne Livingston Street Center.

The key commitment required at this time from the City for this project to be eligible for funding, would be the commitment from the City to provide the Housing Authority with long term site control of the property (sale or long term lease), contingent only on grant approval.

The deadline for the grant application is January 14, 2011. Prior to that date, the Housing Authority will need to prepare a preliminary plan for renovation, gain commitments from not only existing partners but also from other education and training partners in the community, and provide commitments for five percent of the grant in matching funds. The Housing Authority has discussed with community development division staff the possibility of using some portion of the recently awarded TIGER II grant for that purpose, and also possibly applying for CDBG funding.

It appears that pursuing a sale to the Housing Authority may be the most viable option for the City to achieve many of its strategic and fiscal goals. This action would align with Council's Strategic Goals by supporting fiscal responsibility through a market-based sale and furthering job growth and community development through the missions and actions of the non-profit agencies. Staff recommends allowing the Housing Authority to move forward with a formal offer to purchase and pursuing next steps as it relates to the sale of city-owned property. This would need to be done in a timely manner to allow further Council consideration prior to the grant deadline of January 14, 2011.

HOUSING AUTHORITY – POTENTIAL HUD RENOVATION GRANT OPPORTUNITY FOR REID CENTER

Mr. David Nash, Chief Operations Officer of the Housing Authority of the City of Asheville, said that with the W.C. Reid Center in transition, the current tenants of the center are working with the City and other community partners to identify opportunities to preserve the Center as a community asset. They have not spoken yet with A-B Tech, but they will be a critical partner in the process as they go forward. These partners envision the Center as a place where people from the surrounding neighborhoods could access education, job training, support services and other resources that help them achieve greater self-sufficiency and empowerment.

The HUD grant that is currently available is for a community education and training facility. It can be either an early childhood education facility or an adult education and training facility – or both. It fits well with the current use of the tenants in the building.

Specifically, we envision adaptive reuse of this historic African American school and neighborhood center as a job training facility that incorporates some or all of the following components:

- Technical training, life skills training and job placement, with an emphasis on "green-collar" careers—those that improve environmental, community and human health (Green Opportunities);
- Basic adult education (GED preparation) and credit recovery programs for high school students along with tutoring and academic remediation for short and/or long-term middle and high school students; emphasis on parent support group meetings; disseminating drug and alcohol effect information; computer recycling along with internet access usage for the community (Partners Unlimited);
- Continued high quality early childhood education in the Lonnie Burton Building (Community Action Opportunities);
- Youth programs designed to engage local youth in positive, community-based activities, including music, academics, pre-employment training and service (The Empowerment Resource Center, GO);
- Monuments, displays and programs that honor the contributions of prominent African Americans from the Asheville area (Empowerment Resource Center); or
- A public housing resident services and management/maintenance center for the neighborhood (Asheville Housing Authority and Residents Council).

A core principal in our vision for the building would be engagement of the surrounding community. We have held one community meeting with another meeting to be held later in the evening. We want to find out the neighborhood's interest for the building in general and their interest in this grant request. If they are not interested, the Housing Authority will stop until further discussions.

The renovation of the building itself would provide ongoing opportunities to train and employ locals, especially public housing residents. We see the future Reid Center as a Neighborhood Sustainability Center, linking history, housing, multi-modal transportation, education/training and jobs, located in the center of the Southside neighborhood close to some of Asheville's major job centers.

The grant opportunity is up to $5 Million and there may be some advantages to applying for a smaller amount. The grant requires a minimum 5% match and they have talked with Mr. Staudinger about one possible resource for that match. They will look for others possible match sources in the community, along with the Housing Authority's non-federal funds. They are thinking that they will propose to include a purchase price to the City of the appraised value in the grant so that could be reinvested into other parks & recreation facilities. However, that is contingent upon the AHA receiving the grant. Since the grant deadline is January 14, on January 11, 2011, they would need an option to purchase the property. That option could be contingent upon the AHA receiving the grant. A long-term lease is also a possibility, but it would need to be at least a 50-year lease and it would restrict some of the operating funding we could put into it. An option to purchase would be the better option for them.

In response to Vice-Mayor Newman, Mr. Nash said they should know in approximately 4-5 months if they have been awarded the grant.

Vice-Mayor Newman moved to allow the Housing Authority to move forward with a formal offer to purchase and pursuing next steps as it relates to the sale of city-owned property. This motion was seconded by Councilman Smith and carried unanimously.

City Manager Jackson clarified that this will be back on the January 11 agenda for formal Council consideration prior to the January 14 grant deadline. At the January 11 meeting staff will provide Council information on the actual structure of the real estate relationship.

Vice-Mayor Newman suggested on January 11 Council be advised of the public input process, along with the more fully-prepared grant proposal. He understands that the AHA is talking to the Housing & Community Development Committee (HCD) for some of the 5% match.

Mr. Nash said that he has talked with Mr. Staudinger to see if there may be some unused program income or other funding that could be allocated to this grant and he has generally discouraged him from that idea. They must have the 5% match prior to grant application. There are other options and he will talk again with the HCD Committee. He will not come to Council on January 11 and ask the City to make the $250,000 contribution to this project. This is a competitive federal grant and he thinks our chances are good to get.

In response to Mayor Bellamy, Mr. Staudinger said that possibly some of the funds awarded to the City under the N.C. Dept. of Transportation's TIGER II planning grant may be available for this type of initiative. Mayor Bellamy hoped the HCD Committee will keep that in mind that this meets the threshold of qualifying for a project that is able to be funded by money received but not technically allocated to a project.

B. RESOLUTION NO. 10-262 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A UTILITY CUT ENTERPRISE FUND REPAIR AGREEMENT WITH PUBLIC SERVICES OF NORTH CAROLINA

In response to Councilwoman Manheimer about a possible conflict of interest due to her law firm's representation of Public Services of North Carolina on a condemnation issue, City Attorney Oast did not see that is a disqualifying conflict.

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into a Utility Cut Repair Enterprise Fund Agreement with Public Services of North Carolina (PSNC).

PSNC and Metropolitan Sewerage District (MSD) have requested that the City repair all utility cuts made to City streets and sidewalks within the City limits. City staff has evaluated this request and proposed a financial structure that would allow the City to perform these services without an increase in cost to the City's General Fund. The program which operates as an enterprise fund allows local utilities to deposit an estimated sum of funds to cover anticipated utility cut repairs. The program which commenced July 1, 2010, currently has two participants; the City Water Department and the Stormwater Enterprise Fund. MSD has indicated they are interested in participating in the program July 1, 2011. Progress Energy has also indicated some interest participating in the program.

Under the agreement, the City makes all repairs consisting of asphalt or concrete to trenches cut and backfilled by PSNC. While PSNC will not be required to obtain permits, PSNC must notify the City within 24 hours of any cuts made. The City will utilize a nuclear density gauge to determine the compaction of the trench and if acceptable will make the utility cut repair. There is no longer a warranty period for the utility cut.

The Street Utility Cut Enterprise Fund was approved by City Council as part of the FY 2011 Budget. The action supports several of Council's Strategic Goals by leveraging internal and external partnerships as well as improving the affordability of water and stormwater rates.

Pros:

- All cuts and repairs will be made in accordance with the City of Asheville Standards and Specifications Manual.
- PSNC will not be required to obtain street cut permits.
- The program will be more efficient due to number of cuts the City will be repairing.
- Repairs will be more consistent.
- Due to the structuring of the program, the City has minimal risk in this agreement.

Con:

- The Contractor that has been performing this work for PSNC will no longer be contracted to perform these repairs inside the City limits. City staff met with the contractor and asked him to submit bids on other work for the City. While staff cannot guarantee award of bid to the contractor, the contractor will be provided with the necessary information to submit bids.

The City's ability to provide these services, based on the previous five years data, would cost approximately $1.6 million. A review of the amount of permits over the past five years indicates that approximately 55% of the permits were obtained from the Water Department, 35% of the permits were obtained by MSD, 5% from PSNC and 5% to the City's Stormwater. The cost of the program is broken down as follows:

Agency	% of cuts	% of cost
Water Department	55	$880,000
MSD	35	$560,000
PSNC	5	$80,000
Stormwater	5	$80,000
Total	100	$1,600,000

The program will be reviewed annually. In the event that actual cost exceeds 10% of the budget, PSNC will be required to pay the difference between the budgeted amount and the actual amount. In the event that actual cost is 10% less than the budgeted amount, the City will reimburse PSNC the difference between the budgeted amount and the actual amount.

City staff recommends City Council authorize the City Manager to enter into a Utility Cut Repair Enterprise Fund Agreement with Public Services of North Carolina.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 10-262. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 289

C. 51 BILTMORE PARKING DECK PROJECT

51 BILTMORE PROJECT UPDATE

PARKING DEMAND STUDY UPDATE

RESOLUTION NO. 10-263 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWO-YEAR LEASE AGREEMENT WITH PUBLIC INTEREST PROJECTS FOR PROPERTY KNOWN AS 86 S. LEXINGTON STREET FOR THE PURPOSE OF PROVIDING TEMPORARY PARKING DURING THE CONSTRUCTION OF THE PARKING GARAGE AT 51 BILTMORE AVENUE

RESOLUTION NO. 10-264 - RESOLUTION FOR THE PARKING DECK FINANCING AND SETTING THE PUBLIC HEARING FOR THE FINANCING ON JANUARY 11, 2011

Administrative Services Director Lauren Bradley said that this is the consideration of a project update for the 51 Biltmore Avenue Parking Garage and associated resolutions authorizing the negotiation of project financing and a lease for temporary parking during construction.

In October 2008, City Council approved a Downtown Development Agreement (DDA) with McKibbon Hotel Group (MHG), Public Interest Projects and the City of Asheville for the purpose of constructing a parking garage at 51 Biltmore Avenue. Since 2008, City Council twice extended the DDA to allow for more time for MHG to obtain financing in a difficult market. MHG obtained a bank commitment for financing its portion of the project in September 2010.

With a financing commitment in place for the private portion of the project, staff is seeking City Council authorization to negotiate financing for the parking garage as well as other actions related to proceeding with the project.

I. Project description

The project is a mixed-use building that includes: an Aloft Hotel; sub-leased retail spaces along Biltmore Avenue; a City owned parking garage; and a component that may be a second phase for an area along Biltmore Avenue and Lexington Avenue to include housing units. The second phase portion of the project will come back through the review process including the Downtown Commission. This site is identified in the City Development Plan 2025: Center City Plan as both a potential parking garage site and as a possible location for a catalytic development because of its important location and size. Catalytic developments are projects that because of their size, location or programming have the potential to stimulate additional investment or provide missing uses that are critical to maximizing downtown vitality.

The current proposed parking garage will have 412 spaces and access points from three streets: one-way in from Biltmore Avenue and Aston Street, and two-way movement at Lexington Avenue. Several garage levels are below grade with the design taking advantage of the natural terrain across the site to eventually meet Aston Street and Biltmore Avenue at grade. Public restrooms are provided in the garage with direct access from Aston. Four of the garage's spaces will be for electric vehicles, and ten bike lockers will be made available in the facility. Because of the presence of the garage on the sidewalk edge, a space for public art will be provided to soften the façade and create pedestrian interest.

The retail spaces and hotel use cover and top the garage along Biltmore Avenue. Along Aston Street the garage fronts directly at the street and provides a driveway into the garage.

The retail and hotel uses occupy the frontage areas along Biltmore Avenue and above the street level along Aston Street. The building is six stories along Biltmore Avenue and measures about 91 feet to the top of the roof structure at the Biltmore/Aston corner. Ground level retail space along Biltmore Avenue will total about 5,397 rentable square feet, which will be leased. The hotel use occupies the second floor and above as measured from Biltmore Avenue and has 115 guest rooms. A balcony space for the hotel is located on the second level of the building and will serve to activate the street. A hotel amenity floor is provided at the top of the garage level.

The cost associated with building a parking garage includes property acquisition, design and hard construction. The total project cost for the parking garage is projected to be $14,792,436.

Conditional zoning to permit this use was adopted by the City Council on October 14, 2008. Also, the properties on which the project is to be constructed have been under option to the City since late 2008.

II. Due diligence

During the last three months, staff has worked with the project partners, including MHG and MHG's lender, to ensure financial, legal and risk management matters related to the project have been sufficiently evaluated. Significant time has been spent on developing agreements - including the DDA, a condominium agreement, a parking lease agreement and a construction management agreement – to ensure that the public's interests are protected as the project moves forward.

As a public-private partnership, there is a risk that the public component of the project could move forward to completion while the private component does not. This risk will diminish as private investment (both the developer's equity and financing) in the project progresses during construction. In order to fairly evaluate and mitigate this risk, staff offers the following:

- A need for additional public parking in this area has been identified and verified through a parking demand study, as described in Section III below. The construction of the parking garage meets this public purpose independent of the proposed private development on the site;
- The DDA provides that, if either party becomes unable to meet its financial obligations with respect to the project, the other party may undertake completion of that part of the project. The effect of this is that, if MHG cannot complete the hotel, the City can. While this would be at some cost to the City, it does put the City in control of the development.
- Should the private development component be assigned to another entity, the agreements mentioned above, and the Conditional Zoning ordinance, provide that the private development can only proceed as currently planned unless otherwise agreed by all parties (including the City), and;
- Staff is recommending an interim financing approach during the construction of the project to minimize any financial risk the City may have in the early stages of the project. This approach is further explained in Section IV below.

III. Parking demand study update

A parking study prepared by Kimley-Horn and Associates in 2008 evaluated the demand for parking versus the supply in the Central Business District. The study determined that the area around Biltmore Avenue had a peak deficit of parking in the amount of 622 spaces and a normal demand of 476 parking spaces. The proposed location of the garage is a surface parking lot with approximately one hundred parking spaces. Given economic conditions and related project extensions, staff updated the original parking demand study data. The updated study suggests that the deficiencies in this zone are not drastically changed in the new projections, and that the parking system demands are generally consistent with the original study.

IV. Parking garage financing

The financing of the 51 Biltmore project (the Aloft Hotel, sub-leased retail spaces and parking garage) involves separate, but integrated financing transactions. As previously mentioned, MHG has obtained a bank commitment for financing its portion of the project consisting of the Aloft Hotel and sub-leased retail spaces. The City is responsible for securing and financing the parking garage component of the 51 Biltmore project.

There are several types of capital financing methods available to local governments in North Carolina. The primary forms of those capital financing methods include general obligation, revenue-backed and asset-backed securities. The City currently does not have GO authorization for parking debt issuance. While the 51 Biltmore parking garage will become part of the City's overall Parking Services Enterprise Fund, as a practical matter, the overall parking system does not generate sufficient financial coverage or "mass" to issue revenue bonds in the capital markets for system improvements. The remaining type of financing available to the City to finance the

parking garage is through the issuance of asset-backed securities. This type of financing instrument (also known as "installment financing contract") has been used periodically by the City to finance a variety of assets including fire stations, renovation of the Municipal Building, sanitation trucks and public safety equipment.

The City proposes to secure financing for the parking garage improvements through a private placement installment financing contract with a bank. Additionally, the installment financing contract will be structured in a manner that provides the City interim, construction draw down financing – essentially a temporary construction loan with the City paying interest on the periodic construction draws. Current interest rates are anticipated to be about 1% for this interim financing method.

There are several reasons for this interim financing strategy, including:

1. Provides the City greater flexibility (as compared to a permanent, long-term financing approach) to deliver at closing the City's funding simultaneously with the developer's financing. Fixed rate public offerings (like a COPs transaction) require highly rigid financing calendars with sale dates calendared and fixed transaction closing dates. Additionally, with fixed rate public offerings that have been priced and sold, there is significant market, legal and tax consequences related to failure to close and failure to complete the project. A private placement with a bank for an interim financing provides the City with significantly greater closing flexibility, because it has essentially obtained construction line of credit, which the City can pay-off at any time with reasonable notice.
2. Provides the City greater flexibility to terminate the financing (as compared to a permanent, long-term financing approach) should 51 Biltmore project development risk (construction completion) materialize after closing. The City has 51 Biltmore project development risk throughout the project; at closing, through the construction period in which MHG is expending its equity, through the period in which the MHG's lender is expending its commitment and to the grand opening of the Aloft. Construction completion risk is partially mitigated in the early period of the construction calendar of the parking garage through the interim financing mechanism because the City could terminate any further draws on the construction financing. As the 51 Biltmore project - both the garage and hotel construction - progresses to completion, the likelihood of termination occurring is lessened.
3. Provides the City greater flexibility in integrating other City financing needs with the permanent financing (which would occur within 12-18 months). The City has several financing projects that are in the initial stages of development including Civic Center improvements, City Hall renovations, street light retrofitting and a potential new fire station. Additionally, the COPs that were issued in connection with the Municipal Building are candidates for an economic refunding thereby saving the City annual debt service. Combining many of these projects in single, fixed rate permanent financing will provide the City with overall improved collateral, better interest rates and lower overall transaction costs.
4. Provides the City with low cost financing during the construction period in the range of 1%. A later (12-18 months) permanent financing package does subject the City to fixed interest rate risk over that period.

It is anticipated that repayment of the lease payments associated with the 51 Biltmore parking garage would come from parking revenues of the financed facility as well as the favorable cash flows from the operating activities of the Parking Services Enterprise Fund.

Under the provisions of Section 160A-20 of the General Statutes of North Carolina, installment financing contracts that involve land require a public hearing in which the public may comment on the proposed financing and project. The resolution sets the public hearing for January 11 and authorizes the City Manager and various other officials to make application to the

Local Government Commission, to engage various professionals in connection with the financing and to proceed with securing the financing.

City staff is scheduled to meet with the staff of the Local Government Commission on December 17 in connection with continued due diligence with the Commission scheduled to take action on the financing at its February 8; 2011 meeting. The parking garage financing would close shortly thereafter.

V. Lease for temporary public parking during construction

The site on which the new parking garage will be built currently provides about 100 public parking spaces. These spaces will be taken out of use during construction of the garage. In order to continue to provide public parking in the area during construction, staff is recommending that the City enter into a two-year lease agreement with Public Interest Projects for land at 86 South Lexington Street, a parcel immediately adjacent to the site, that will be used to provide approximately 45 public parking spaces. The city will operate and manage the temporary lot. It is anticipated that parking revenues from the lot will more than cover the cost of the lease, which has been negotiated at $3,000 per month.

This project is in alignment with the Strategic Plan by promoting sustainable, high-density, in-fill growth that makes efficient use of resources and by making environmentally efficient capital improvements. In addition, this action complies with the Parking Action Plan adopted by City Council.

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking. This parking garage would address this need.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.
- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.
- Project allows for the opportunity to develop workforce housing more feasibly due to reduced capital requirements for constructing private parking, which in turn supports lower priced housing units.

Cons:

- Public-private partnerships tend to be complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- The cost of the land is higher than the appraised value. Originally the owner did not want to sell the property but rather lease the property to the City for sixty years. After the City determined that it was a better financial decision for the City to purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

Total project cost for the parking garage is projected to be $14,792,436, which will be financed over a period of 20-25 years. It is anticipated that repayment of the lease payments associated with the 51 Biltmore parking garage would come from parking revenues of the financed facility as well as the favorable cash flows from the operating activities of the Parking Services Enterprise Fund.

Staff recommends that City Council:

- Approve the Resolution authorizing the negotiation of an installment financing contract for the 51 Biltmore Avenue parking garage, and;
- Approve the Resolution authorizing a two-year lease agreement with Public Interest Projects for property located at 86 South Lexington Street for temporary public parking.

In response to Councilman Bothwell, Director of Transportation Ken Putnam said that the City did not look at any other methods of transportation downtown, e.g., a trolley system. he said the updated parking study was to validate the previous study and to update the model it had created so as to use it as a tool in the future.

Throughout discussion, Mr. Putnam, Public Works Director Cathy Ball and Kimley-Horn representative Fred Burchett responded to various questions/comments from Council, some being, but are not limited to: what is the rationale for the price of the land and has there been any renegotiation of that price; how were the study dates selected; how do the projections take into account how other convenience and mobile options would affect parking needs; at what point does surplus parking encourage people to use an automobile over another alternative form of transportation; are there other examples of cities that have utilized more balanced approaches; and how does parking fit into the context of smart growth.

Councilman Bothwell felt we are proceeding with plans made in a different economic climate. He was concerned about putting all our parking money into this one project for the next several years. The parking study didn't take into consider the changing automobile use, with gasoline almost $3 a gallon. He felt that transit is changing. Transit using of shuttles and trolleys is flexible, whereas, transit using concrete parking garages is not.

Councilman Smith appreciated McKibbon for their willingness to invest in our downtown. He spoke to the need of convenience and mobility for all downtown. He said that parking is a solution to a convenience and mobility problem. The fact is that there is more than one solution to the convenience and mobility program. He addressed the need for a multi-tied approach to the future of convenience and mobility downtown. Parking is only one piece of the solution but we need the other pieces as well. He reviewed the 2025 Plan and noted that this site was identified as a place for a public/private partnership parking garage. He was surprised to see that in that Plan they identified "D*owntown parking is a complex issue that requires a multi-tiered solution."* The Plan included a solution of looking at creating a downtown shuttle to facilitate internal circulation – link with parking facilities, major activity centers and City transit system. He would like to find a way to reduce the pollution for people walking downtown and to improve the street level experience. He pointed out that if we spend $15 Million on a parking deck, we won't have that money to be used for sidewalks somewhere else in the City.

In response to Councilman Smith, Vice-Mayor Newman said that Council has never commissioned, not during the Downtown Master Plan process nor the Transit Master Plan process, an official study to look at developing a downtown circulator in terms of a detailed route structure, the cost and expected ridership. Mr. Putnam said there are only conceptual routing and rough ideas of cost shared with Council earlier. Councilman Smith wondered if this conversation was better suited for a Council retreat as far as being able to have a multi-faceted approach to downtown transportation.

Councilman Davis pointed out that there are some parking needs downtown that we may not recognize, e.g., First Presbyterian Church has a need for approximately 100 parking spaces in that area.

Vice-Mayor Newman does acknowledge this is committing our resources for a long time, but this is one area of downtown that needs parking. He agrees with Councilman Smith in that parking is not the only solution and would be interested in looking at other solutions.

In response to Mayor Bellamy, Economic Development Director/Civic Center Director Sam Powers updated Council on the offer from McKibbon for the parking lot across from the Civic Center. Mayor Bellamy suggested staff update the Planning & Economic Development Committee to see if there are other opportunities for partnership to meet Council's goals in that area, should the McKibbon proposal not proceed.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Davis moved for the adoption of Resolution No. 10-263. This motion was seconded by Vice-Mayor Newman and carried 4-2 with Councilman Bothwell and Councilman Smith voting "no."

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Vice-Mayor Newman moved for the adoption of Resolution No. 10-264. This motion was seconded by Councilman Davis and carried 4-2 with Councilman Bothwell and Councilman Smith voting "no."

RESOLUTION BOOK NO. 33 – PAGE 291

D. CONSIDERATION OF THE CITY'S STATE LEGISLATIVE AGENDA FOR THE 2011 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast said that this is the consideration of a resolution approving the City's State Legislative Agenda for the 2011 Session of the North Carolina General Assembly.

At its meeting of November 9, 2010, Council initiated discussion of the State Legislative Agenda for 2010. He provided Council with the report in three major areas, but would only address two major areas due to Council's desire to see more information on the State Municipal Policy Matters.

I. Continuing Local Issues. Based on direction received at the November 9 meeting, and on information received since them, a resolution has been prepared requesting legislative action with respect to several issues, some of which are carried over from previous years, and some of which are of persistent local concern.

A. Adjustment of Woodfin/Asheville boundary and UNC-A area and Merrimon Avenue. This is a renewal of the request developed last year. We have identified with more particularity the location of the boundary, and have reviewed the matter with the affected governmental and educational agencies. Of particular importance is that a method was developed for allowing privately owned properties currently located in Woodfin to remain subject to Woodfin's jurisdiction, at their option.

B. Clarification of the Video Service Competition Act of 2006. This was also carried over from last year. We sought introduction of a bill to preserve the status quo with respect to features of local cable television franchises (such as intranets) that were not addressed by the Video Service Competition Act. The bill that was introduced was referred to a study committee.

C. Authorization for Asheville to condition provision of water service on annexation for developments of a certain size. This request has been made in the past, and has taken several forms. This was last considered in 2009.

D. Clarify authority to use property assessment process to finance certain energy efficiency projects. This continues efforts begun in 2009. While legislation has been adopted that implements parts of this authorization, questions remain as to the effect of such assessments on home mortgage financing, and restrictions on the sources of revenue available for such programs. The School of Government has been working with stakeholder parties on clarification of these issues.

II. New Matters. Since the November 9 meeting, we have received several other items for potential inclusion on the legislative agenda:

A. Structure of State ABC system. In recent years, there have been discussions regarding changes to the structure of the State ABC system. These discussions have centered on privatizing parts of the system, which would have the affect of diminishing local control and local revenue. The local ABC Board has asked Council to consider a resolution supporting the current structure.

B. School system consolidation. There have been indications that the topic of school system consolidation may come up in this legislative session, particularly in view of the State economic situation. Asheville and Buncombe County currently operate separate school systems, so the impact of potential legislation on this subject is of particular interest on a local level.

III. State Municipal Policy Matters. We have now received the North Carolina League of Municipalities Proposed Advocacy Goals. The League has scheduled a conference for January 20, 2011, at which the agenda will be narrowed down and prioritized. Each member municipality is entitled to one vote in this process.

If Council desires for Asheville to participate in this process, Council should select a delegate, and should provide voting direction on the major issues. Council's attention is directed to the following items of particular interest.

A. Page 1, Item 1B. Municipal broadband authorization. With the termination of local cable television franchises by operation of the Video Service Competition Act (VSCA), the ability of local governments to build and operate fiber-optic systems has been a matter of interest across the State.

B. Page 3, Item 2A. Local control over ABC operations. This is consistent with the local ABC Board's request, summarized above.

C. Page 3, Item 2B. More influence for cities in ABC permitting decisions. This has been an issue over the years for Asheville and other municipalities. Currently, local involvement is advisory only, which can lead to repeated permitting of problem locations.

D. Page 4, Item 3A. Sales tax distribution process. The method of sales tax distribution has been a matter of interest to the City for several years.

E. Page 5, Item 3D. Prepared meals and beverage tax. This has been considered by Council in the past. The proposal would be for a State-wide local option authorization.

F. Page 7, Item 5A-E. Transportation infrastructure. This proposal is highlighted because of consistent local interest in transportation issues in general, including:

- Passenger rail service
- Alternative nodes of transportation
- Sidewalks.

He also provided Council the NCLM information package which contains a description of the policy development process, along with a form and method for submission of new items for legislative consideration. The deadline for doing this is January 14, 2011. In lieu of or in addition to participating in the NCLM Advocacy Goals Conference, Council may by resolution support individual proposals.

He also provided the Council with the N.C. Metro Mayors legislative agenda.

He recommended Council give him direction to proceed with the four continuing local issues at this time. On January 11, he will come back asking Council's consideration on adopting the State Legislative Agenda with more information regarding new matters and State Municipal Policy Issues for Council consideration.

In response to Mayor Bellamy, City Attorney Oast said that this is the beginning conversation about our legislative agenda and he assumes Council is okay with giving him direction to proceed with the four continuing local items.

Vice-Mayor Newman moved to adopt the four continuing local issues as part of the legislative agenda. This motion was seconded by Councilman Bothwell. However, after Mayor Bellamy noted that she could not support the motion as she felt the public was not aware that we would be voting on our legislative agenda, Vice-Mayor Newman withdrew his motion.

City Attorney Oast said that he will be seeking Council's approval of the state legislative agenda on January 11, 2011.

E. CONSIDERATION OF SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT'S RECOMMENDATION REGARDING THE TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY FOR THE CITY OF ASHEVILLE

Vice-Mayor Newman said that the Sustainable Advisory Committee on Energy & the Environment (SACEE) reviewed the Transformational Development Policy at their November meeting as per Council's directive. The Committee discussed the policy's structure and design in relation to green/sustainable development practices, consistency with other development incentives, and incentivization thresholds for influencing development decisions. When City Council approved the Transformational Development Policy, the ordinance states the incentive will go into affect December 30, 2010. The SACEE Committee believes the timeframe before implementation does not allow them to adequately provide the policy support Council requested.

SACEE recommends that the City Council delay implementation of this ordinance until February 1, 2011, or later so staff and appropriate committees (including the Affordable Housing Working Group) can effectively perform the due diligence necessary in review of this policy. SACEE would bring forward their recommendations in January for Council consideration. This was a unanimous vote by the committee.

Vice-Mayor Newman moved to delay implementation of this ordinance no later than February 1, 2011. This motion was seconded by Councilman Bothwell and carried unanimously,

with the understanding that SACEE will report back to Council with specific recommendations before February 1 or the policy will be effective February 1, 2011.

VI. NEW BUSINESS:

A. RESOLUTION NO. 10-265 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Newman, Chairman to the City Council Boards & Commissions Committee, said that the terms of Jacquelyn Hallum and Precious Folston, as members on the Asheville School Board, will expire on April 1, 2011.

At the November 9, 2010, Boards & Commissions Committee meeting, it was the consensus of the Committee to instruct the City Clerk to contact Ms. Hallum and Ms. Folston to see if they were interested in reappointment and if so, to obtain their attendance records.

Both have served one term and both have expressed interest in reappointment.

Due to the extensive appointment process regarding the School Board with advertising to begin immediately and the significance of the board, the Committee requested City Council's direction on whether to proceed with advertising and interviewing for the School Board vacancies or to reappoint Ms. Hallum and/or Ms. Folston.

In response to Councilman Smith, Mayor Bellamy, as School Board liaison, said that the current School Board members are already in the process of discussing school consolidation. She supported reappointing Ms. Hallum and Ms. Folston as they are experienced and have served the citizens well. Having continuity on the Board will help move the community through the process.

Councilman Bothwell suggested the issue of an elected school board vs. an appointed school board be discussed if school board consolidation does not occur.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Davis moved for the adoption of Resolution No. 10-265 to reappoint Jacquelyn Hallum and Precious Folston to each serve an additional four-year term respectively, terms to expire on April 1, 2015, or until their successors have been appointed. This motion was seconded by Mayor Bellamy and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy announced the following vacancies: Board of Adjustment; Community Relations Council; Sustainable Advisory Committee on Energy & the Environment; Fair Housing Commission, Firemen's Relief Fund; Greenway Commission; Metropolitan Sewerage District Board; Riverfront Area Redevelopment Commission; Transit Commission and Tree Commission. The deadline for applications is Thursday, January 5, 2011, at 5:00 p.m.

Ms. Kyle Ross researched some concerns over the past five years relating to the criminal justice system – in particular the Asheville Police Department and the District Attorney's Office. Her first concern was fairness regarding an investigation of a fired police officer. Mayor Bellamy advised Ms. Ross that City Council cannot consider personnel matters in open session; and (1) suggested she meet with City Manager Jackson; and/or (2) meet with the Citizens-Police Advisory Committee. City Attorney Oast noted that the particular investigation Ms. Ross was speaking about is in litigation and cannot be discussed.

400.

Claims

The following claims were received by the City of Asheville during the period of October 22 – December 2, 2010: Rachel Evans (Sanitation), Brunk Auctions (Parks & Recreation), Charles and Nancy Long (Water), Jessica Toan (Water), Donald Gundry (Water), Lynn Ansley (Streets), Leigh W. Jones (Police), Iveth Ahumada (Water), David West (Sanitation), Progress Energy (Water), Paul Lorenzo (Police), Wendy Fletcher (Water), Quantarian Garnett (Sanitation), AT&T (Water) and Eric Bryant (Police). These claims have been referred to Asheville Claims Corporation for investigation.

Closed Session

At 7:29 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: John Robert Follett and the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and **(2)** To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 7:45 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

Jerry W. Bellamy
MAYOR

Tuesday – January 25, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Students from Asheville Catholic School led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF DR. HANK DUNN, PRESIDENT OF ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE

Mayor Bellamy was pleased to recognize Dr. Hank Dunn, President of Asheville-Buncombe Technical Community College. Dr. Dunn became the fifth President of A-B Tech on March 1, 2010. Prior to coming to A-B Tech, he served as Chancellor of Ivy Tech Community College in downtown Indianapolis for four years. Dr. Dunn is a dynamic educational leader with more than 30 years of experience in higher education and various business settings. He sees his role in the community as providing high quality educational opportunities and economic development to the residents of western North Carolina.

Dr. Dunn was pleased to be in the Asheville-Buncombe community and spoke about some of their programs.

B. PROCLAMATION PROCLAIMING JANUARY 30-FEBRUARY 5, 2011, AS "NATIONAL CATHOLIC SCHOOLS WEEK"

Mayor Bellamy read the proclamation proclaiming January 30-February 5, 2011, as "National Catholic Schools Week" in the City of Asheville. She presented the proclamation to Mrs. Donna Gilson, Principal of Asheville Catholic School, and students from Asheville Catholic School, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING FEBRUARY, 2011, AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2011, as "Black History Month" in the City of Asheville. She presented the proclamation to Mr. Ron King, Mr. Dan Johnson and Mr. Richard Fort from the YMI Cultural Center, who briefed City Council on some activities taking place during the month along with the YMI history and mission statement.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 14, 2010

B. RESOLUTION NO. 11-1 – RESOLUTION AMENDING THE MEMBERSHIP OF THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Councilman Bill Russell be and he is hereby appointed as the ex-officio non-voting City Council representative on the Citizens/Police Advisory Committee to serve a term according to the length of his Council term of office.

Section 1 (h) of Resolution No. 94-186 be amended to read as follows: "Two ad hoc seats to be temporarily filled and appointed by committee members for a specific problems, incident, or event – to be voting members."

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C. RESOLUTION NO. 11-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO DEVELOP THE LONG RANGE TRANSPORTATION DEMAND MANAGEMENT PLAN

ORDINANCE NO. 3935 - BUDGET AMENDMENT TO DEVELOP THE TRANSPORTATION DEMAND MANAGEMENT PLAN

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) to develop the Long Range Transportation Demand Management (TDM) Plan and consideration of a budget amendment, in the amount of $100,000, to set up the funds for the above-mentioned project.

TDM is the application of policies and strategies that attempt to optimize existing transportation resources and infrastructure by mitigating single occupancy vehicle use in a defined area. TDM programs have the potential to deliver better environmental outcomes, lower parking demands, improved public health, stronger communities, and a more prosperous and livable city.

The TDM program has been hosted by the city since Fiscal Year 2005 and has focused in promoting alternatives to single occupancy vehicle mainly inside the City limits. The NCDOT has expressed the need to set regional goals to improve the quality of life for the citizens of Western North Carolina by providing education, support and resources that enhance and promote alternatives to driving alone. In order to evaluate the adequacy of these goals to the current program being managed by the city and to continue funding it, the NCDOT wants to perform an analysis and provide new strategies that will allow TDM to grow accordingly to regional needs.

The City of Asheville will hire a consultant to develop this plan and will be responsible for completion. The estimated cost is $100,000 and will be funded by Section 5307 of the Federal Transit Administration (FTA), with existing funding that will otherwise be lost, in the amount of $80,000. The 20% or $20,000 match is provided by NCDOT.

This Long Range TDM Plan supports the City of Asheville's 2010/11 Strategic Plan by helping to promote emission-reducing options, as well as supporting the Asheville Transit System though programs such as the *PASS*port program. It also complies with fiscal responsibility, leveraging funding from Federal and State agencies.

Pros:

- The project will be completely funded by the FTA in the amount of $80,000 and the NCDOT in the amount of $20,000.
- No city funds will be used to develop the Plan.

- This plan will address NCDOT and City concerns about the future of the TDM program.
- This plan will provide guidance for future TDM initiatives regarding regional needs.

Cons:

- City staff will manage this project. The TDM coordinator position is currently funded 50% by the NCDOT and 50% by the city.

City staff will be used to develop this plan; this task is already part of the current budget for this fiscal year. The plan will be funded 80% or $80,000 by FTA and matched by NCDOT with 20% or $20,000. There is no impact to the General Fund budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the NCDOT to develop the TDM Plan and the associated budget amendment, in the amount of $100,000, to set up the funds for the above-mentioned project.

RESOLUTION BOOK NO. 33 – PAGE 298
ORDINANCE BOOK NO. 26 – PAGE 412

D. RESOLUTION NO. 11-3 - RESOLUTION IN SUPPORT OF AN ECONOMIC BENEFIT ANALYSIS FOR A COMMUNITY IMPROVEMENT DISTRICT

Summary: Update by the Downtown Management Subcommittee on its activities and consideration of a resolution supporting an economic benefit analysis for a Community Improvement District (CID).

The Downtown Master Plan, adopted by City Council in May 2009, strongly recommended a downtown management entity for Downtown Asheville. A subcommittee was formed by the Downtown Commission to explore this idea, and it has been meeting for the past year. In the United State and many parts of the world, these entities are funded by a special assessment district, and are often called a Business Improvement District (BID). The Downtown Master Plan recommends a Community Improvement District (CID) as our downtown has so many residents as well as businesses. These districts can be found in all sizes of cities and towns. In North Carolina, there are over 40 of them ranging from Chimney Rock to Waynesville to Charlotte.

As a part of its work, the subcommittee has been doing several things: learning about improvement districts, gathering information on current city services to downtown and analyzing the downtown tax base. Currently, the subcommittee has put together a survey for property owners to be carried out in the first quarter of 2011. The purpose of the survey is to find out what additional services property and business owners would be interested in as a part of the improvement district. In January 2011, the subcommittee will also begin a series of meetings with property owners in different areas of downtown to explain how districts function, but mainly to hear their thoughts about a potential district for Downtown Asheville. The subcommittee is working towards a goal of coming to City Council in June 2011 for approval of the district. However, this process is somewhat organic, and the end date may change.

The group has also been discussing an Economic Benefit Analysis that would show property and business owners what economic impact an improvement district would likely have for properties and businesses in Downtown Asheville. These studies are required in some places as a pre-requisite to district approval. They are not required in North Carolina, however our subcommittee thought it would be a good idea given the current economic climate and hesitancy of some property owners.

There are details concerning the economic benefit analysis in the documents provided to Council, including an RFP that will be released to solicit proposals. Currently, the Asheville

Downtown Association has promised $7000 in funding, a request of $1000 is being made to the downtown residents, and the committee feels confident that the county will fund another $3500. The Subcommittee is requesting a matching $3500 from the City of Asheville to help fund the economic impact study along with the survey. The funding ratios acknowledge that downtown stakeholders must be in the lead of this process.

The subcommittee is requesting that the city help fund the Economic Impact Analysis as a partner. This would be accomplished within the existing budget of Economic Development.

This item was reviewed by the City Council Planning & Economic Development Committee on December 21, 2010, and they recommended approval.

City Council has adopted the goal of completing the Downtown Master Plan and implementing it. The Downtown Management Subcommittee has determined that an economic benefit analysis is important in implementing Chapter 7 of the Downtown Master Plan.

Pros:

- An economic benefit analysis will show what benefits property owners and business owners can reasonably expect from a Community Improvement District downtown.
- The city's contribution can be made using existing funding.

Con:

- None noted.

The City's contribution towards the study can be funded out of the existing Office of Economic Development budget and does not require a budget amendment.

Staff recommends that City Council support the funding plan for the Economic Benefit Analysis, which includes $3,500 of city funds.

RESOLUTION BOOK NO. 33 – PAGE 299

E. RESOLUTION NO. 11-4 - SETTING A PUBLIC HEARING ON FEBRUARY 22, 2011, TO CLOSE SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Summary: The consideration of a resolution of intent to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes; an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened unnamed right of way located near Jason Street.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjoining property owners, Frontier Syndicate LLC; Rhesa Read Tull Jr., Dorothy Tull Mothershead, and Margaret Tull Davis (heirs of Farrar G. Parker) have requested the City of Asheville to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes; an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened Elizabeth Place. Adjacent property owners Asheville

Board of Education and did not join the petition, a copy of this resolution of intent shall be sent by registered mail.

The Greenway Commission met on November 11, 2010. They voted unanimously to support the street closures and strongly recommended that any future development plan include the greenway connection as discussed in the site master plan.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use. The Strategic Plan Goals most closely aligned with the Montford Commons Development closure requests is the Job Growth and Community Development Goal in that it will provide sustainable high density infill growth that makes efficient use of existing resources.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close several portions of unopened rights of way and City streets within the Montford Commons area and set the public hearing for February 22, 2011.

RESOLUTION BOOK NO. 33 – PAGE 300

F. ORDINANCE NO. 3936 - BUDGET AMENDMENT FOR AN ASHEVILLE PARKS & GREENWAYS FOUNDATION DONATION

Summary: The consideration of budget amendments authorizing the City Manager to increase the budgets for 1) Aston Park by $900, 2) the Park Maintenance Division by $4,171, 3) Special Projects budget by $70,580, and 4) to revise the Festivals Fund operating budget by $14,461.

The City of Asheville has received contributions totaling $90,112 from the Asheville Parks and Greenways Foundation to support various programs and special projects within the Parks, Recreation & Cultural Arts Department. The Asheville Parks and Greenways Foundation is a 501(c)3 non-profit organization whose purpose is to support programs and special projects related to parks, greenways and recreation programs within the City of Asheville Parks, Recreation & Cultural Arts Department.

The budget and description of each project supported by the Asheville Parks and Greenways Foundation contribution is listed below:

$900 to increase the operational budget to support Aston Park

$4171 to increase the operational budget to support the Hanging Flower Basket program in the Park Maintenance Division

$14,461 to revise the Festivals Fund operational budget to reduce the City of Asheville General Fund subsidy of the Festivals Fund

$430 to increase the special projects budget to support land acquisition related to greenway development

$25,000 to increase the special projects budget to support public art projects at Riverbend Park

$20,150 to increase the special projects budget to support public art projects at Reed Creek Greenway

$25,000 to increase the special projects budget to support the Public Artist of the Year project

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:
- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:
- None

These donations enhance parks services at no impact to the General Fund operating budget.

Staff recommends City Council to approve the budget amendments authorizing the City Manager to increase the budgets for 1) Aston Park by $900, 2) the Park Maintenance Division by $4,171, 3) Special Projects budget by $70,580, and 4) to revise the Festivals Fund operating budget by $14,461.

ORDINANCE BOOK NO. 26 – PAGE 414

G. ORDINANCE NO. 3937 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $131,167, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department (APD).

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. The City of Asheville Police Department has received $131,167 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for critical improvements, training, and equipment purchases for the Asheville Police Department.

Among the items slated for purchase with this funding include: 1) Replacement of Emergency Response Team Rifles; 2.) Forward Looking Infrared (FLIR) Surveillance Equipment; 3.) TASERS; 4.) Mobile Data Terminal Computers; 5.)LED Flashlights; 6.) Child Pornography Training, Computer Forensics Training and other uniforms and equipment not covered by the APD operating budget.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using drug seizure monies to enhance the APD's equipment and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows our employees to be more professional and more effective in proactively enforcing and preventing criminal activity.

Pro:

- Federal seizure revenues to cover the cost of equipment and training related to street level drug enforcement and community policing activities

Con:

- None noted

The increase of $131,167 for training and equipment. Accepting these funds is a significant financial benefit to the APD allowing us to better train and equip our employees without impacting the General Fund budget.

City staff recommends City Council adopt the budget amendment, in the amount of $131,167, to authorize the use of Federal Drug Seizure Funds to purchase equipment and training for the Asheville Police Department.

ORDINANCE BOOK NO. 26 – PAGE 420

H. ORDINANCE NO. 3938 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF NORTH CAROLINA STATE DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $88,325, to authorize the use of North Carolina State Drug Seizure Funds to purchase equipment and fund training for the Asheville Police Department.

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

The City of Asheville Police Department has received $88,325 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to purchase drug enforcement equipment and training not covered by the APD operating budget. Items to purchase include: 1) Radar Speed Detection Units; 2) LIDAR Speed Detection Units; 3) Radar Speed Trailer; 4) Drug Surveillance Equipment; 5.) Police Bicycles; and 6.) Training related to Police Management, Hazardous Devices Training, Crowd-Control Training, Crash Data Retrieval Training or other training for employees.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using drug seizure monies to enhance the APD's equipment and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows our employees to be more professional and more effective in proactively enforcing and preventing criminal activity.

Pro:

- North Carolina State drug seizure revenue used to fund drug enforcement equipment, training, and improvements at no cost to city taxpayers.

Con:

- None noted

The increase of $88,325 for training and equipment. Accepting these funds is a significant financial benefit to the APD allowing us to better train and equip our employees without impacting the General Fund budget.

City staff recommends City Council adopt a budget amendment, in the amount of $88,325, authorizing the use of North Carolina State Drug Seizure Funds to fund drug enforcement equipment, training and other improvements for the Asheville Police Department.

ORDINANCE BOOK NO. 26 – PAGE 422

I. ORDINANCE NO. 3939 - BUDGET AMENDMENT FROM THE INSURANCE FUND PROGRAM TO PAY CLAIMS EXPENSES THAT HAVE EXCEEDED THE APPROVED BUDGET AMOUNT

Summary: The consideration of a budget amendment, in the amount of $200,000, from the Insurance Fund program reserves to pay claims expenses that have exceeded the approved budget amount.

The City's Fiscal Year 2010-11 adopted budget for the liability insurance program, which includes funding for premiums, claims and administrative expenses, totaled $1,460,270.

The budget is established each year to pay regular and routine claims; however, previously incurred claims are often paid in later budget years when they are settled or when additional costs are incurred. As a result, the budget needs to be increased by $200,000.

Pro:

- The City maintains adequate funds in the Insurance Fund to cover costs in high claim years.

Con:

- A few number of serious incidents have caused the timing of claim costs to be above staff's initial budget projections for the year.

Budget authorization for this increase will come from reserves already set aside in the liability insurance program. Currently, the City has $5,034,884 set aside in the Insurance Fund for claims that have been incurred but not yet paid. The budget amendment provides authorization to appropriate $200,000 from this reserve to pay the claims. This budget amendment will not impact the General Fund or any of the other operating funds.

City staff recommends City Council approve the budget amendment appropriating $200,000 from the liability insurance program reserves.

ORDINANCE BOOK NO. 26 – PAGE 424

J. RESOLUTION NO. 11-5 - RESOLUTION AMENDING THE 2011 CITY COUNCIL MEETING SCHEDULE TO ADD CITY COUNCIL'S ANNUAL RETREAT ON FEBRUARY 4, 2011, AT WARREN WILSON COLLEGE IN CANON LOUNGE IN ASHEVILLE NORTH CAROLINA

RESOLUTION BOOK NO. 33 – PAGE 302

K. RESOLUTION NO. 11-6 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COMMUNICATION SERVICE INCORPORATED FOR THE INSTALLATION OF WIRELESS NETWORKING EQUIPMENT AT THE ASHEVILLE CIVIC CENTER

ORDINANCE NO. 3940 – BUDGET AMENDMENT FOR THE INSTALLATION OF WIRELESS NETWORKING EQUIPMENT AT THE ASHEVILLE CIVIC CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract on behalf of the City of Asheville with Communication Service Incorporated, for the installation of wireless networking equipment at the Asheville Civic Center, and the associated budget amendment, in the amount of $62,669.

The Asheville Civic Center lacks the ability to provide reliable wireless internet connectivity to event organizers and patrons of the facility. As part of the Civic Center renovation project funded through a grant from the Tourism Product Development Fund of the Buncombe County Tourism Development Authority, this equipment is being installed to provide improved service to national media outlets, event organizers, staff and visitors to the facility. This equipment will also provide added revenue generating opportunities for the Civic Center with the ability to offer secure wireless internet access to event organizers as a purchase option during facility use.

This project was advertised for bids and Communication Service Incorporated, located in Asheville, N.C., was the lowest responsive/responsible bidder for the required project elements. Bids have also been received for the installation of wireless networking equipment at City Hall. This contract does not include the installation of equipment at City Hall as funding has yet to be identified.

This action complies with the City Council Strategic Operating Plan in fully leveraging external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Will greatly improve network and internet access at the Civic Center.
- Adds value to the Civic Center as a facility of choice.
- Creates additional revenue opportunities through service fees.

Con:

- Project management, contract administration, and integration with existing equipment and security protocols will consume staff time.

The contract amount for the project totals $62,668.13. The budget amendment authorizes the contract to proceed and be rolled into the SoCon renovations financing.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract on behalf of the City of Asheville with Communication Service Incorporated, for the installation of wireless networking equipment at the Asheville Civic Center, and the associated budget amendment.

RESOLUTION BOOK NO. 33 – PAGE 303
ORDINANCE BOOK NO. 26 – PAGE 426

L. RESOLUTION NO. 11-7 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2011, TO CLOSE COOPER BOULEVARD

Summary: The consideration of a resolution of intent to permanently close Cooper Boulevard.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Ingles Market Inc., represented by Preston Kendall, Real Estate Property Manager, has requested the City of Asheville to permanently close Cooper Boulevard.

The Greenway Commission met on January 13, 2011, and recommended an existing foot path (goat path) be improved and paved. However this is located within the buffer area and the planning staff is researching if it can be done. Planning will provide information to the Greenway Commission which may change their recommendation. Additionally there is a topographic concern which will also be addressed by Planning Staff. Final comments from the Greenway Commission will be provided in the staff report for the public hearing on February 22.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close Cooper Boulevard and to set the public hearing on February 22, 2011.

RESOLUTION BOOK NO. 33 – PAGE 304

M. RESOLUTION NO. 11-8 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MEDALLION ATHLETIC PRODUCTS INC. TO INSTALL NEW BACKSTOP NETTING AT MCCORMICK FIELD

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Medallion Athletic Products, Inc. to install new backstop netting at McCormick Field.

The lease agreement between the City of Asheville and DeWine Seeds-Silver Dollar Baseball for the Asheville Tourists at McCormick Field includes a capital improvement program which is funded via the lease revenue. Each year the funds are used to make facility improvements to McCormick Field. The City and DeWine Seeds-Silver Dollar Baseball work together to identify and prioritize improvements. This year the priority project is to replace the backstop netting.

The City conducted a competitive bid process for the backstop netting replacement project.

Medallion Athletic Products, Inc., located at 150 River Park Road in Mooresville, North Carolina, is the lowest responsive and responsible bidder not to exceed $63,000 and is proposed to be selected to replace the backstop netting at McCormick Field.

This action complies with the City's Strategic Operating Plan in that it supports making timely capital reinvestments that improve the infrastructure of a City facility. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros:

- Capital investment to maintain and care for McCormick Field, a City-owned asset.
- Provide timely capital reinvestment to prevent additional deferred maintenance costs.
- Fulfill commitment for maintenance of park system.

Con:

- None

The $63,000 to support the backstop netting replacement contract is budgeted in the Fiscal Year 2010-2011 Parks, Recreation and Cultural Arts Department capital improvement budget for McCormick Field. The budget receives revenue from DeWine Seeds-Silver Dollar Baseball as part of the lease agreement to support the budget and the cost associated with backstop net replacement.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Medallion Athletic Products, Inc., not to exceed $63,000 to install new backstop netting at McCormick Field.

RESOLUTION BOOK NO. 33 – PAGE 305

N. RESOLUTION NO. 11-9 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF REAL PROPERTY AT 75 SHELBURNE ROAD, KNOWN AS THE FORMER NORTH CAROLINA NATIONAL GUARD ARMORY, FROM THE STATE OF NORTH CAROLINA

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of real property at 75 Shelburne Road, known as the former North Carolina National Guard Armory, from the State of North Carolina.

On August 25, 1960, the City of Asheville conveyed property at 75 Shelburne Road (PIN # 963709498100000) to the State of North Carolina for the purpose of operating a National Guard Armory. This conveyance was subject to the condition that if property is no longer required by the State of North Carolina for this military purpose, the property would revert back to City of Asheville ownership. The NC National Guard Armory facility has relocated to a site at Richmond Hill and no longer occupies the property at 75 Shelburne Road. The State of North Carolina has requested that the City of Asheville accept the property in its current condition and accept the liability and responsibility for the site.

The site consists of approximately 9.18 acres and is improved with buildings associated with the former use, including a large gymnasium, offices, garage and secured parking. Most of the improvements were constructed in the 1960s, apart from a small office building addition that was constructed in the 1980s.

Staff has conducted due diligence on the property, including environmental review, and multiple site inspections. The recognized environmental conditions on site include: (1) presence of asbestos in boiler tank insulation and pipe elbows, floor tile and mastic, building caulk and chalkboard mastic, (2) elevated levels of lead dust in indoor firing range, (3) below-ground oil-water separator associated with vehicle wash bay area, (4) unregulated underground storage tank (500 gallon capacity) containing heating oil. Soil samples collected at the underground tank site indicate a potential diesel fuel release. Upon acceptance of the property, the City would be

responsible for remediating these issues at a potential cost of $25,000 to $50,000, including lead and asbestos abatement, underground storage tank removal and associated soil remediation.

Overall, these upfront costs are fairly low considering the inherent value of the property. The current zoning is Institutional and offers a wide variety of land uses, with excellent access to Shelburne Road and I-240. Staff has identified several short-term uses for the property, to include utilizing the existing wash bay area for city fleet vehicles, operating existing buildings for Parks Maintenance function and off site storage. Discussions regarding long-term use will commence once the reversion process is final. The State of NC process for the property conveyance may take up to 6 months.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through accepting a conveyance of prime real property for relatively minimal costs.

Pro:

- 9.18 acres of prime property will be under City of Asheville ownership

Con:

- Environmental issues including asbestos, lead dust and an underground fuel storage tank must be mitigated at the sole cost to the City

Costs associated with building operation (utilities) and costs to remediate environmental concerns will be reviewed in the upcoming budget cycle.

City staff recommends City Council approve a resolution authorizing the Mayor to accept a conveyance of real property at 75 Shelburne Road from the State of North Carolina.

RESOLUTION BOOK NO. 33 – PAGE 306

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF THE EXTERNAL AUDIT OF THE FISCAL YEAR 2010 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Interim Finance Director Kai Nelson said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

In connection with the General Fund, he was pleased to report that the City finished the fiscal year with roughly $11-12 Million in Fund Balance, representing approximately 15% of the current year's expenditures.

In connection with the Civic Center Enterprise Fund and the Parking Enterprise Fund, they improved in 2010 compared to 2009. Regarding the Transit Enterprise Fund and the Water Enterprise Fund, their financial performance remained largely unchanged. The Golf Enterprise Fund showed a slight decline in their performance.

Regarding compliance matters, the external audit noted no question costs in connection with federal and state expenditures. In connection with internal control matters, the external audit firm noted two internal control matters, noting that by the time the audit report was completed in December, those had been fully addressed by staff. They are noted in the audit report that they have been corrected.

Finally, the fiscal year that the audit covers is July 1, 2009 – June 30, 2010. That was a particular difficult year for the Finance Department in several respects. One is that there was a substantial amount of turnover in various levels of the Finance Department operation. Secondly is there was a major financial conversion in connection with the City's financial systems which contributed to the delay in the presentation of the audit report.

The City Council Finance Committee heard earlier today a report that the Local Government Commission (LGC) has issued once they received the audit report. The LGC issued a report in which they requested the City to address three matters – (1) Fund Balance matter; (2) two compliance matters earlier referred to; and (3) the lateness in the filing of the audit report. The LGC has subsequently amended their communication to the City today and deleted the Fund Balance matter. That letter has been provided to Council members. The response has been drafted.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2010 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed two material weaknesses in internal controls and no instances of non-compliance in the administration of federal and state awards programs. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. The City converted its accounting software during the year, which required a major time commitment from the City's accounting staff. Also, we noted some areas for improvement in the City's accounting function that we have communicated to management in a separate letter dated December 28, 2010."

In response to Mayor Bellamy, Mr. Nelson explained in more detail that there are three factors that contributed to the delay in filing the 2010 audited financial statements as follows: (a) employee turnover in the Finance Department in critical senior and technical level positions; (b) conversion of the City's business and financial applications from a legacy accounting system to an enterprise resource planning system; and (c) redesign and required new mapping of the City's entire financial accounting structure. The latter two factors were completed in 2010 and will not be impediments to completing the 2011 audit report in a timely fashion. With regard to the first factor of employee turnover, the City is currently recruiting for several key positions in the Finance Department, including the Director's position, and will have the necessary resources in place to ensure the timely completion of the 2011 audit.

Mr. Nelson said that the second concern related to the auditor's communication regarding two internal control matters – the accounting and financial reporting of notes receivable for the Housing Partnership Fund and bank reconciliations. The City has already instituted procedures to correct both matters.

He said that the City Finance treasury staff are current with the main bank statement reconciliation and are presently working on December 2010's statement. Financial activity in the Housing Trust Fund for 2011 has been recorded in accordance with appropriate accounting standards. In connection with the Housing Trust Fund finding, it is important to note that this fund first appeared on the City's financial statements in 2005 and until 2010, the manner in which the City was recording the transactions was never questioned. During the course of the audit, he inquired about the appropriateness of the accounting treatment which resulted in the change for 2010.

Mr. Nelson also responded to Mayor Bellamy regarding the City's Fund Balance and the importance that there be a plan to retain the 15% of Fund Balance.

Mayor Bellamy was very much concerned regarding the lateness of the audit. She felt the public trust and the LGC relies on City government to meet their deadlines. She expressed concern to the independent audit firm about the need to stay on schedule and to communicate to Council in a timely manner regarding the potential for future delays and other matters of a material nature.

Mayor Bellamy said it is am important part of the Council's responsibility to address our external auditors about the City's finances, and noted that she would respond to the correspondence by the LGC outlining each of the concerns raised.

B. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 11-10 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER TO INCREASE THE CONTRACT WITH HICKORY CONSTRUCTION COMPANY FOR THE NORTH FORK WATER TREATMENT PLANT PUMPING SYSTEMS IMPROVEMENTS PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of city staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of a resolution authorizing the City Manager to execute a change order in the amount of $3,161 to increase the construction contract for Hickory Construction Company from $328,474 to $331,635 for the North Fork Water Treatment Plan (WTP) Pumping Systems Improvements Project.

The Water Resources Department applied for and was awarded ARRA funding in the amount of $510,000 for the North Fork WTP Pumping Systems Improvements project through NCDENR's Drinking Water State Revolving Fund (DWSRF). This loan is a 50% grant with a 50% loan requirement. Since applying for ARRA Funding, the project scope has changed to reduce the amount of work to be done and subsequent cost. Therefore, the total project cost is significantly less than the approved $510,000.

Water Resources issued formal bids in August 2009 for construction services relating to this project. The bid was awarded to the lowest responsible bidder, Hickory Construction Company, in the amount of $328,474.

In order to close out the project, a change order is needed to increase the contract amount by an additional $3,161 for a total contract amount of $331,635. The change order is needed to accommodate: (1) additional conduit and handholes to the North Fork WTP front gate and (2) the lack of existing wiring at the pump skids.

This project is part of City Council's strategic plans to improve city infrastructure and receive ARRA Funding to aid in economic recovery and operated in a fiscally responsible manner.

Pros:

- Approval of this action will allow the city to close out the North Fork WTP Pumping Systems Improvements project.
- This project is 50% funded from ARRA Funding, including the additional $3,161.00 needed for the change order.

Cons:

- Without approval of the change order, the project will not be completed.
- The Water Resources Department will have to fund 50% of the change order cost which will come from the Water Capital Projects fund.
- The change order will require staff to complete additional paperwork for the State when requesting reimbursement.

The City will be responsible to pay the loan amount not covered by ARRA Funding, which is 50% of the total project cost including the change order amount of $3,161. The funds needed for the change order are available in the ARRA capital project. The construction of the projects are substantially complete, and when these new pumps are in service an 80% reduction in power consumption will be realized.

Staff recommends approval of the resolution authorizing the City Manager to execute a change order in the amount of $3,161 to increase the construction contract for Hickory Construction Company from $328,474 to $331,635.

Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-10. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no".

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C. 12-MONTH REVIEW OF REVISION TO THE SIDEWALK ORDINANCE

Public Works Director Cathy Ball said that the purpose of this report is to provide a 12 - month update to City Council regarding the changes to the sidewalk ordinance approved by City Council on December 15, 2009.

On December 15, 2009, City Council amended the Unified Development Ordinance (Section 7-11-8) pertaining to sidewalks. Council also approved a resolution amending the Fees and Charges Manual to allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

The specific changes included the following:

1. Consolidate the geographical areas where the fee-in-lieu of construction funds can be spent.
2. Allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

3. Provide the ability for the fee-in-lieu of construction amount not to exceed 15% of construction costs even if the sidewalk is shown as a needed linkage on the Pedestrian Thoroughfare Plan.

Unfortunately due to the low amount of development that has occurred over the past year, we do not have much to report. During the past 12-months we have only received a total of $57,806 in the citywide fee-in-lieu-of fund with most of the money ($54,091) coming from the Thoms Estate project in North Asheville.

We do not feel that enough development as occurred for us to evaluate the impact of the change. We have not received any negative comments from the public regarding these changes.

This action complies with the City Council Strategic Operating Plan of sustainability by reforming and streamlining the development review process.

Pros and Cons:

- We have not had enough development activity to provide a complete assessment of the changes.

During the past 12-months we have only received a total of $57,806 in the citywide fee-in-lieu-of fund with most of the money ($54,091) from the Thoms Estate project in North Asheville.

It was the consensus of Council to have staff provide another update in two years.

D. UPDATE ON HANDICAPPED ON-STREET METERED PARKING IN DOWNTOWN ASHEVILLE

Director of Transportation Ken Putnam said that the purpose of this memorandum is to update City Council on recent action that has occurred since October 26, 2010 regarding handicapped on-street metered parking in downtown Asheville.

At the October 26, 2010, meeting, City Council directed staff to proceed with requiring meter activation by all users effective November 12, 2010, provide Battery Park Apartment residents a discounted monthly parking rate at the Civic Center Parking Garage (50% discount), provide an update in January 2011 with feedback from residents and staff on how the changes are going, continue negotiations with AT&T to secure parking spaces for public use on their surface parking lot, allow the Battery Park Apartment residents a one month fee waiver to park free in the Civic Center Parking Garage until December 19, 2010, look at our parking meters for ADA compliance, and continue discussions with the management of Battery Park Apartments.

Following is a summary of recent action steps that have been accomplished and/or are in process:

- 700+ educational flyers were placed on vehicles giving notice of the subject change between October 28, 2010 and November 11, 2010 (averaged 65 flyers per day).
- 92 warning citations with educational flyers were issued between November 12, 2010 and November 18, 2010 (averaged 15 citations per day for 6 days).
- 2,060 overtime citations were issued between November 19, 2010, and December 31, 2010 (averaged 90 citations per day for 23 days).
- Five percent of the overtime citations issued (101 citations) involved vehicles displaying a handicapped placard and/or license tag (Educational flyers were included with the citations).
- As of January 1, 2011, the educational flyers are no longer placed on windshields.
- Staff met with the Battery Park Apartment management company on November 5, 2010, to update them on the City's action plan and to ask them directly if they planned on doing

anything to ease the burden on their residents. They responded in writing on December 15, 2010, and stated that their first-come, first-served 24-space off-street surface parking lot would continue to be available as in the past. In addition, their property manager and service coordinator continually work on a case-by-case basis with the residents to link them with public and medical transportation services. They offered no other suggestions to help.

- Staff met with a group of the Battery Park Apartment residents on November 8, 2010, to discuss concerns and various options to help ease the burden.
- The Mayor and staff met with a concerned citizen on November 23, 2010, to discuss the overall policy decision and possible implications.
- Staff met with Bart Floyd on December 2, 2010, to discuss various options to make it easier to "feed" the parking meters.
- Six Battery Park residents have taken advantage of the discounted monthly parking rate in the Civic Center Parking Garage.
- Negotiations with AT&T continue. Staff is currently pursuing a project that includes taking down two existing buildings that are located at 68 and 76 Haywood Street due to their age and constructing a paved, surface parking lot that meets current Unified Development Ordinance standards. When the project is completed, staff hopes to have at least 75 parking spaces that could be used for hourly parking controlled by a pay-by-space machine. This action should provide much needed parking relief in the Grove Arcade area. The target completion date of the subject project is July 2011.
- The Building and Safety Department is reviewing our existing parking meters for ADA compliance.

Since the actual enforcement began, staff has not received very much feedback, positive or negative, regarding the changes. In addition, we have not received any appeals of parking citations involving handicapped placards and/or license tags. Staff continues to look for ways to improve any additional burdens that the changes have placed on people with disabilities including meeting with citizens and listening to their suggestions.

In the memorandum dated October 26, 2010, he suggested that monthly on-street parking permits along the area immediately adjacent to the Battery Park Apartment building (includes 14 on-street metered parking spaces) could be considered and the current rate ranges from $30 to $45 per month. Once the memorandum became public record, there was some resistance from the business community. Another suggestion would be to create up to four designated handicapped parking spaces in the same area. Although we could not guarantee these parking spaces for Battery Park residents, it would provide more opportunities for a "close by" parking space.

City staff recommends City Council direct staff to pursue creating up to four designated handicapped parking spaces along the area immediately adjacent to the Battery Park Apartment building.

Ms. Raelin Hansen, speaking on behalf of the Battery Park Apartment residents, said that since the City has made parking available for the Battery Park residents at the Civic Center Parking Garage at a reduced cost, two elderly individuals have fallen walking from the Civic Center to the apartments. She explained how the incline from the Parking Garage has a slight grade and in inclement weather it is difficult to walk that distance. She felt there should be more handicapped designated parking spaces close to the Apartment Building (designated for Apartment Building residents), noting that they have 50-60 people who have cars with only 24 parking spaces provided by the Apartment Building. Also, she asked if the City could discuss with apartment management to limit the number of residents living there under HUD guidelines.

In response to Mayor Bellamy, Mr. Putnam said that he will continue to meet with citizens and listen to their comments.

Councilman Bothwell asked how many of the 50-60 people who live in Battery Park Apartments who have cars are handicapped. Mr. Putnam said that he has requested that information from the Battery Park Apartment management company but has not been furnished with that information. Councilman Bothwell suggested he speak with some of the residents in the Apartment Building who may be able to provide that information to him.

Councilman Russell moved to direct City staff to create up to 4 designated handicapped parking spaces along the area immediately adjacent to the Batter Park Apartment Building, with two of those spaces currently designed as motorcycle parking. This motion was seconded by Councilman Davis and carried unanimously.

In response to Mayor Bellamy, Mr. Putnam said that the money for the signs would come from the Parking Enterprise Fund.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER FINANCING OF A NEW PARKING FACILITY LOCATED AT 51 BILTMORE AVENUE

RESOLUTION NO. 11-11 - RESOLUTION RE-SCHEDULING PUBLIC HEARING FOR 51 BILTMORE PARKING DECK FINANCING

RESOLUTION NO. 11-12 - RESOLUTION AUTHORIZING EXECUTION OF SECOND AMENDMENT TO DOWNTOWN DEVELOPMENT AGREEMENT

RESOLUTION NO. 11-13 - RESOLUTION APPROVING AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST REGARDING A NEW PARKING FACILITY LOCATED AT 51 BILTMORE AVENUE

City Attorney Oast said that in connection with the City's participation in the 51 Biltmore Parking Deck Project, two ancillary resolutions should be considered.

The first resolution is a procedural resolution acknowledging the circumstances that led to the public hearing on the proposed financing not being held on January 11, 2011, as originally scheduled. This resolution simply reschedules the public hearing, and ratifies the actions taken by staff to reorganize and re-advertise the public hearing for January 25, 2011.

The second resolution authorizes the amendment of the Downtown Development Agreement to extend certain time periods set out therein, including the options for the purchase of the property and the "Decision Period." The previous extension was until December 31, 2010. This resolution recognizes that the parties have made significant progress in furtherance of the Project, including progress towards securing financing (public and private), obtaining construction bids, and developing legal documents. Because the financial, legal, and construction arrangements have not yet been finalized, this proposed second amendment is contemplated as an interim extension. A final amendment to the Downtown Development Agreement will be considered at or near the time of closing, after the legal and financial arrangements have been finalized, which will be more comprehensive.

Adoption of the resolution rescheduling the public hearing is recommended prior to proceeding with the public hearing. Adoption of the resolution authorizing the Second Amendment to the Downtown Development Agreement is recommended in order to allow staff to continue its work on the Project, and to extend several time periods in the Agreement. Action on this resolution may be taken after the public hearing.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have previously received a copy of resolution rescheduling the public hearing for 51 Biltmore Parking Deck financing and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-11. This motion was seconded by Councilman Bothwell and carried unanimously.

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City Clerk Burleson reported to the City Council that notice of a public hearing to receive public comments on the proposed execution and delivery by the City of (a) an Installment Financing Contract to pay the capital costs of acquiring and constructing a new parking facility located at 51 Biltmore Avenue in the City and (b) a Deed of Trust and Security Agreement to create a security interest in the real property on which the parking facility will be located and the improvements thereon was published on January 14, 2011, stating that the City Council would hold a public hearing thereon on January 25, 2011 at or about 5:00 p.m.

Director of Administrative Services Lauren Bradley said that this public hearing is to receive public comments on the proposed execution and delivery of an installment financing contract to construct a new parking facility located at 51 Biltmore Avenue, and for Council to consider a resolution authorizing the installment financing contract for the project.

Under the provisions of Section 160A-20 of the General Statutes of North Carolina, installment financing contracts that involve land require a public hearing in which the public may comment on the proposed financing and project. On December 14, 2010, City Council approved a Resolution authorizing the negotiation of an installment financing contract for the construction of a new parking facility at 51 Biltmore Avenue and set the public hearing date for January 11, 2011. Due to a legal advertising error and the cancellation of the January 11, 2011, meeting because of inclement weather, all public hearings scheduled for that date were rescheduled to January 25, 2011.

Ms. Bradley said that her presentation will include an overview of the project, the proposed financing and the feasibility of paying for the project.

She showed a rendering of the proposed project. The "51 Biltmore Project" includes both public and private development components on one shared site. The site will house a city-owned public parking garage, a privately-owned and operated Aloft hotel, and privately-owned commercial retail space along the front of the property. The City is responsible for constructing and operating the public parking garage. A private developer, McKibbon Hotel Group, is responsible for construction and operating the hotel and retail space. What makes this project a "partnership" is the mixed-use nature of the site. Part of the hotel will sit above the city's parking garage, and the retail space will wrap around the garage façade. The third component of the project is some land and air rights that are being retained by the property owner, Public Interest Projects (PIP), for a potential future workforce housing development.

She explained why the City pursed a shared site for the parking garage. Stand alone parking garages tend to deactivate street-level activity around the structure since people only enter and exit the structure for one reason: parking. This can have a negative impact on surrounding businesses and an area's overall economic growth. Stand alone garages are often less attractive than surrounding buildings, and they also limit the tax base potential of the property on which they sit since public parking garages don't pay property taxes. By mixing uses on a parking garage site, a community can make efficient use of limited resources (like land and infrastructure). At the same time, the community can promote economic development and tax base growth by incorporating other types of development (like residential units, offices, retail, etc.) into the parking garage design. The 51 Biltmore parking garage site accomplishes those objectives. The City is not paying for any portion of the hotel or the hotel's parking needs. The

Developer is paying for the increased structural costs in the garage to support the hotel above it. No economic incentive deals for the developer.

She briefly reviewed the project history. In 2006 City Council adopted a Parking Action Plan that included an item to pursue a parking garage in the area of Biltmore Avenue and directed staff to look at a public/private partnership to do that. Prior to 2006 we had heard from the community and stakeholders downtown that there was a need for Council. By adopting the Plan, Council wanted to put some actionable items for staff to work on. In May of 2008, the City commissioned a parking study that evaluated the demand for parking versus the supply in the Central Business District. The study determined that the area around Biltmore Avenue had a peak deficit of parking in the amount of 622 spaces and a normal deficit of 476 parking spaces. The proposed location of the 51 Biltmore parking garage is a surface parking lot with approximately 100 parking spaces. Given economic conditions and related project extensions, staff updated the original parking demand study data in 2010. The updated study suggests that the deficiencies in this zone are not drastically changed in the new projections, and that the parking system demands are generally consistent with the original study. The City has not commissioned a study to determine how other transportation alternatives, like a downtown shuttle, would impact parking demand in the Central Business District.

She reviewed the following parking garage specs:

Total Number of Spaces: 412

Number of Full-Time Spaces Utilized by Hotel 35
Monthly Rate Paid by Hotel for Full-Time Spaces $140/month per space

Number of Part-Times Spaces Utilized by Hotel 80
Monthly Rate Paid by Hotel for Part-Time Spaces
(4:30 pm – 10:00 am) - $70/month per space
(7:00 pm – 10:00 am) - $60/month per space

Using a map, she showed a footprint of the property. PIP owns the property at 51 Biltmore. Cascade Mountain Properties owns an adjacent piece of property where the Hot Dog King is currently located. The City is purchasing a portion of 51 Biltmore from PIP, subjacent (i.e., underground) rights under adjacent property, and the Hot Dog King property from Cascade Mountain Properties for the parking garage. The City's portion of the property at 51 Biltmore is about 2/3 of the parcel. McKibbon Hotel Group is purchasing a portion of the 51 Biltmore property and air rights from PIP for the hotel and retail development. PIP is retaining a portion of the 51 Biltmore property and air rights for a potential future workforce housing development. After the parties close on the land, the site and its structures will become part of a condominium where each party owns its respective share. In other words, the City will own and operate the garage; McKibbon will own and operate the hotel and retail space, and; PIP will own its property and air rights.

She explained the history of how the transaction was negotiated to know how we arrived at the purchase price for the land. When PIP, the owner of the property at 51 Biltmore Avenue, approached the City with this partnership, they wanted to have joint ownership in the operations of the parking garage. They proposed that they would invest in the property, the City would build the parking garage and both parties would share in the revenues. The City was not open to this proposal because the majority of the risk was on the City, not PIP. As a second option, PIP offered to lease the property at 51 Biltmore Avenue for sixty years for $180,000 per year. Following financial analysis, the City determined that it saved the City approximately $1 million dollars over the projected life of the deck to purchase the property rather than lease it. PIP agreed to sell the property for $3,110,000. The purchase price of the land is higher than the appraised value. After the City determined that it was a better financial decision for the City to

purchase the property, the owner agreed to sell but with the restriction that they recoup the capital gains taxes.

Staff later determined that the addition of the Hot Dog King property adjacent to 51 Biltmore Avenue might save the City significant construction costs by avoiding further excavation at the 51 Biltmore site. Engineering estimates indicated that the City would save about $5,200 per parking space or $2,272,400 by utilizing the Hot Dog King property. In light of the potential savings to the City, PIP sought and obtained a contract for the Hot Dog King property in the amount of $1,450,000. Although this is higher than the appraised value, the net construction cost savings after purchasing the Hot Dog King property is approximately $800,000.

In the case of the 51 Biltmore parking garage, the City believed the negotiated price of the land was a fair price because of the savings it yielded in construction costs and long-term lease costs. In addition, the City had to consider if it was feasible to purchase enough land to construct a garage in another suitable location, and what those associated costs might be. Based on the availability of land and downtown parking needs, the City pursued the project at 51 Biltmore because it believed it was best suited to meet the public's needs for parking and could provide a mixed-use public parking garage.

She said that the total costs projected for the construction is $14,100,000, which is lower than the $14,800,000 reported in December.

She explained that the private placement installment financing contract consists of (1) construction draw-down financing; (2) 1% interest rate, two-year term; and (3) longer-term financing would likely be timed to include integration with other large projects (i.e., City Hall).

Using a chart, she explained the project feasibility. In North Carolina, local governments can establish separate enterprise funds for any activity for which a fee is charged to external users for goods or services. For these types of enterprise funds, fees and charges are established to cover the operating and capital expenses of the activity so that the fund is self-sufficient and does not require support from other sources. Using this model, Asheville operates a Parking Services Enterprise Fund for parking. This fund uses the fees and fines captured from on-street metered parking, parking garages and surface lots to cover the operating and capital expenses of the parking system. The fund does not reply on property tax dollars for support.

The new parking garage at 51 Biltmore would be financed over a period of 25 years. The debt service would be paid for from the parking revenue generated by the new garage along with the positive cash flow from the existing Parking Services Enterprise Fund. Detailed financial projections anticipate that these revenues are more than sufficient to cover these debt service payments as well as other capital expenses incurred by the parking system over the life of the loan.

The chart illustrates a financial projection for the Parking Services Enterprise Fund including operation of the 51 Biltmore parking facility. One column shows the pro-forma for the facility in year 5 of its operation. In that year, the parking garage at 51 Biltmore is expected to generate $546,000 in revenue over expenses before the debt service payment. Over the life of the loan, the annual debt service payment (principal and interest) for the garage is anticipated to be $1,105,000. All of the revenue generated by the facility at 51 Biltmore would be applied toward the debt service payment.

Columns on the char show the audited results of the Parking Services Enterprise Fund during the last three years. From 2008-2010, the Parking Services Enterprise Fund generated an average of $1.3 million annually in operating income. Over this period of time, the City made the last of its debt service payments on its existing parking garages and transferred $248,000 each year to the Transit Fund. In 2011, the transfer to the Transit Fund increased to $375,000. At the same time, in anticipation of building a new parking garage, the City invested significant capital

dollars in its existing parking garages to allow for future cash flow to support a new facility. These expenses, considered one-time or infrequent expenses, are not expected to occur again at those levels within the next ten years.

Taking this into consideration, one of the columns shows what the performance of the Parking Services Enterprise Fund would look like if the system performed at 2010 levels and included the 51 Biltmore parking garage and associated debt service payment. Factored into this analysis is an annual amount that would be set aside in the fund's reserves for future capital maintenance on all four garages (Rankin, Wall Street, Civic Center and 51 Biltmore). Under this scenario, the Parking Services Enterprise Fund would have experienced $411,451 in revenue over expenditures.

As the garage operates beyond year 5, the facility's operating revenue improves in an anticipation of parking rate increases. As the facility's revenues improve, and if the parking system's performance remains consistent, it is expected that the positive cash flow in the Parking Services Enterprise Fund will also improve.

Over a 50-year period, the parking facility at 51 Biltmore is projected to generate $23 Million in positive cash flow. Positive cash flow begins after year 25, with the debt service is paid. Fund balance in the Parking Fund at Fiscal Year 2009-10 year-end was $2.7 Million.

Other financial considerations (estimates) include (1) City property taxes: $94,000 annually (currently receives $7,000 in taxes); (2) County property taxes: $118,000 annually; (3) City sales taxes: $13,500; and (4) Occupancy taxes: $200,000.

In addition to the increase in city property tax revenue, the Asheville City School System is expected to receive $33,750 in additional property tax revenue. Buncombe County is anticipated to receive an additional $118,125 in property tax revenue. The sales tax impact to the State of North Carolina is estimated to be $368,736, $13,500 of which will be returned to the City of Asheville, and hotel occupancy taxes will yield $200,250 to the Buncombe County Tourism Development Authority.

The project during construction is anticipated to support 405 jobs and $15.3 million in personal income. This income will generate $4.3 million in income tax, $2.9 million in Federal collections and $1.4 million in State collections. After construction is complete, it is expected the project will support 118 jobs and $3.2 million of personal income. This income will generate $1.6 million in income tax, $795,000 in Federal collections and $860,000 in State collections.

Staff is asking Council to consider (1) a resolution extending the "decision period" in the Downtown Development Agreement to June 2011 and options on the property until March 2011; and (2) a resolution approving an installment financing contract for the construction of a parking facility at 51 Biltmore Avenue.

Staff said that if the resolutions are approved by City Council, the next steps would be (1) LGC consideration in February of 2011; (2) loan and land closing in mid-February; and (3) construction to begin in March, 2011.

Mr. John McKibbon, representing McKibbon Hotel Group, said that he has 30 years experience in the hotel business. He felt this project will bring in tourism and is a good way to grow the community. He looked forward to working on this public/private partnership.

Mr. Pat Whalen, President of PIP, explained the wisdom of prior city councils in constructing parking garages. This project costs zero tax dollars, pays for itself over time, creates badly needed jobs, increases density, increases tax revenues and will create tax value around it. The site will pay more in City property taxes in its first year than it paid over the previous 25 years. This project has been worked on and analyzed by staff in numerous public meetings over

the last four years. The project fulfills numerous plans to address the parking shortage on south side of Patton. He urged Council to support this project.

Mayor Bellamy opened the public hearing at 6:47 p.m.

The following individuals spoke in support of the 51 Biltmore Avenue parking facility for various reasons, but basically due to the need of parking in that area (also acknowledging the need for other transportation alternatives):

Ms. Laurie Masterson, downtown property owner (Laurie's)
An Asheville resident
Mr. Ed Byers, downtown property owner (Ariel Craft Gallery)
Mr. John Cram, downtown property owner (Blue Spiral 1)
Ms. Kim McGuire, Asheville resident
Mr. Jim Samsel, downtown property owner (Samsel Architects)
Mr. Jimi Rentz, downtown property owner (Barley's)
Ms. Leslie Anderson, Asheville resident
Mr. John Ellis, Director of Diane Wortham Theatre at Pack Place
Mr. Dwight Butner, downtown property owner (Vincenzo's) and Chairman of the Downtown Commission
Mr. Harry Weiss, Asheville resident
Ms. Karen Tessier, Asheville resident
Mr. David Nutter, resident on Flint Street
Mr. Bill Griffin, downtown property owner (Four Corners)
Mr. Joe Minicozzi, Executive Director the Downtown Association
Mr. Eberhard Heide, downtown property owner (Asheville Wine Market)
Mr. Charlie Ball

The following individuals were opposed to the 51 Biltmore Avenue parking facility, for various reasons, but basically wanting to look at other transportation alternatives that will reduce the need for automobiles downtown and reallocation of parking revenue for other needs:

Mr. Robert Eidus, resident on Albemarle Place
Ms. Linda Brown, Asheville resident
Ms. Laura Brano, resident on Highland Street
Mr. Donald Warren, Kenilworth resident
Mr. Mark Bloom, Asheville resident
Mr. Bruce Emory
Mr. Karl Caterjohn, resident on Von Ruck Court
Mr. Jay Quinn, North Asheville resident
Mr. Chris Pelly, President of the Haw Creek Community Association and member of the East Asheville Sidewalk Initiative
Ms. Kimberly Kabicki
Mr. James Sheeler, Asheville resident
Mr. Bill Maloney, Asheville business owner
Ms. Megan Maloney, Asheville resident

At 8:07 p.m., Mayor Bellamy closed the public hearing.

Throughout discussion, Ms. Bradley, Transportation Director Ken Putnam, Public Works Director Cathy Ball, Downtown Master Plan Project Manager Sasha Vrtunski, responded to various questions/comments from Council, some being, but are not limited to: do we have the data showing how the construction of the Buncombe County parking deck on College Street has changed the parking deficit; what is the occupancy that is assumed over the life of the deck; what kind of prospects do we have that the prices will not inflate over the course of the project; has any thought gone into using the Business Improvement District as an assessment base for financing

the project; and how much will McKibbon be paying to reinforce the parking deck to support the hotel.

Mayor Bellamy said that members of Council have previously received copies of the resolutions and they would not be read.

Councilman Russell moved to adopt Resolution No. 11-12, authorization of the second amendment to the Downtown Development Agreement. This motion was seconded by Vice-Mayor Newman.

Vice-Mayor Newman believed the single greatest threat to the environmental integrity of Buncombe County and our region is the pattern of sprawl development. A single solution is promoting a successful pattern of development downtown of mixed use. He is very strong supporter of greater investment in transit and continues to support using some of the Parking Funds for transit. He noted that even the very conservative financial analysis shows if we move forward with this project we will still have a net positive source of revenue in our Parking Fund of over 400,000 a year and that number will grow every year. This project will not consume all of the funds that we have that could be contemplated for other transportation projects in Asheville. He felt this project represents a very sound investment for Asheville. He hoped we would discuss at our retreat ways to implement other approved plans, while focusing on other key steps for multi-modal transportation in Asheville.

Councilwoman Manheimer was disappointed to see the dissemination of information that compares funding this project vs. sidewalks, for example. There are projects that generate their own revenues and pay for themselves and this is one of them. Sidewalks do not generate anything. Sidewalks need to be funded in a different way. She also noted that if we were to back out of the contracts (option to purchase, commercial realty purchase agreement and partnership agreement) already signed with McKibbon and PIP, we would be breaching those agreements and that is bad business conduct. She agreed with Vice-Mayor Newman about discussing how other funds could be used to support sidewalks, greenways, etc.

Councilman Smith felt there are many positive aspects this project can bring to Asheville; however, he was concerned about spending priorities. If we already had committed dedicated funds for sidewalks, bike lanes, greenways, etc. he could support the project. However, we have not. Therefore, he could not support the project. He looked forward to finding a way to fund these priorities next year.

Councilman Bothwell felt the only facts everyone agrees on is the price tag of $14.1 Million and 412 parking spaces. Beyond that everything involves assumptions and points of view. The truth is if we are paying $1 Million per year in debt service, that is $1 Million that could be spent somewhere else. Arguments have been that this project will bring substantial economic benefit to the City, but sidewalks raise the value of every house in the neighborhood, and businesses who look to locate here might want other modes of transportation, such as bike lanes, sidewalks, etc. He has asked repeatedly for a study for a shuttle system, noting that the Downtown Master Plan says it should be a short-term project to create a circulating shuttle. Those circulating shuttles will ease up City parking city-wide. In these uncertain financial times, he felt it would be appropriate to hold off and don't borrow that money for the parking deck.

Councilman Davis agreed with Councilwoman Manheimer that this is not a about funding one thing or another. He did invest in downtown over 26 years ago and felt this is a good investment now. He is very supportive of this partnership in a part of town that will grow.

The motion made by Councilman Russell and seconded by Vice-Mayor Newman carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

Councilman Russell moved to adopt Resolution No. 11-13, approving an installment financing contract and a deed of trust regarding a new parking facility located at 51 Biltmore Avenue. This motion was seconded by Vice-Mayor Newman.

Mayor Bellamy reiterated that there are no property taxes in any scenario being put forth in the parking deck. If taxes are increased, it won't be because of the deck. We are constructing the deck from fees from people who use our decks, meters, and those who pay their fines. She pointed out that the City of Asheville has been conscious on where we place our parking meters. We don't put meters in neighborhoods, and we have heard from businesses in Biltmore Village and West Asheville that if the City places meters in front of their businesses it will negatively impact their businesses. That leaves getting all the money from the parking decks, the parking meters and the parking tickets from downtown. It makes sense to her that we use money collected from downtown back into parking for downtown. She, too, supports subsidizing transit every year. Seventy percent of the individuals who use transit in our community do so as it's their only means of transportation. City Council has made a commitment to fund transit and every year Council continues to increase how much goes toward transit. We also make as many incremental improvements as we can afford. Through the many, many hours of developing the 2025 City Plan, this site called for a deck. We need to meet the needs of the growing economy by keeping some of the old paradigm and bringing in the new. Thinking about the Sullivan Acts, City Council does not want to start taking money from the Parking Enterprise Fund without clearly defining what the funds will be used for. She supported the parking facility. She encouraged the community to talk with our legislators, with the same level of passion as they do for sidewalks, to ensure that as they look to trim their budget, they don't hurt our budget, i.e., by taking away our Powell Bill Funds, Safe Walks to School funds, etc.

The motion made by Councilman Russell and seconded by Vice-Mayor Newman carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

RESOLUTION BOOK NO. 33 – PAGE 314

At 9:00 p.m., Mayor Bellamy announced a short recess.

B. PUBLIC HEARING TO CONSIDER REZONING 13 ACRES ON ORCHARD STREET FROM INDUSTRIAL DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 3941 - ORDINANCE TO REZONE 13 ACRES ON ORCHARD STREET FROM INDUSTRIAL DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 9:12 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 13 acres on Orchard Street from Industrial District to RM-6 Residential Multi-Family Low Density District. This public hearing was advertised on January 14 and 21, 2011.

He said that this 13-acre site is located near the very westernmost limits of the City's Extraterritorial Jurisdiction (ETJ), in an area marked by a mix of sparse development and higher-intensity development. This part of the ETJ was established in May of 2001, and the subject property, along with the adjacent land to the northwest, north, and northeast, was zoned Industrial. The combined area, totaling roughly 100 acres, was identified to have potential for industrial development owing to its largely vacant condition, as well as its proximity to Interstate 40 and Smoky Park Highway.

According to the Unified Development Ordinance (UDO)'s Article 8, the purpose of the Industrial District is to "reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees."

In 2005 the owner of the 31 industrially zoned acres off Dogwood Road closest to the interstate petitioned for rezoning to RS4. The rezoning was approved, though City Council and City staff recognized that such a rezoning went against a Comprehensive Plan policy stating that Industrially zoned land should be preserved for industrial uses, a policy further emphasized in the Sustainable Economic Development Strategic Plan. The 31 acres were subsequently conditionally zoned to RM-6 in 2007, and are currently under development as the Vistas of Westfield planned (residential) community.

The subject site of this report is 13 acres of the remaining 70+ industrially zoned acres owned by members of the Roberson family. The properties have been in the family for a number of generations. Phillip Roberson, one of the petitioners, is interested in developing the property in such a way that family members will continue to be able to enjoy and appreciate the family property. Namely, he would like to build a residence, but residential uses are not permitted in the Industrial District. Accordingly, he is seeking a rezoning to RM-6 (Residential Multi-Family Low Density), a district which would allow such development.

The stated purpose of the RM-6 district is "to permit a limited range of low density multi-family housing types along with single-family detached and attached residences. [...] This district is also intended for areas where low density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential."

The particular 13 acres included in this petition can aptly be described as having environmental constraints. The center of the site is a knoll, which is surrounded on three sides by creeks and drainages requiring aquatic buffers and associated with flood hazard areas. Further, a sewer line bisects the site, and the high ground of the site is separated from Dogwood Road (the only adjacent paved road) by Pole Creek, a significant perennial stream in a substantial gully.

As is noted above, the requested rezoning would not be consistent with a Comprehensive Plan policy stating that Industrially zoned land should be preserved for industrial uses. However, there are multiple recent precedents for City Council approval of similar zoning changes. At the August 2009 meeting of Asheville City Council's Planning and Economic Development Committee, City staff discussed these cases, and reviewed its practice of considering each such rezoning petition on a case-by-case basis, under close consultation with the Office of Economic Development. This approach was adapted following earlier stakeholder discussions acknowledging changing views about the future of this region's economy.

Staff does feel that the 56-acre area to the northeast of the subject site still retains potential for industrial development, particularly in light of N.C. Dept. of Transportation's (DOT) recent initial steps to examine the ramifications of an I-40 interchange at Liberty Road, which borders the eastern edge of this property. One scenario would involve the construction of a new road through this area to provide a more direct connection to Smoky Park Highway. Even under this scenario, however, the environmental constraints of the 13-acre subject area make it a less suitable site for an industrial tenant.

Staff has received two communications from neighboring property owners. One was simply seeking information and did not express any objection. The second owner was primarily concerned with whether the rezoning might have an impact on the potential future DOT project

mentioned above. DOT staff has indicated that the zoning designation of this property would not affect the implementation of the interchange project.

At their December 1, 2010, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning. The public hearing involved no speakers other than the applicant.

When City Council voted to approve the downzoning of the 31-acre Vistas of Westfield property to the north of the subject site on October 12, 2005, staff noted that it could be appropriate to reconsider a downzoning of some of the remaining industrially zoned property, based on the additional anticipated residential presence. The petitioner's request has prompted just such a reconsideration, and staff feels it is justified for the specified fraction of the property.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning district is compatible with the surrounding zoning.
- Environmental constraints make this site less than ideally suited for Industrial tenants.
- The subject area is removed from the potential future interchange at Liberty Road.

Con:

- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially zoned land for industrial uses.

Staff has concerns about rezoning Industrially-zoned land, due to the policies against such action stated in the Comprehensive Plan and other plans. Both the Planning and Zoning Commission and City Council have, however, supported similar rezoning in the recent past, and since 2006 stakeholders have not expressed significant concern about the rezoning of such land for other uses. If the City Council wishes to consider this rezoning independent of the existing policies, staff feels a good case can be made for recommending approval.

Mr. Phillip Roberson, property owner, explained how the properties have been in the family for a number of generations and hoped Council would approve the rezoning.

Mayor Bellamy closed the public hearing at 9:17 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3941. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 428

C. PUBLIC HEARING TO CONSIDER A CONDITIONAL ZONING REQUEST FOR THE PROJECT IDENTIFIED AS BARNES DUPLEX LOCATED AT 12 WINCHESTER PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR AN EXISTING DUPLEX, AND A MODIFICATION REQUEST TO ALLOW AN ENCROACHMENT INTO THE FRONT SETBACK

ORDINANCE NO. 3942 - ORDINANCE TO CONDITIONALLY ZONING REQUEST FOR THE PROJECT IDENTIFIED AS BARNES DUPLEX LOCATED AT 12 WINCHESTER PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY

MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR AN EXISTING DUPLEX, AND A MODIFICATION REQUEST TO ALLOW AN ENCROACHMENT INTO THE FRONT SETBACK

Mayor Bellamy opened the public hearing at 9:17 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Barnes Duplex, located at 12 Winchester Place, from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District for an existing duplex, and a request for a modification to allow an encroachment into the front setback. This public hearing was advertised on January 14 and 21, 2011.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for one parcel located at 12 Winchester Place from RM-8 (Residential Multi-Family Medium Density District) to RM-16 (Residential Multi-Family High Density District) in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO). When the new property owner applied for permits to split the utilities in this existing duplex, it was discovered that the multi-family use was never legally established. The conditional zoning will remedy this non-conforming situation.

The site consists of a single parcel located at 12 Winchester Place with an area of approximately .21 acres. The lot and surrounding area is currently zoned RM-8. The immediate neighborhood is residential but commercial uses along Haywood Street are proximate (approximately 300 feet to the north – zoned CBII).

The site contains a two-story residential structure (approximately 1,389 square feet) and two detached accessory structures (116 and 238 square feet). The structure was built circa 1950 as a single family house and at some point was converted into a duplex. The applicant is proposing to maintain the use as a duplex and is not proposing any changes to the site. Access to the structure will remain in the current location from Winchester Place, where a gravel driveway leads to space behind the house for two parking spaces.

Although no sidewalks exist, Winchester Place is not identified as a needed linkage so none is required. No new landscaping or open space requirements apply.

Modification

- The structure has a small existing covered front porch that encroaches into the front setback. Front setback in RM-16 is 15 feet and this porch is 10.3 feet from the street. Staff is supportive of this request.

The parcel is approximately 9,148 square feet in area and a duplex in RM-8 would require 10,000 square feet as the minimum lot size to accommodate the two units. Rather than maintain the current zoning designation and seek a modification to reduce lot size, RM-16 will allow for the multi-family use on adequate acreage. However, RM-16 would allow for a total of four residential units. Staff recommends a condition limiting the number of residential units on this site to two only (present conditions).

This proposal was recommended for approval with conditions by the Technical Review Committee on November 15, 2010 and unanimously recommended for approval by the Planning and Zoning Commission on December 1, 2011. No public comment has been received.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   The site has existed in its presently developed state for many years and there are no physical changes are proposed to the site. There are no significant natural or topographic features on the site or in the immediate vicinity.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   The proposal is not expected to injure the value of adjoining or abutting properties. Since there are no physical changes to the site and because the site has been operating as a duplex for decades, there should be no impact to abutting properties. Additionally, there are apartments in the immediate vicinity, establishing a multi-family presence in the neighborhood.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
   The two-story residential structure was built in the 1950s and is visually similar to the other residential structures in the immediate neighborhood. The parking area and small accessory structures are comparable to typical single-family lot configurations. Although the dwelling was converted into a duplex many years ago, there is only one entrance visible from the front, giving the appearance of a single-family home. No physical changes are proposed on the site and it will remain in harmony with the scale, bulk, coverage, density and character of the area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
   Objectives throughout the *Asheville City Development Plan 2025* are based upon encouraging a mix of residential options, especially providing higher density in close proximity to walkable, bikable commercial corridors served by transit (such as this location along Haywood Road in West Asheville).

   Additionally, City Council's goal for *affordability* is to "create and preserve affordable rental and home ownership opportunities in Asheville so that all citizens have access to safe, sufficient and affordable housing." This proposal legally establishes a duplex that will provide safe, code-compliant rental housing in West Asheville.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
   The project site is located just off of Haywood Street (transit Rte. 1) in West Asheville in an established residential neighborhood where adequate infrastructure exists. In addition, preliminary review by other service providers has not revealed any problems for continued service to the site.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

No traffic congestion or traffic hazard is anticipated. The use is existing and adequate off-street parking is provided on the site.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pro:

- The conditional zoning legally establishes a long-existing duplex use on the site.

Con:

- None noted.

Staff recommends approval of the conditional zoning request as submitted by the applicant, including the porch encroachment into the front setback. Although the RM-16 zoning designation would allow for a total of four units, staff suggests a condition restricting the site to only two units.

Mr. Dale Roberts, adjoining property owner, explained that this is a busy street and due to parking concerns he hoped that they would limit the renters to single people.

Mayor Bellamy closed the public hearing at 9:21 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3942, to conditionally zone the project identified as Barnes Duplex, located at 12 Winchester Place, from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District for an existing duplex, and approval of a request for a modification to allow an encroachment into the front setback, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) Density shall be limited to only two units on this site. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 430

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY BOARD OF ADJUSTMENT VARIANCE FINDINGS

ORDINANCE NO. 3943 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY BOARD OF ADJUSTMENT VARIANCE FINDINGS

Mayor Bellamy opened the public hearing at 9:21 p.m.

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance amend the Unified Development Ordinance to modify Board of Adjustment variance findings. This public hearing was advertised on January 14 and 21, 2011.

She said that at the recent Board of Adjustment retreat on October 5, 2010, City staff presented a proposal to modify the Board of Adjustment findings to be more consistent with the state enabling legislation that authorizes the Board to grant relief to a city's development standards. As described in the statutes, there are three main conclusions that must be made, and many cities have expanded on the first conclusion to include three separate "tests", typically resulting in a total of five findings that must be made before a variance can be granted. Asheville has seven findings for basic requests and six, slightly different, findings for sign variance requests. After some consideration and discussion, the current board of adjustment members, both regular and alternate, voted unanimously to amend the findings as proposed by staff.

It is unclear why the City's findings have evolved to include more findings than the state statutes require. It has also been noted that the findings, as currently listed, confuse some applicants with their redundancy, overlap and phrasing. Before a Board of Adjustment can issue a variance, the courts require that it make certain findings. These findings must be included in the record of the case and must be broad enough to indicate not only the conclusions that the Board draws but also the factual reasons on which they are based. Essentially, these findings must indicate to the courts that the Board has complied with the requirements and applied the standards set forth in the state enabling act and the zoning ordinance. North Carolina's enabling act calls for three main findings. Those findings include:

1) That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;
2) That the variance is in harmony with the general purpose and intent of the ordinance and preserves it's spirit; and
3) That in granting the variance the public safety and welfare have been assured and substantial justice has been done.

The terms "practical difficulties" or "unnecessary hardships" in the first finding are not strictly defined and are typically satisfied through three tests. Those tests are:

a) If made to comply with the provisions of the ordinance, the property owner cannot secure a reasonable return from, or make reasonable use of their property,
b) The hardship of which the applicant complains results from unique circumstances related to the applicant's land, and
c) The hardship is not the result of the applicant's own actions.

If incorporated into the other findings this results in a series of five (5) questions presented to the applicant that, when properly supported provides justification for granting a variance. Staff proposed reorganizing the findings in such a way that it is clear that the three tests belong to finding #1 and that the other two findings will stand on their own.

This action complies with city adopted goals and plans by improving the clarity of our standards for the public's benefit.

Pro:

- Reduces confusion and redundancy when addressing the findings

Con:

- None identified

This wording amendment was reviewed by the Planning & Zoning Commission at their December 1, 2010, meeting where the proposal was supported unanimously (6:0).

City staff concurs with the Planning & Zoning Commission and recommends that the City Council adopt the ordinance as proposed.

Mayor Bellamy closed the public hearing at 9:22 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3943. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 435

E. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR MISSION HOSPITAL AND SURROUNDING CAMPUS LOCATIONS

ORDINANCE NO. 3944 - APPROVAL OF A SIGNAGE PLAN FOR MISSION HOSPITAL AND SURROUNDING CAMPUS LOCATIONS

Mayor Bellamy opened the public hearing at 9:22 p.m.

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance approving a signage plan for Mission Hospital and surrounding campus locations. This public hearing was advertised on January 14 and 21, 2011.

Mission Health Systems (MHS) is currently undergoing a comprehensive evaluation of their Campus Master Plan to address growth and ongoing construction projects occurring at multiple campuses within the area. The two most recent and substantial of projects occurring within MHS are the Hospital Drive road extension project and construction of the new Cancer Center. The Hospital Drive project is ahead of schedule and is slated for completion early this summer.

Although MHS had hoped to present one complete and comprehensive Master plan to the City for their review, the changes brought about by the Hospital Drive road project and its impending completion prompted MHS to instead address the immediate need for appropriate signage for routing emergency vehicles, patients, and visitors to appropriate hospital entrances and campus locations.

The initial phase of the MHS plan comes in the form of a signage plan that specifically addresses primary and secondary campus identification signs, wayfinding and directional signage, and regulatory and traffic control signs. The plan proposes a combination of both new signage and modifications to existing directional signage. Some existing identification signs (attached and freestanding), however, will remain in current locations and will be addressed in future phases of the comprehensive master plan.

For the purposes of this review staff identified a "Development Area" for Mission Health Systems that includes: the Memorial Mission and St. Joseph's Campus drives and entrances along Biltmore Avenue, the new Hospital Drive and Victoria Road connections and MHS mini campus locations on the NE and SW sides of the street (445-495 Biltmore Avenue and Cancer Center), and the Mission Hospital entrances along McDowell Street.

The properties associated with this application are all zoned Institutional (INST). Given the size of the "development area" and the desire to ensure reasonable compatibility with signage in the vicinity but outside of the study area, the staff compared the single tenant and multi-tenant sign allowances permitted for Institutionally zoned properties specified in Section 7-13-4 and the Directional signage allowance in Section 7-13-2 of the Unified Development Ordinance (UDO).

Campus Identification Signs:

Three primary "Campus Entrance" identification signs are proposed within the development area. Two of the three signs will be equipped with an electronic changeable copy (LED) component:

- Location O1a (with LED): St. Joseph's Campus entrance off of Biltmore Avenue
- Location 140 (with LED): Not specifically associated with a campus, more of a gateway sign; proposed at the corner of McDowell Street and Hospital Drive
- Location 51: New Mission Hospital Campus entrance off of Victoria Road

In addition to the primary identification signs noted above, one secondary campus identification sign (141) is proposed for the new Cancer Center and is located on the corner of Hospital Drive and Hamilton Street.

The specific sign dimensions for each of the identification signs proposed for the development and a comparison of the proposal with the City's sign ordinance is provided in the table below.

** The sign ordinance typically allows for one free-standing sign and an allowance for attached signage per parcel.*

CAMPUS IDENTIFICATION SIGNS

SIGN TYPE/ LOCATION	WHAT IS PROPOSED	WHAT IS PERMITTED	AMOUNT EXCEEDED
Primary ID sign: 01a, 140 Free Standing Ground Sign w/ Electronic (LED) Changeable Copy	Height: 13 feet Size: 100 sqft LED: 25% of sign face	Height: 8 feet Size: 90 sqf LED: < 50% of sign face	Height: 5 feet Size: 10 sqft LED: N/A
Primary ID sign: 51 Free Standing Ground Sign	Height: 10'-4" Size: 73 sqft LED: 34% of sign face	Height: 8 feet Size: 60 sqft LED: < 50% of sign face	Height: 2'-4" feet Size: 13 sqft LED: N/A
Secondary Campus ID: 141 Free Standing Ground Sign	Height: 8 feet Size: 50 sqft	Height: 8 feet Size: 60 sqft	N/A

Vehicular Directional Signs:

As noted above, the significant changes resulting from the Hospital Drive road project have prompted MHS to modify their existing wayfinding program to address the directional complexities of a hospital with multiple campus locations. The modifications proposed include providing a variety of vehicular directional signs to direct and route emergency vehicles, patients and visitors to the correct hospital and entrance. The table below provides the location and type of directional signage proposed for each location point identified on the map.

The primary differences between the various directional signs are reflected in the height, square footage and branding (name/logo) provided. The larger signs (DV-3) are designed to comply with the DOT cap heights standards (letter size) that address higher vehicle speeds on

roadways with multiple traffic lanes. As a result, while larger signs are located primarily on the main corridor roads (Hospital Drive, and Victoria Road); they are also proposed in a few strategic but less visible locations on internal driveways located within the campus hospital.

Smaller directional signs (DV-5 and DV-5a) are proposed within the development area primarily at street intersections and in locations where the directional signage is only visible from and provides direction to a single view-point (i.e. location 87 is visible only to drivers heading south on Victoria Road - the backside of the sign will be blank and not visible from any other vantage point). It should be noted that smaller signs are also located at a few internal sites within the campus boundary where there are higher levels of vehicle and pedestrian activity.

**The Directional signage allowance in the UDO is intended to provide direction to visitors within a multi-tenant development (i.e. shopping center). The signage is exempt from formal review (a permit is not required) as long as the signs do not exceed 4 square feet per face, and do not exceed 3 feet in height; the number of signs per lot is also limited to 4 signs.*

VEHICULAR DIRECTIONAL SIGNS

SIGN TYPE/ LOCATION	WHAT IS PROPOSED	WHAT IS PERMITTED	AMOUNT EXCEEDED
DV1.3 01 3-Sided Directional Sign- No logo	Height: 8'-11" Size: 42 sqft Modify the existing sign to include a third face.	Height: 3 ft Size: 4 sqft Four signs permitted per site; Two faces per sign	Height: 5'-11" Size: 36 sqft 1 extra sign face
DV-2 64 Secondary Entrance Directional Sign w/ Name & Logo	Height: 9'-11" Size: 47 sqft	Height: 3 ft Size: 4 sqft Four signs permitted per lot; Two faces per sign	Height: 7'-11" Size: 43 sqft
DV-3 17, 36,105,105a, 110 Direction Sign w/ Name & Logo	Height: 11'-1/2" Size: 52 sqft	Height: 3 ft Size: 4 sqft Four signs permitted per lot; Two faces per sign	Height: 8'-1/2" Size: 48 sqft
DV-5 87, 102 Directional Sign w/ Name and Logo	Height: 8'- 6" Size: 28 sqft	Height: 3 ft Size: 4 sqft Four signs permitted per lot; Two faces per sign	Height: 5'-6" Size: 24 sqft
DV-5a 129,142 Directional Sign – No logo	Height: 7'-6" Size: 21 sqft	Height: 3 ft Size: 4 sqft Four signs permitted per lot; Two faces per sign	Height: 4'-6" Size: 17 sqft
RT 145, 146 Directional Sign – 445 Biltmore - Staff Parking - No logo	Height: 6ft Size: 5 sqft	Height: 3 ft Size: 4 sqft Four signs permitted per lot; Two faces per sign	Height: 3 ft Size: 1 sqft
IB-4s 143, 144	Height: 7'-6" Size: 15 sqft	Height: 3 ft Size: 4 sqft	Height: 4'-6" Size: 11 sqft

Cancer Center Parking Deck – No logo		Four signs permitted per lot; Two faces per sign	

Traffic control signs:

These include sign types SN-4, SN-6, and SN-O. Once completed, Hospital Drive and Victoria Road will be public and standard City street name signs (SN-6) will be installed. MHS is proposing custom street name signs (SN-4, SN-O) that include the Mission Hospital logo/pictogram on privately maintained streets and driveways within the campus.

Findings:

The stated purpose of allowing the consideration of a separate signage plan is as follows:

The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.

MHS has proposed a sign program that appears to meet the intent and purpose of the signage plan. The signs have been creatively designed and customized to exclusively identify multiple MHS campus locations and parking areas by providing visible cues that are consistent in color, layout, branding (pictography), and structural form (stone bases).

Two gateway signs enhanced with LED messaging capabilities are also incorporated into the plan to provide limited Public Informational messages and alerts to visitors and patients approaching the campus. For hospitals, utilizing this type of technology is a rather new and unique approach for relaying important information to the public and visitors traveling to the campus.

The Directional (wayfinding) signage is also customized and complements the common design elements featured in the identification signs (noted above) visually informing motorists that they are still within the hospital campus area. The signs are strategically located throughout the development area and provide clear direction to visitors and patients traveling to specific campus destinations.

Pros:
- Comprehensive, graphically consistent signage
- Presents an intuitive and simple wayfinding (directional) approach

Con:
- Electronic messaging components (LED) often result in creating unnecessary distraction to drivers of motor vehicles

City staff supports MHS efforts to create a unique and consistent identity and our review indicates that this approach is satisfactory and recommends City Council approval with the following list of conditions: (1) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (2) Traffic control and street name signs shall meet MUTCD standards in terms of location, size, color, message, shape, and height. All poles supporting any of these signs shall meet the breakaway standards for such poles. A maintenance agreement acceptable to the City shall be required from the developer to place maintenance and replacement on the developer for perpetuity; (3) Signs that include a changeable copy LED component are: 1) limited to two messages within a 24 hours period; and 2) are only permitted for display of Public Information and must comply with all LED signs standards as outlined in Section 7-13-4(a)(14)of the UDO; (4) All signage must

comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (5) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy closed the public hearing at 9:25 p.m.

Upon inquiry of Councilman Davis of the equity of these signs compared to other businesses, it was the consensus to instruct the Planning & Development Committee to begin review of some possible amendments to the sign ordinance and to report back to Council via memorandum.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3944 with the following conditions: (1) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (2) Traffic control and street name signs shall meet MUTCD standards in terms of location, size, color, message, shape, and height. All poles supporting any of these signs shall meet the breakaway standards for such poles. A maintenance agreement acceptable to the City shall be required from the developer to place maintenance and replacement on the developer for perpetuity(3) Signs that include a changeable copy LED component are: 1) limited to two messages within a 24 hours period; and 2) are only permitted for display of Public Information and must comply with all LED signs standards as outlined in Section 7-13-4(a)(14)of the UDO; (4) All signage must comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (5) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 437

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 11-14 - RESOLUTION TO SUPPORT THE W.C. REID CENTER GRANT PROPOSAL BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE AND TO AUTHORIZE THE MAYOR TO DISPOSE OF CITY-OWNED REAL PROPERTY KNOWN AS THE W.C. REID CENTER, LOCATED AT 133 LIVINGSTON STREET, BY PRIVATE SALE

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing approval granting to the Housing Authority of the City of Asheville an option to purchase the Reid Center, and other financial commitments to the project.

As was reported at the December 14, 2010, City Council meeting, the Housing Authority of the City of Asheville is exploring a recently announced grant opportunity that would preserve and rehabilitate the Reid Center as a community education and training center. In November, the US Department of Housing and Urban Development announced a national capital grants competition for public housing authorities. The Housing Authority of the City of Asheville is eligible to apply for as much as $5 million to purchase, construct or renovate property for a community education and training center.

The grant requirements directly align with the existing uses now at the Reid Center, and may represent a unique opportunity to meet Council, neighborhood, and community-wide public service goals. The grant funding is specifically for public housing authorities to develop facilities to provide early childhood education, adult education, and/or job training programs for public housing residents. Each of the current users of the Reid Center is directly engaged in those activities:

- Community Action Opportunities operates their Head Start program in the "annex" building;
- Green Opportunities now runs their green job training and placement program from the Reid Center;
- Partners Unlimited provides training and remediation services to keep students in school and for out-of-school youth.

The Housing Authority uses part of the Reid building space for management and maintenance of its public housing developments in the area. The Reid Center is located adjacent to or nearby Erskine, Walton and Livingston Street public housing communities, and residents of those communities and other public housing communities directly benefit from the activities at the Center. All of these community partners would commit to a plan to renovate the Center, enhancing the energy efficiency and sustainability of the existing buildings, and using the renovation itself as a training opportunity for underemployed community residents.

From a community and neighborhood perspective, preserving the Center as an important historical resource has been voiced as a key community priority. The Housing Authority would incorporate Asheville's African-American heritage in its vision for the facility.

The use of the facility as a community education and training center would help meet Council strategic goals for sustainable development and job creation. Council currently funds (both through Outside Agency and through federal funds distributed by the City) Green Opportunities and the Housing Authority.

Additionally, if successful, the grant would allow the City to sell the property to the Housing Authority for its appraised value, potentially contributing significantly to the next phase of construction at the new Livingston Street Center.

The key commitment required at this time from the City for this project to be eligible for funding, would be the commitment from the City to provide the Housing Authority with long term site control of the property (sale or long term lease), contingent only on grant approval.

Other commitments the Housing Authority has requested the City consider making are:

- Subgrant of the HUD Special Purpose Grant of $137,200 to the Housing Authority for renovations, contingent on the new HUD grant award. This grant was made to the City as a part of a package of congressional earmarks, and can only be used for the Reid Center.
- Subgrant of some portion of the recently awarded TIGER II Planning Grant. $100,000 of this grant has been reserved for development assessment and planning on City-owned property in the "East of the Riverway" target area. The Housing Authority has asked for consideration of the use of $50,000 of these funds, again contingent on the award of the new HUD grant.
- Payment by the City of Asheville of some percentage of utility costs for the building for the three years of the project The Housing Authority has suggested 50%.

The deadline for the grant application is in February, 2011. Prior to that date, the Housing Authority will need to prepare a preliminary plan for renovation, gain commitments from not only existing partners but also from other education and training partners in the community, and provide commitments for five percent of the grant in matching funds.

The Housing and Community Development Committee considered the Housing Authority's proposal at their January 5, 2010, meeting and they recommended adoption of the resolution.

These changes directly support the City's Strategic Operating Goals as follows: (1) *Fiscal Responsibility*: If successful, the return from the sale would yield funds to support the City in pursing other projects, and remove from the City expense the operation of an inefficient building; (2) *Sustainable*: The proposed project would create opportunities for City residents to learn sustainable job skills; and would be an important component of the East of the Riverway project; (3) *Job Growth and Community Development:* The project would support diversified job growth through "green" jobs training; expand partnerships for economic development; and create local labor pool development opportunities; and (4) *Safe:* The project would support ongoing recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Ensure continued operation of neighborhood-based employment education and training center;
- Existing organizations to operate those programs are in place there;
- Renovations would be a training opportunity, helping create skills while keeping costs down;
- City would sell building for appraised value;
- HUD Capital Grant sought is available only to Housing Authorities;
- No other funding identified for building renovation;
- Neighborhood has identified saving building as important;
- Use of gym by City could be continued until new gym is constructed.

Concerns:

- Construction could possibly interfere with recreation programming;
- Other use possibilities have not been thoroughly explored;
- Structural, other existing conditions could impact cost;

If the Housing Authority was awarded the HUD Capital Grant, the City would be able to sell the Reid Center for appraised value. Continued operation of the gym would be an ongoing expense, but at a percentage of the cost needed to operate the entire Center now.

City staff recommends City Council adopt the resolution to support the Reid Center Grant proposal by the Housing Authority of the City of Asheville.

Mr. Staudinger responded to Mayor Bellamy when she asked what would happen if the Housing Authority does not receive the grant.

Mr. David Nash, Chief Operations Officer of the Housing Authority of the City of Asheville, and City Attorney Oast responded to Mayor Bellamy about the commitment of the partnership and the continued use of the building for a community based education and training center.

At Mayor Bellamy's request, Mr. Nash said that he would meet annually with the community in order for them to continue to be involved in the Reid Center.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-14. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 317

B. CIVIC CENTER RENOVATION UPDATE

RESOLUTION NO. 11-15 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT AMENDMENT WITH PBC+L AND BETSCH ASSOCIATES FOR PHASE II ARCHITECTURAL AND ENGINEERING DESIGN SERVICES FOR THE CIVIC CENTER RENOVATIONS

ORDINANCE NO. 3945 - BUDGET AMENDMENT FOR CIVIC CENTER RENOVATIONS

RESOLUTION NO. 11-16 - RESOLUTION DECLARING THE CITY OF ASHEVILLE'S INTENT TO REIMBURSE ITSELF FOR CAPITAL EXPENSES INCURRED WITH CONNECTION WITH THE RENOVATION, CONSTRUCTION AND EQUIPPING OF THE CIVIC CENTER FROM THE PROCEEDS OF AN INSTALLMENT FINANCING CONTRACT TO BE EXECUTED IN FISCAL YEAR 2012

Economic Development and Civic Center Director Sam Powers said that this is the consideration of a (1) a resolution authorizing the City Manager to sign a contract amendment for architectural and engineering design services for the preparation of construction drawings, receipt of bids, and administration of the construction contract for Phase II renovations to the Asheville Civic Center to meet requirements for the Southern Conference Basketball Tournament; (2) a budget amendment in the amount of $480,000 from existing Civic Center capital project funds to establish a project budget for the design contract; and (3) a reimbursement resolution, which officially declares the intent of the City to be reimbursed for costs associated with the project from the proceeds of the installment financing contract.

A project timeline, preliminary estimate of probable project costs, and source of funds have been provided to City Council. It is anticipated that the project financing will be done through an installment financing contract conducted through the City's finance department and reviewed by the NC Local Government Commission (LGC), similar to the process used with other recent City building projects. A Reimbursement Resolution, which officially declares the intent of the City to be reimbursed for costs associated with the project from the proceeds of the installment financing contract, is also provided to Council for consideration. The project timeline anticipates that construction will begin in June 2011, and be completed by December 2011.

The action supports current and prior Strategic Operating Plan Goals: Fiscal Responsibility, by leveraging internal and external partnerships for pursuing capital improvement projects and infrastructure projects; Green and Sustainable, by taking the City's sustainability program to the next level, which will include HVAC improvements to the Banquet Hall, increased recycling, and energy efficient lighting improvements; and the Job Growth and Community Development Focus Area, by creating more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

The action complies with the Civic Center Commission's Strategic Plan, as well as recommendations of the 2006 Civic Center Task Force. The action supports the Downtown Master Plan, which calls for a near-term action step to maintain and upgrade the existing Civic Center and Thomas Wolfe Auditorium to serve for at least the next five to ten years.

City Council's Planning & Economic Development Committee reviewed and supported the SoCon bid as an event with a substantial economic impact of over $16 million for the initial three-year bid period.

Pros:

- Action meets the requirements to facilitate the Southern Conference, and the resulting $16 million economic impact.
- Action will support improved visitor experience and increased revenue capabilities for the Civic Center by increased seating, more points of sale, and increased opportunities for promoter use of the renovated facility.
- Action leverages significant partnership funding to allow for greater levels of renovation.

Con:

- Financing the project slightly increases the lifetime cost of the project due to the payment of interest on the amount financed.

Funding already approved by the TDA and Buncombe County, along with existing Civic Center capital funds and planned FY 2011-12 CIP funding as outlined in the five-year Capital Improvement Program totals approximately $3 million. The total cost of Phase II renovations, including the professional services contract, will likely be $4.8 million. The City will therefore need to finance $1.8 million. The financing will be structured such that debt service payments will begin in FY 2012-13. Based on discussions with City finance staff, the projected debt financing payback would be 5-6 years with annual debt service of $400,000, which will be covered by future CIP allocations and TDA payments. In addition, staff and Civic Center Commission members continue to explore additional revenue sources.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to sign a contract amendment with PBC+L Architecture and Betsch Associates for Phase II architectural and engineering design services for the preparation of construction documents, receipt of bids, and administration of the construction contract; (2) approve a budget amendment in the amount of $480,000 from existing Civic Center Capital Project funds to establish a project budget; and (3) adopt the reimbursement resolution, which officially declares the intent of the City to be reimbursed for costs associated with the project from the proceeds of the installment financing contract.

Mr. Mike Burke, Chairman of the Civic Center Commission, said that in 2009, the City of Asheville led a successful collaborative partnership initiative which resulted in Asheville being named the official host of the NCAA Southern Conference (SoCon) Men's and Women's Basketball Championships for 2012-14. The award of the SoCon Tournament 2012-14 formed the nucleus of the City's application to the Buncombe County Tourism Development Authority (TDA). In July 2009, the TDA awarded the Civic Center $2 million in Product Development Grant Funds for renovations to the Civic Center arena. In addition, Buncombe County Commissioners partnered with the City by approving $320,000 for the project. City Council has continued to include the Civic Center as a priority in the City's Capital Improvement Program (CIP). UNC Asheville will host the preliminary women's games in the new Kimmel Arena. The ABC Board will partner with the Civic Center in an alcohol awareness public educational campaign utilizing the new messaging infrastructure. The newly created Regional Sports Commission is leading the SoCon Local Organizing Committee, whose responsibilities include raising sponsorship funds for the event.

After the TDA grant award, the Civic Center Commission developed a Request for Qualifications (RFQ) process for architectural services for the required renovations. An evaluation committee comprised of Civic Center Commissioners, local design professionals and City staff, conducted an extensive public RFQ process. As a result, the design team of PBC+L Architecture and Betsch Associates was selected. PBC+L Architecture has an office in Asheville and has designed many public assembly facilities. Betsch Associates has designed several arena projects for SoCon institutions. The design team was contracted to provide the preliminary architectural report refining the project scope, timeline, and an updated estimate of probable project costs to meet SoCon commitments. On December 29th, the Civic Center Commission unanimously endorsed the preliminary concept provided by the architectural design team, and voted to recommend to City Council that the City Manager be authorized to execute a contract

amendment for Phase II architectural and engineering design services for the preparation of construction drawings, receipt of bids, and administration of the construction contract.

Mr. Chad Robertson, representing the PBC+L, briefly explained the proposal and what the Civic Center Commission wanted them to achieve with the funding available.

Mr. Ken Betsch, represent Betsch Associations, reviewed in detail the drawings, construction schedule and project budget in order to make the Civic Center more competitive.

Councilman Davis, liaison to the Civic Center Commission, was pleased with the active role of the Civic Center Commission and Mr. Powers in this process. He felt there will continue to be good events in the building during the construction phase.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Davis moved for the adoption of Resolution No. 11-15. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 319

Councilman Davis moved for the adoption of Ordinance No. 3945. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 444

Councilman Davis moved for the adoption of Resolution No. 11-16. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 320

C. RESOLUTION NO. 11-17 - RESOLUTION ADOPTING THE CITY OF ASHEVILLE'S LEGISLATIVE PROGRAM FOR THE 2011 SESSION OF THE N.C. GENERAL ASSEMBLY

RESOLUTION NO. 11-18 – RESOLUTION SUPPORTING THE N.C. METROPOLITAN MAYORS COALITION 2011 ADVOCACY AGENDA

RESOLUTION NO. 11-19 – RESOLUTION SUPPORTING A STATEWIDE INDEPENDENT ENERGY EFFICIENCY PROGRAM

City Attorney Oast said that this is the consideration of a resolution approving the City's State Legislative Agenda for the 2011 Session of the North Carolina General Assembly. This matter was continued from Council's December 14, 2010 meeting.

At its meeting of November 9, 2010, Council initiated discussion of the State Legislative Agenda for 2010. He provided Council with the December 14 Staff Report for details. He divided this report into three major areas.

I. Continuing Local Issues. Based on direction received at the November 9 meeting, and on information received since them, a resolution has been prepared requesting legislative action with respect to several issues, some of which are carried over from previous years, and some of which are of persistent local concern.

A. Adjustment of Woodfin/Asheville boundary and UNC-A area and Merrimon Avenue. This is a renewal of the request developed last year. We have identified with more particularity the location of the boundary, and have reviewed the matter with the affected governmental and educational agencies. Of particular importance is that a method was developed for allowing privately owned properties currently located in Woodfin to remain subject to Woodfin's jurisdiction, at their option.

B. Clarification of the Video Service Competition Act of 2006. This was also carried over from last year. We sought introduction of a bill to preserve the status quo with respect to features of local cable television franchises (such as intranets) that were not addressed by the Video Service Competition Act. The bill that was introduced was referred to a study committee.

C. Authorization for Asheville to condition provision of water service on annexation for developments of a certain size. This request has been made in the past, and has taken several forms. This was last considered in 2009.

D. Clarify authority to use property assessment process to finance certain energy efficiency projects. This continues efforts begun in 2009. While legislation has been adopted that implements parts of this authorization, questions remain as to the effect of such assessments on home mortgage financing, and restrictions on the sources of revenue available for such programs. The School of Government has been working with stakeholder parties on clarification of these issues.

II. New Matters. Since the November 9 meeting, we have received several other items for potential inclusion on the legislative agenda:

A. Structure of State ABC system. In recent years, there have been discussions regarding changes to the structure of the State ABC system. These discussions have centered on privatizing parts of the system, which would have the affect of diminishing local control and local revenue. The local ABC Board has asked Council to consider a resolution supporting the current structure.

B. School system consolidation. There have been indications that the topic of school system consolidation may come up in this legislative session, particularly in view of the State economic situation. Asheville and Buncombe County currently operate separate school systems, so the impact of potential legislation on this subject is of particular interest on a local level.

C. Assistance for Water Lines in Mills Gap Road Area. Residents of this area around the closed CTS electroplating facility have inquired about obtaining City water to help them with ground water contamination problems. Last year, Council voted to request State and federal elected officials for assistance to obtain the materials needed to perform this work, and such other assistance as may be available.

D. Parks District. Council has expressed interest in legislation that would allow for formation of a parks district, with the possibility of participation by two or more local governments. While a similar arrangement may be possible through an inter-local agreement, legislation allowing for a parks district would likely encompass some powers that typical inter-local agencies do not have.

III. State Municipal Policy Matters. We have now received the North Carolina League of Municipalities Proposed Advocacy Goals. The League has scheduled a conference for January 20, 2011, at which the agenda will be narrowed down and prioritized. Each member municipality is entitled to one vote in this process.

If Council desires for Asheville to participate in this process, Council should select a delegate, and should provide voting direction on the major issues. Council's attention is directed to the following items of particular interest.

A. Page 1, Item 1B. Municipal broadband authorization. With the termination of local cable television franchises by operation of the Video Service Competition Act (VSCA), the ability of local governments to build and operate fiber-optic systems has been a matter of interest across the State.

B. Page 3, Item 2A. Local control over ABC operations. This is consistent with the local ABC Board's request, summarized above.

C. Page 3, Item 2B. More influence for cities in ABC permitting decisions. This has been an issue over the years for Asheville and other municipalities. Currently, local involvement is advisory only, which can lead to repeated permitting of problem locations.

D. Page 4, Item 3A. Sales tax distribution process. The method of sales tax distribution has been a matter of interest to the City for several years.

E. Page 5, Item 3D. Prepared meals and beverage tax. This has been considered by Council in the past. The proposal would be for a State-wide local option authorization.

F. Page 8, Item 5A-E. Transportation infrastructure. This proposal is highlighted because of consistent local interest in transportation issues in general, including: (1) Passenger rail service; (2) Alternative nodes of transportation; and (3) Sidewalks.

He also provided Council the NCLM information package is a description of the policy development process, along with a form and method for submission of new items for legislative consideration. In lieu of or in addition to participating in the NCLM Advocacy Goals Conference, Council may by resolution support individual proposals.

He provided Council with the previously received the N.C. Metro Mayors legislative agenda.

We have received a proposed resolution supporting a Statewide Independent Energy Efficiency Program. This resolution anticipates a legislative proposal by the NC SAVE$ ENERGY alliance to fund energy efficiency programs to assist low income households. Council may adopt this resolution separately, and it can be included with information submitted to the legislature.

As covered in previous staff reports, Council has usually reviewed the legislative agenda of other civic and governmental organizations for items to include in its own legislative agenda, or for opportunities for mutual support and collaboration. The Asheville Area Chamber of Commerce is one of the organizations whose legislative agenda is of interest to us, for self-evident reasons.

Since the December 14, 2010, Council meeting, we received information from the Governmental Affairs Task Force (GATF) regarding the State and Federal legislative priorities for the Asheville Area Chamber of Commerce. That information was forwarded to Council last month. The Chamber's and GATF's stated approach is to have a "concise and powerful" legislative agenda. With this in mind, the GATF voted on January 4, 2011, to recommend the following three State legislative priorities to the full Chamber Board for consideration:

- Support programs and state legislation to help small businesses create and maintain jobs, including tax incentive strategies, grants and an expansion of the small business preference for companies seeking contracts with state government.

- Support the "Fund Schools First" statewide campaign to fund schools and preservation of state funding for cooperative high school programming (Huskins, Learn and Earn Online, dual enrollment).

- Support incentives and programs to enhance green building and energy conversation efforts.

These priorities were presented to State legislators at the Chamber's legislative luncheon on January 14.

Staff's recommendation is as follows:

1. Continuing local issues. Adoption of the Resolution regarding the State Legislative Agenda for 2011 is recommended. Adoption of this resolution will enable staff to assemble information in support of each request for submission to our legislative delegation. It is important to note that this is a starting point; there will be many opportunities to identify and act on other legislative proposals.

2. New matters. At Council's direction, appropriate resolutions can be prepared for either of the other listed items, or those items can be added to the State Legislative Agenda resolution.

3. State Municipal Policy Issues. There is a lot of information in the League's proposal, and Council may desire more information on some of the items. Representatives of the League have offered to come to Asheville to discuss these matters. With this in mind, Council may wish to defer action on this item until its meeting in January.

It was the consensus of Council to have a standing topic on the 2nd meeting agenda each month to discuss additional legislative items.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-17, adopting the following legislative program for the 2011 Session of the North Carolina General Assembly (1) Introduce a local bill to adjust the boundaries of Asheville and Woodfin to: (a) Eliminate pockets of unincorporated area between the two municipalities; (b) Resolve jurisdictional confusion in the area of UNC-A (including land set aside for future growth), and Broadway/I-26/River Road interchange; and (c) Authorize agreements regarding service delivery to affected private properties; (2) Introduce a local bill or support general legislation to clarify status of local intranet facilities in connection with the Video Service Competition Act of 2006; (3) Introduce a local bill providing for annexation agreements for certain developments that receive city water service; and (4) Support legislation to clarify authority and sources of revenue for implementation of Property Assessed Clean Energy (PACE) programs. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 322

Mayor Bellamy moved for the adoption of Resolution No. 11-18, resolution supporting the N.C. Metropolitan Mayors Coalition 2011 Advocacy Agenda. This motion was seconded by Vice-Mayor Newman and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 324

At Mayor Bellamy's request, Vice-Mayor Newman moved for the adoption of Resolution No. 11-19, supporting a statewide independent energy efficiency program. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 326

D. CONSIDERATION OF SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT'S RECOMMENDATION REGARDING THE TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY FOR THE CITY OF ASHEVILLE

Planning & Development Director Judy Daniel said that this is the consideration of revised elements proposed by the Sustainability Advisory Committee for Energy and the Environment (SACEE) for the Transformational Development Policy adopted in November 2010.

At the November 23, 2010, meeting the City Council adopted a resolution supporting the creation of a "Transformational Development Policy". That action followed several other considerations of the policy (in August, September, and November) where the Council directed the staff to modify certain aspects of the policy. The Council adopted the policy, but after discussion also directed the Sustainable Advisory Committee for Energy and the Environment (SACEE) to consider certain elements of the policy and provide their thoughts and recommendations to the Council.

Also of interest, on January 4, 2011, the Buncombe County Commission adopted a policy to support the creation (through new construction or rehabilitation) of workforce housing (limited to rental housing). She provided Council a copy of that policy, a summary of its provisions, and a comparison of the two policies. It differs from the City Transformational Development Policy in scope, detail, and process; but is directed to the same goal of incentivizing the creation of workforce level rental housing.

The staff suggests that a "sunset" or "date certain renewal" clause be added to the policy. Since the nature of the policy is related to the excessive difficulties in finding financing for even very marketable projects that meet many Council goals; it may be advisable to consider an annual update and reconsideration of the need for the policy or if certain aspects of it should be changed or eliminated. The annual report would also allow the Council to monitor the performance of the grantees in meeting the requirements established by the Council.

The Council may wish to consider adding certain elements that are in the County policy such as requiring annual proof of income or requiring residents to be full time County residents.

Mr. Matt Raker, Chairman of SACEE, said that SACEE considered the policy at a meeting on November 17. After a substantial discussion they determined that they needed additional time to review the policy elements. They formed a subcommittee to consider the policy and requested that the Council allow them until the end of January to provide comments (given the difficulty of convening meetings in December). The Council granted that extension, and the subcommittee met on December 15 to consider the policy and its relationship to and potential impact on the Sustainability Bonus policy recently adopted by the Council. In their review of the Transformational Policy the SACEE subcommittee also requested, received, and included input from the Affordable Housing Working Group (AHWG), understanding their interest in protecting the intent and elements of the Sustainability Bonus policy. SACEE notes that the AHWG comments were largely consistent with SACEE's thoughts, and thus the memo reflects the concerns and recommendations of both groups.

He provided Council with the memo with their comments, along with an annotated copy of the policy elements adopted by the Council indicating the changes recommended by SACEE (including the thoughts of the Affordable Housing Working Group). In summary, SACEE recommends:

- Limits to the geographic scope of the policy to be consistent with the Sustainability Bonus
- Requiring Energy Star or higher green building standard
- Substantial changes to the green building elements
- Requiring 20% affordable housing, rather than 10%
- Adding a better definition of what open space elements should be expected
- Clarification of the specific number of "preferred" elements required
- Changing the policy title to: Sustainability Incentive Grant

Mr. Raker strongly encouraged Council to adopt the recommendations as they believe the policy will effectively serve Council's strategic goals, complement the recently enacted Sustainability Bonus, be a strong economic development tool, and yield public benefits appropriate for the level of public involvement.

Councilman Russell recalled Council requesting SACEE's input on the green and sustainability building techniques in preferred element 3 and was a little confused at the overall review and recommended changes in the entire policy. Vice-Mayor Newman agreed; however, they felt they felt it was important to have the policy be consistent with other adopted Council's incentives (e.g., commercial corridors). He felt we should have sent the draft policy to SACEE before adopting it in November of 2010.

Mr. Raker said that they wanted to make sure there were green building components in the policy but they also wanted to reinforce the other City's goals and practices.

After a brief discussion, it was the consensus of Council (1) to ask City staff to take the adopted policy and show the SACEE's recommendation with strike-outs and SACEE's comments to the side so Council can see clearly their input; (2) to have options presented when changes are recommended; (3) that the revised policy be sent to the Council of Independent Business Owners for review; and (4) to place this item on the February 22, 2011, agenda consideration.

VI. NEW BUSINESS:

A. ORDINANCE AMENDMENT TO REQUIRE PAWNBROKERS AND SECOND-HAND DEALERS TO SUBMIT THEIR DAILY PAWN AND/OR PURCHASE TRANSACTIONS TO THE ASHEVILLE POLICE DEPARTMENT ELECTRONICALLY

Mayor Bellamy said that there has been a request by property owners to delay this item. Therefore, Councilman Davis moved to delay action on this item. This motion was seconded by Councilman Russell and carried unanimously.

B. BOARDS AND COMMISSIONS

Regarding the Asheville-Buncombe Community Relations Council, Councilman Bothwell moved to postpone taking action on the vacancy left by Ms. Kate Pett for six months. This motion was seconded by Councilman Smith and carried unanimously.

Regarding the Tree Commission, Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Robert Oast Sr. and Parker Andes, as members on the Tree Commission, expired on December 31, 2010. Both individuals are not eligible to

serve another term. It was the consensus of Council to interview the two applicants who have applied for the Commission: Debbie Emmons and Mike Kenton.

RESOLUTION NO. 11-20 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Douglas Hattaway (Alternate) and David Brown (Regular) as members on the Board of Adjustment expire on January 21, 2011. In addition, there currently exists a vacancy, left by Juma Jackson, whose term will expire January 21, 2012.

The following individuals applied for vacancies on the Board of Adjustment: Bill Branyon, Eric Rainey, Nelda Holder, Ron King and David Nutter.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Douglas Hattaway (Alternate), David Brown (Regular) and appointing Nelda Holder (Alternate).

Vice-Mayor Newman moved to (1) reappoint Douglas Hattaway (Alternate) and David Brown (Regular) to each serve a three-year term respectfully, terms to expire January 21, 2014, or until their successors have been appointed; and (2) appoint Nelda Holder to serve the unexpired term of Mr. Jackson, term to expire January 21, 2012, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 328

RESOLUTION NO. 11-21 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Melanie Brethauer, Duncan McPherson and Gary Hamrick (as the Progress Energy representative), as members on the Sustainable Advisory Committee on Energy & the Environment (SACEE), expired on December 31, 2010.

The following individuals applied for vacancies on the Sustainable Advisory Committee on Energy & the Environment: Benjamin Colvin, Mandy Broderick, Aaron Sarver, Eric Rainey, Peggy Dror, Sherry Ingram, Charles Rosenblum, Parker Spears, Jeremiah Smith and Hobie Orton.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Melanie Brethauer and Duncan McPherson. As to the Progress Energy seat, SACEE has expressed an interest in converting this to a regular open seat (rather than an ex-officio for Progress Energy). It was the consensus of the Boards & Commissions Committee that Vice-Mayor Newman talk with Chairman Matt Raker to discuss this request prior to taking any action. The Boards & Commissions Committee will report their recommendation to Council after their next meeting.

Councilman Bothwell moved to reappoint Melanie Brethauer and Duncan McPherson to each serve a three-year term respectively, terms to expire December 31, 2013, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 329

RESOLUTION NO. 11-22 - RESOLUTION APPOINTING A MEMBER TO THE

ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Paul Ford, Geraldine Melendez and Jeff McMickens, as members on the Asheville-Buncombe Fair Housing Commission, expired on December 31, 2010.

No one has applied for the vacancies on the Fair Housing Commission.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Jeff McMickens and to re-advertise for the remaining seats.

Councilman Smith moved to reappoint Jeff McMickens to serve an additional three-year term, term to expire December 31, 2013, or until his successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 330

RESOLUTION NO. 11-23 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that the term of Leesa Gibbs, as a member on the Firemen's Relief Fund, expired on January 1, 2011.

The following individual has applied for a vacancy on the Firemen's Relief Fund: Christopher James Bradford.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Leesa Gibbs. He noted that Ms. Gibbs has served 3 2-year terms; however, the board only meets twice a year.

Councilwoman Manheimer moved to reappoint Leesa Gibbs as a member to the Firemen's Relief Fund to serve an additional two-year term, term to expire January 1, 2013, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 331

RESOLUTION NO. 11-24 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Stephen Jones and Marcia Bromberg, as members on the Asheville Greenway Commission, expired on December 31, 2010.

The following individuals applied for vacancies on the Greenway Commission: Sandy Taratino, Eric Rainey, Philip A. Ellis, Mary Weber, Charles Rosenblum, Robert Roepnack and Ally Donlan.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Stephen Jones and Marcia Bromberg.

Councilman Bothwell moved to reappoint Stephen Jones and Marcia Bromberg to each serve a three-year term respectfully, terms to expire December 31, 2013, or until their successors have been appointed. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 332

RESOLUTION NO. 11-27 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the term of Louis Bissette, as a member on the Metropolitan Sewerage District Board (MSD), expires on January 19, 2011.

The following individuals applied for this vacancy: Eric Rainey and Barbara Field.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended extending Mr. Bissette's term until June 30, 2011.

Councilman Russell moved to extend Louis Bissette's term until June 30, 2011, pending City Attorney verification that City's appointment of an MSD Board member can be extended. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 335

RESOLUTION NO. 11-25 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE AREA RIVERFRONT REDEVELOPMENT COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Joe Ferikes and Robert Camille, as members on the Asheville Area Riverfront Redevelopment Commission, expired on January 1, 2011. Both positions must be a riverfront or business property owner.

The following individuals applied for vacancies on the Riverfront Redevelopment Commission: Chris Joyell, Gail McCarthy, Eric Rainey and Philip A. Ellis.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Joe Ferikes and Robert Camille.

Councilman Smith moved to reappoint Joe Ferikes and Robert Camille to each serve a three-year term respectfully, terms to expire January 1, 2014, or until their successors have been appointed. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 333

RESOLUTION NO. 11-26 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Kevin Jenkins and David Erb, as members on the Transit Commission, expired on December 31, 2010.

The following individuals applied for vacancies on the Transit Commission: Brett A. McCall, Joan A. Gryscavage, Kevin D. Cross, Pamela K. Fisher and Dennis Wayne Miller, and Flora Marr.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Kevin Jenkins and David Erb.

Councilman Smith moved to reappoint Kevin Jenkins and David Erb to each serve a three-year term respectfully, terms to expire December 31, 2013, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 33 – PAGE 334

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Kyle Ross presented her research from 2000-2010 about the justice system in Buncombe County, specifically related to the Police Department. Specifically she spoke about the terminated police officer Roger Aly. She also presented Council with the Police Department's mission statement and guiding principles and asked Council hold the Police Chief accountable to those guiding principles. City Attorney Oast said that Council cannot discuss personnel in open session.

Councilman Bothwell complimented Public Works Director Cathy Ball and Assistant City Manager Jeff Richardson on their creative approach to use drug rehab workers to clear snow from sidewalks.

The following claims were received by the City of Asheville during the period of December 3-30, 2010: Geoff Alexander (Transit), Kathryn Assoian (Police), Michael S. Wyatt (Transit), James L. Brown (Parks & Recreation), Julie Dill (Transit), Elvis M. Pinkney (Transit), Frank Huggins (Water), Garret Burnett (Streets), Charter Communications (Water) and Jim Johnson (Fire). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:34 p.m.

Magdalen Bulleson
CITY CLERK

Jan M Bellamy
MAYOR

Friday – February 4, 2010 - 10:00 a.m.
Warren Wilson College
Gladfelter Building – Canon Lounge

City Council Annual Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (left meeting at 1:30 p.m.); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Bellamy convened the meeting and welcomed everyone to the annual City Council retreat.

Mayor Bellamy thanked Warren Wilson College for hosting City Council's retreat and introduced Mr. Sandy Pfeiffer, President of Warren Wilson College, who briefly outlined the successful national model of partnership between the City of Asheville and Warren Wilson College.

He welcomed Council to the Warren Wilson College Campus and explained their shared vision of sustainability. He then outlined the many areas of partnership between Warren Wilson College and the City of Asheville.

Mayor Bellamy thanked Councilman Bothwell and Councilman Russell for their assistance on the retreat agenda. She then introduced Mr. Chuck Fink, facilitator, who asked each Council member what outcome they would like to see out of this retreat; how they will measure success of the retreat; and something about themselves that people don't know. He then reviewed the norms of the meeting and had Council do a short exercise regarding the quality of communication.

Discussion surrounded Director of Administrative Services Lauren Bradley's update on the impact of State budget on City of Asheville. Even though a lot is unclear and unknown, she felt we have a manageable process for a continuation budget. Staff will continue to closely watch the State's budget to see how it might impact the community.

It was the consensus of Council to have staff research the steps necessary to enable a voter referendum on sales tax to apply only in the City of Asheville and the timeline.

Discussion occurred through City Attorney Oast's update on the annexation bills and how they would affect our pending annexations. Council was in agreement that we need to educate members of our delegation on the (1) distinction between involuntary and voluntary annexation and encourage them to look at ways to give cities the ability to grow; and (2) need to look for creative ways for the City to grow showing how the City is managing their budget. He also responded to Mayor Bellamy regarding electronic gaming. It was the consensus of Council to support the initiative of the N.C. League of Municipalities' position on annexation.

It was the majority of Council to advise our legislators that City Council is not in favor of a moratorium that stops annexations already in process; but they recognize that the majority supports an anti-annexation bill. They would like the bill to continue to include a provision that they have seen in previous annexation bills that would allow cities to continue to require annexation of development adjacent to the city that makes use of City services, such as water.

Assistant City Manager Jeff Richardson briefly updated Council on the current Strategic Operating Plan. He, and other staff, responded to Council's questions/comments, noting that answers not readily available would be provided to Council.

Goals Setting

There was considerable discussion about the time period for the strategic goals. It was the consensus of Council to review and update the current strategic goals for 2010-11, with staff working immediately on any policy items that have no budgetary impact. However, if there is budgetary impact, it will be wrapped into the next fiscal year budget. Mayor Bellamy explained that after Council identifies their strategic goals, City staff will wordsmith the goals and bring them back to Council at a worksession for their review and then to a formal meeting for adoption. As the budget process for Fiscal Year 2011-12 proceeds, items with big budgetary impacts will go to the Finance Committee and then recommended to Council, possibly in worksession.

Each Council member explained their personal goals, which were then grouped into the following six focus areas: Affordable, Fiscal Responsibility, Green/Sustainable, Safe, Job Growth/Community Development, and Multi-Modal Transportation (which was added as an additional focus area).

Councilman Smith:

- Look at water rates with an eye toward small business
- Continuing the energy goals set to reduce internal costs
- Maintain commitment to Housing Trust Fund
- Affordable Housing Standing Committee
- Best ways to achieve some master plan goals
- Encourage and facilitate other job creators to connect them with small businesses
- Continue support of incubator program
- Look at food production – how can we support area farmers and area restaurants
- Need for bigger strides in multi-modal transportation
- Track effectiveness of the nuisance court
- Safety for pedestrians on the Hillcrest Pedestrian Bridge
- Add staff and resources to the APD's office for child internet exploitation

Councilman Manheimer:

- Rewrite of the UDO using a form based method
- Ask the DOT to look at the Merrimon Avenue corridor problem again since they have now adopted the complete streets policy
- Adopt a City of Asheville Complete Streets Policy
- Take action in finding ways to fund sidewalks/bike lanes/greenway projects in a comprehensive manner
- Continue to look at ways to resolve our budget health issues
- Continue to improve our governmental relationships with County Commissioners, state and local delegation, and neighboring municipal communities
- Reinforcement of comprehensive water rates
- Include elements of bike safety

Councilman Davis:

- Move forward with the Business Improvement District
- Support riverfront redevelopment
- Support Civic Center renovations
- Need for fireworks on the 4th of July and New Years Eve

Mayor Bellamy:

- Make sure that adopted master plans are still a priority
- Foster more employment in our community
- More engagement with the Land-of-Sky
- Review of our enterprise funds
- Seek funding from the Livable Communities Initiative
- Look for ways to fund the Capital Improvement Plan
- Look for ways to leverage our existing dollars for more pedestrian/bike dollars

Vice-Mayor Newman:

- Look at proposals on our clean energy commitments
- Need for more multi-modal transportation
- Look for funding for sidewalks and greenways
- Create a new sidewalk crew to focus just on new construction
- Partnership with County on greenways
- Continue to focus on regional issues facing the City – work more with County and state legislators
- Look for more regional sustainability initiatives
- Low income housing tax credit products
- Increase the scale of tax credit projects in Asheville
- Improve air service to the Asheville Regional Airport
- Review High Point model regarding reduction of crime

Councilman Bothwell:

- Referendum on public financing of local elections
- Eager to see GIS mapping
- Support UDO rewrite to form based code
- Review selling water to other municipalities
- Look for resources to fund Mountain Bike Skills Park
- Carefully review candidates for Planning & Zoning Commission
- Power Saver Program through the FHA
- Carbon assessment for whole community done by professors and interns at UNC-Asheville or Warren Wilson College
- Public/private partnership for adding solar panels to the Civic Center roof
- Consider a ban for tree-topping
- Review UDO spacing of trees in parking lots to help with heat effect
- Review steep slope law regarding lower elevations
- Reconsider fluoridation in Asheville water
- Advance bicycle and greenway master plans
- Study downtown trolley or circulating trolley in City of Asheville
- Need for more sidewalks
- Consider cost sharing with neighborhoods for more sidewalks
- Impact of increasing of parking fees and lowering deck rates for City residents
- Continue to look at the number of adequate handicapped parking spaces
- Look at Durham's new law which lets police use international id cards for legal id
- Consider 3 Strikes law – City not contracting with companies and contractors who have been found guilty of labor, civil rights, environmental or tax laws

Councilman Russell (was not in attendance during this part of the retreat).

Council then reviewed each of the existing goals and objectives which were confirmed, amended or deleted and included, by majority vote, any individual goals.

After reviewing each of Council's personal goals, the following is a list of the new goals and objectives that received majority support of Council, to be folded into the Strategic Operating Plan:

- Affordable Housing Standing Committee
- Review of wholesale and resale water across jurisdictional lines
- Increase engagement with Land-of-Sky on their water study
- Comprehensive review of enterprise funds, community education and transparency
- Analyze Community Improvement District
- Review tree topping policy
- Review requirements of parking lot trees regarding spacing and shade
- Seek to obtain the Livable Communities Grant
- Support "Between the Bridges" initiative
- Maintain momentum and build on partnerships for Civic Center improvements
- Look for partnerships for fireworks on 4th of July and New Years Eve
- Support and promote job growth
- Seek resources to enhance Police Department's internet child abuse program
- Monitor High Point's crime model
- Look for resources to fund sidewalks, bike lanes, greenways beyond pay as you go

In addition, the new multi-modal focus area definition was discussed and agreed upon as follows: "Integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in a funding priority list."

The following list of personal goals, for the new multi-modal focus area, will be narrowed down at a worksession:

- Streets, sidewalks, greenways, river access, etc. Make headway – add new sidewalk crew to double output.
- Look for partnerships for greenway investment.
- Clearly develop long-term Capital Improvement Plan with funding plan. Growth: Take action for funding sidewalk, bike lane, greenway projects beyond pay-go; look for comprehensive strategy.
- Pursue a pedestrian and bike friendly community grant opportunity
  - Leverage existing dollars
- Solve the Merrimon Corridor problem
  - N.C. Dept. of Transportation analysis using Complete Streets Policy
  - Council adoption of Complete Streets policy
- Transit: Make multi-modal its own focus area; advance sidewalks, greenways.
  - Study downtown trolley
  - Evaluate cost-sharing for sidewalk projects
- Consider parking rate increase
  - Lower rate for residents
  - Adequate handicapped spaces
- Multi-modal Transportation for sidewalks, greenways, transit, etc. How can we increase support for this overarching goal?
- G.I.S. mapping of Master Plans.
- Evaluate and affirm goals to ensure alignment with Council and the community.
- Bike safety enhancements
  - Public education

Councilman Bothwell asked that as we try to go paperless that that staff not provide hard copies of PowerPoint presentations.

At the request of Councilman Davis, Mayor Bellamy, liaison to the Asheville School Board, will convey to them the extravagant look of their annual report, with Mayor Bellamy noting that they do have an in house print-shop.

Economic Outlook

Economic Development/Civic Center Director Sam Powers and Mr. Ben Teague, Senior Vice President of Economic Development at the Asheville Area Chamber of Commerce, reviewed with Council the overarching economic outlook for our area.

Wrap Up

When Councilman Smith felt this retreat felt rushed, City Manager Jackson said that if a facilitator would have been hired earlier a lot of the preparatory work could have been done in advance. Councilman Smith suggested the next retreat committee be identified sooner to begin work on the next retreat.

Councilman Davis was very pleased with the retreat location; however, since we also have a partnership with UNC-Asheville he suggested that as a location for the next retreat.

Adjournment

The retreat adjourned at 4:55 p.m.

Magdalen Bowleson
City Clerk

Mayor

Tuesday – February 8, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (arrived in meeting at 5:21 p.m.); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF MS. KIT CRAMER, PRESIDENT AND CEO OF THE ASHEVILLE AREA CHAMBER OF COMMERCE

Mayor Bellamy was pleased to recognize Ms. Kit Cramer, President and CEO of the Asheville Area Chamber of Commerce. Ms. Cramer was announced at the Chamber's new President and CEO on November 15, 2010. Prior to accepting the position in Asheville, Ms. Cramer was President of the International Downtown Association in Washington, D.C. Prior to that office, she worked for the Charlotte Chamber of Commerce for 17 years in various management capacities.

B. CITY RECOGNITION IN NATIONAL ENVIRONMENTAL HALL OF FAME FOR MUNICIPAL SUSTAINABILITY EFFORTS

Mayor Bellamy said that the City of Asheville is honored to join a league of both national and international organizations and individuals to receive an award from the National Environmental Hall of Fame. This award acknowledges the City for our leadership in energy efficiency, renewable energy and energy conservation.

Ms. Erika Schneider from Sundance Power Systems presented the award on behalf of the National Environmental Hall of Fame, to Mayor Bellamy and Energy Coordinator Maggie Ullman.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2011

B. RESOLUTION NO. 11-28 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE UNITED STATES OF AMERICA FOR CONTINUED OPERATIONS OF AN ARMY RESERVE CENTER AT 224 LOUISIANA AVENUE

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the Mayor to execute a Lease Agreement with the United States of America for continued operations of an Army Reserve Center at 224 Louisiana Avenue, Asheville NC.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional.

The property has been leased to the USA since 1950 at a rent of $1.00 for the entire 50 year term. The single story building and other improvements located on the property were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The most recent lease was signed in 2000 at an annual rent of $60,000 with escalations based on the Consumer Price Index.

At this time, the USA has offered to enter into a lease based on a rental rate that is more consistent with market based pricing, as follows:

(1) Term of five years
(2) Annual rental fee at an initial rate of approx. $82,000 per year with 5% annual increases

The USA procured an appraisal of the property to produce the new rental rate. City staff has further reviewed the pricing, by gathering and comparing lease rates of similar size and location within the Asheville market. On both accounts, there appears to be a gap between what is currently being paid by the USA (now $66,000/year) and the market rate for this property, approximately $100,000 per year. The new rental rate put forth at $82,000 and the 5% escalation rate allow a steady increase towards the market based price. The USA would pay for all utilities and other tenant expenses associated with operating the site.

The Notice of Intent to enter into a Lease Agreement with the United States of America was published on January 28, 2011, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. Strategic real property management, through the renewal lease agreements, presents the City with revenue enhancements to the General Fund.

Pros:

- Enhanced revenue through the lease fee income
- USA provides a valuable public service and is an excellent tenant

Con:

- None

The proposed increase to the lease amount will be built into the upcoming budget cycle for the Fiscal Year 2011-2012 budget. During the next four subsequent years, the lease rate will increase by 5 percent annually. Over the life of the five year lease, the city will realize more than $450,000 in revenue.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with United States of America on behalf of the City of Asheville.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. INTERIM REPORT ON WATER RATE STUDY

Water Resources Director said that in September 2010, City Council adopted a resolution authorizing Water Resources to enter into a contract with Raftelis Financial Consultants to conduct a Water Rates & Fees Study. Following is a summary of recent action steps that have been accomplished and/or are in progress:

- Organized a kick-off meeting with Water Resources staff to identify the goals, objectives, and expectations of the water rate study.
- Gathered billing, water usage, and meter data to determine if the current rate structure achieves revenue sufficiency, stability, and sustainability and ensures full cost recovery for services rendered.
- Analyzed past, current, and proposed budget data to predict future needs for the following costs: operating and maintenance, salaries, overhead, materials, debt service, Sullivan Act transfer, indirect costs, capital project needs, etc.
- Ensured any changes will be compatible with the new billing software.
- Attended a Finance Committee meeting to provide a progress update and receive feedback on the information presented.
- Benchmarked Asheville with other water utilities as a comparison.
- Developed a rate model with a five-year planning period that will be used to project water rates necessary to support all costs associated with providing water service.
- Propose changes to the existing rate structure to ensure that the water fund continues to be self-supporting while ensuring water customers pay fair and equitable rates.

This project is part of City Council's strategic plans to explore opportunities to ensure effectiveness and value for water fees charged and to operate the City of Asheville to the highest level of fiscal responsibility.

Pro:

- Present a progress report of the water rate study and solicit input to include in the final report.

Con:

- The study is not complete at this time. A final report with findings and recommendations is expected to be completed by April 2011.

Staff is looking for City Council feedback on the information presented by Raftelis.

Mr. Lex Warmath, representing Raftelis Financial Consultants, provided Council an update regarding the status of the Water Rate Study. He said some pricing and community objectives from Council will help them shape the next steps in the rate study.

Using charts, he showed how the revenues are slightly above the expenses for Fiscal Year 2011-12, and they do not see a need to adjust rates for next year in order to meet their revenue requirements. However, based on some assumptions (which he explained in detail), Council will need to do something over the next several years since there starts to be a gap between projected expenses and revenues under current rates.

He explained (1) how Asheville compared to other communities (a) Asheville's water sold is below average for comparable systems; and (b) City's annual capital spending is below average for comparable systems; (2) how Asheville compared to local customers, explaining how Asheville's rates are high, but that was based on Asheville's average customer usage (which is very low). The other cities (Hickory, Raleigh, Cary, Knoxville, Greensboro, Charlotte, etc.) have a tiered structure to encourage conservation; again however, Asheville customers conserve; and (3) how Asheville compared nationally, which for residential customers Asheville is higher than the average and for large industrial users, Asheville is much lower than the average.

He showed statistics on the usage and revenue distribution by class. It showed the majority of usage is by single-family residential and a good part is by multi-family residential; however, there is a much bigger proportion of revenues coming from residential customers than their demand profile would indicate.

He reviewed the following rate structure modification ideas: (1) raise commercial and multi-family rates elative to single family (a) provide more equitable cost recovery; (2) separate irrigation from residential rate (a) targets true to elective usage; and (3) capital improvement charge (a) meter differentials.

In response to Mayor Bellamy, Mr. Shoaf said that there is no recommended increase for Fiscal Year 2011-12. The next step is that Raftelis will prepare the final report which will include not only their findings but recommendations moving forward as well as a computerized rate model where we can plug in different scenarios. Going next year forward they will be going through the normal budget process on how Council like to approach the different scenarios.

In response to Councilwoman Manheimer, Mr. Warmath said that they would like to get some policy direction from Council to generate alternative models. City Manager Jackson said that the sooner we can get the changes in policies, the sooner we can get it considered in the rest of the budget cycle which runs through at least the end of May, 2011.

Out of Council member discussion, they were interested in seeing (1) the rate structure adjusted for single-family residential customers who are subsidizing commercial/industrial users; (2) the rate structure adjusted for single-family residential customers who are subsidizing multi-family users; (3) an incentive plan for conservation; (4) the effect of stopping the Sullivan Act transfers; (5) seeing the commercial/industrial users being more in line with other cites; (6) opportunities to upgrade pumps that will help save energy and money; (7) ways to cut expenses departmentally; (8) what our wholesale customers are paying compared to our peers across the state and if low to gradually increase the rates so they can budget for it in future fiscal years; and (9) separating out the actual Sullivan Act transfers from support services.

It was the consensus of Council that City Manager Jackson instruct Mr. Shoaf to guide the consultant in completing the analysis to include rate adjustments for the March 22 worksession.

CLOSED SESSION

At 5:51 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2)

To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 6:10 p.m., Councilwoman Manheimer moved to come out of closed session and return to the Council meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW THE COMBINATION OF THE STORMWATER UTILITY FEE ONTO THE COMBINED UTILITY BILL

ORDINANCE NO. 3946 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A MODIFICATION TO THE STORMWATER ORDINANCE

Mayor Bellamy opened the public hearing at 6:13 p.m.

Stormwater Services Manager McCray Coates said that this is the consideration of an ordinance amend the Unified Development Ordinance (Section 7-12-6) which would allow the combination of the stormwater utility fee onto the Combined Utility Bill. This public hearing was advertised on January 29 and February 4, 2011.

Staff is currently working to improve efficiency by placing the stormwater utility fee on the Combined Utility Bill (water bill). Currently the Stormwater Utility Fee is billed separately, with single family residential properties billed once annually and non-single family properties billed twice annually. The Combined Utility Bill is on a bi-monthly billing cycle. City staff has received requests from numerous individual property owners asking for the combination to take place.

City staff is seeking the ability to combine these utility bills where matching accounts are present and where practicable. For a single family residential property owner who currently receives a stormwater utility bill in the amount of $28.08 once a year, the utility fee will be placed on the combined utility bill on a bi-monthly basis in the amount of $4.68. For the non-single family property owner who currently receives the stormwater utility bill two times per year, they will receive the combined utility bill with the stormwater utility fee included which will be one-sixth of their annual rate. For those accounts that are not serviced by another utility, an individual stormwater utility bill will be generated and sent to the property owner on the same billing cycle as currently established.

Staff is asking for this now because the City is in the process of updating the billing software currently used. In addition, the new software allows staff the ability to move forward and provide the citizens better customer service by combining the bills.

The current billing cycle for the stormwater utility fee for single family residents takes place January-February. Non-single properties receive the bill bi-annually in November-December and again in May-June. The proposed changes will begin in July of 2011.

Regarding challenges, (1) customer education will be necessary; (2) not all water accounts are possible to match with the stormwater utility (some stormwater accounts will need to be billed separate from the water bill); (3) customer service staff will need additional training to respond to questions as they relate to the stormwater utility fee; and (4) if the water service is discontinued, individual billing will be required to be sent to the property owners.

This action complies with City Council's Strategic Operating Plan under Fiscal Responsibility in that it (1) Provides more efficiency in current process; and (2) Reduces extra billings for the different services provided by the City.

Pros:

- By placing the stormwater utility fee on the combined utility bill, an increased collection rate from 94% to 98 % is estimated to occur for matched accounts
- This will provide an additional customer convenience by receiving one standardized bill instead of two or more
- This will reduce duplication of administrative costs by the alignment of billings for Water, MSD, Recycling and Stormwater.
- Combination of the utility bills will reduce postage costs and paper use.
- The new utility billing system will facilitate change in process (MUNIS)
- Cash flow will be improved as a result of the combination

Cons:

- Education of the customers will be necessary
- Not all water accounts are possible to match with the stormwater utility (some stormwater accounts will need to be billed separately from the Water Bill)
- Customer Service Staff will need to be educated to respond to questions as it relates to the stormwater utility fee
- If water service is discontinued at a location, separate Stormwater billing may be required to be sent to the property owner under specific circumstances.

Including the stormwater utility fee on the Combined Utility Bill will have a net positive budget impact of approximately $69,000.

Staff recommends City Council approve the modifications to the stormwater utility ordinance allowing the stormwater utility fee to be placed on the combined utility bill, to be effective July 1, 2011.

A resident on Forest Hill Drive recommended the bills be sent out electronically to save postage.

Mayor Bellamy closed the public hearing at 6:20 p.m.

In response to Mayor Bellamy, Mr. Kevin Hymel, GIS and Application Services Manager, explained that after the system goes live, the process of phasing in electronic billing will be an option.

Mr. Coates responded to Councilman Davis regarding tenant-occupied bills.

In response to Councilman Russell, Councilwoman Manheimer said that the Finance Committee is discussing changing the name of the bill. City Manager Jackson said that staff would provide that information to Council in a memorandum.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3946. This motion was seconded by Councilman Bothwell and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE AND SEPARATION REQUIREMENTS

ORDINANCE NO. 3947 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE

ORDINANCE NO. 3948 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING SEPARATION REQUIREMENTS

Mayor Bellamy opened the public hearing at 6:26 p.m.

Planning & Development Director Judy Daniels said that this is the consideration of two ordinances amending the Unified Development Ordinance (UDO) relative to changes to development review procedures regarding (1) resubmission of a denied conditional use; and (2) and separation requirements to be more consistent with adopted plans and goals. This public hearing was advertised on January 29 and February 4, 2011.

Recent development projects have raised concerns regarding the ability to divide larger development projects not supported by the Council as a means to reduce review thresholds effectively circumventing intended Council reviews and/or conditions designed to mitigate the impact of larger projects. The proposed modifications are intended to better reflect the intent of the Council and the 2025 Master Plan in two ways.

The first amendment below would ensure that decisions of City Council to deny development projects are upheld and that the proposed change expands the range of projects that are precluded from going forward after denial by the Council. Currently a Level III conditional use permit is already denied. This expands that to other types and levels of developments. The first amendment is as follows:

"Sec. 7-5-5(e)(3)(d) - Conditional Use approvals, resubmission of denied applications:

d. No application for approval of a ~~conditional use~~ development project (conditional use, site plan, project plan) under any approval process (Level I, Level II, or Level III), shall be filed with or accepted by the planning and development department if that project ~~which~~ is identical or substantially similar to a conditional use or conditional zoning application which has been denied by the city council within one year of the final action by the city council denying the request."

The second change ensures that separation requirements that were intended primarily to assist development projects in commercial areas do not cause unintended impact to residential neighborhoods. This change was proposed by City staff last year. What we had in mind are places like the Airport, which might be doing a runway expansion, parking lot expansion, or an office expansion. They didn't relate to each other, but they were within a contiguous area. Limiting that separation requirement meant Council didn't have to review things that were minor in the greater scheme of what is reviewed. Staff was not considering residential situations when that was proposed and the current development that caused this conservation did bring it to staff's attention. Staff felt that should be corrected. The second amendment is as follows:

"Sec. 7-5-9(b)(1)(c) - Level II Site plan review process:

c. Properties not adjoining or fronting single-family zoning, that are within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. Properties adjoining or fronting single-family zoning, located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such."

This action complies with the City Council Strategic Operating Plan in that it supports sustainable development practices by ensuring the appropriate levels of review are reserved for high density/higher impact projects where mitigating conditions may be necessary for community compatibility. This action also complies with the 2025 Master Plan in that it supports the goal of providing options for new development while minimizing impact and balancing compatibility with existing neighborhoods.

The Planning & Zoning Commission reviewed these proposed amendments at their January 20 meeting. With 4 of 6 current commissioners present, they voted 4-0 to not support the first amendment (related to applications similar to denied proposals), and 2-2 on the second amendment (separation requirements). Because these amendments were initiated by the staff, they proceed to the Council with these recommendations.

The Commission generally seemed to express concern that the proposed amendments were too closely related to the recent Caledonia project, and needed more time and thought to consider what "unintended consequences" they might cause. Two commissioners supported the change to the separation requirement, supporting the staff position that the UDO change that decreased the separation requirement was not intended for locations that adjoined residential neighborhoods, but for commercial areas.

Pros:

- Will protect the intent of the Council when they deny a conditional use application, and
- Will better protect residential areas from inappropriate higher density/higher intensity development

Cons:

- Will limit development options for properties that were denied a conditional use approval, and
- Will put some additional limits on property in residential areas

City staff recommends City Council adopt the two ordinances amending the UDO.

The following individuals spoke in support of Council adopting the two UDO amendments:

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods (CAN)
Ms. Tracy Stubbing, resident on Finalee Avenue
Ms. Susan Roderick, member of the Technical Review Committee
Kenilworth resident
Ms. Miller Graves, resident on Caledonia Road
Ms. Roberta Newman, Kenilworth resident
Mr. Terry Weeks, resident on Pickwick Road
Ms. Teddy Jordan, resident on Normandy Road
Ms. Patsy Brison, attorney representing Kenilworth Residents Association

Mr. Mike Butrum, representing the Asheville Board of Realtors, felt City Council should table these amendments in order to give the parties involved the opportunity to meet to find a win/win solution, so there are not any unintended consequences.

Mr. E. Thomison Holman, attorney representing Caledonia Apartments, LLC, explained why he felt the proposed amendments are improper, are inconsistent with prior decisions, sets bad policy and is bad policy for City residents. Procedurally, he believed that this matter is not properly before City Council with regard to the first amendment. There needs to be compliance with Section 7-7-4 and that has not occurred with regard to the amendment regarding the separation requirements. Substantively, circumstances given rise to these amendment and the fast track demonstrate that the amendment has been proposed in direct response to the Caledonia projects and that is an improper purpose. Caledonia respectfully reserves all of its rights and remedies relating to this. Broader issues which City Council needs to consider are (1) Code provisions were not enacted because of one developer or one neighborhood and they not the reasons why the Code should be changed; (2) loss of economic benefits to the community which Council considered when it adopted the economic relief amendments in June of 2009; (3) substantial consideration, beginning in the fall of 2008, was put into the amendments before they passed in March and June 2009; (4) even if City Council did not pass the permanent economic relief amendments, the economic reasons for passing the amendments have not gone away; (5) good projects that could and will have a substantial impact will be killed or hurt by these amendments; (6) if the amendments are adopted, the direct effects will be the projects that won't occur and the indirect effects will be the message sent to other developers weighing whether to invest their own livelihood and dollars in Asheville vs. elsewhere if they feel the rules will or may be changed at any moment; (7) adopting these amendments will establish a bad policy, regardless of what Council may think of the Caledonia projects, will weaken the integrity of the UDO; (8) it's critical that people who consider investing in the City know that the rules are applied equally and know that if they follow the rules they won't be changed in the middle of the process; and (9) understanding that the UDO needs to be malleable, but not such that provisions can be so easily modified or discarded based on isolated perceived negative affects of a particular provision. If Council believes that the benefits to these amendments outweigh the cost, he urged them to table a vote on these amendments and implement the same study and consideration given to when it was passed initially.

City Attorney Oast advised Council that this is an ordinance amendment that will apply not to a particular project, but potentially to many.

Ms. Patty Beaver, representing the Council of Independent Business Owners (CIBO), felt that Council is in such a haste to pass these amendments, that they have not gone through the normal public scrutiny that usually takes place before major UDO amendments are approved. They are unaware of meetings with the normal organizations, such as CIBO, Board of Realtors, the Homebuilders, the Chamber of Commerce, and all the various neighborhood associations in the area. This is unusual since they have always participated on one of the groups or as part of larger committees working on these changes. In the past these efforts have resulted in all kinds of well-thought-out regulations. Their concern is that quick passage leads to unintended consequences that may have been flushed out during the normal process that Council has always followed in the past. She asked Council to consider carefully their actions to make sure that what they are doing will be the best for the entire community. Should Council find it worthwhile to delay for further study, they would certainly be available to participate.

Mr. Rick Grant, developer, felt that changes to the UDO due to knee jerk reaction from one project sends the wrong messages to potential developers. City Council needs to encourage, not discourage, sensible development.

Mayor Bellamy closed the public hearing at 7:08 p.m.

In response to Councilman Russell, City Attorney Oast explained the Planning & Zoning Commission vote. Because one of the ordinance amendments failed to get a positive recommendation, we treat that as a negative recommendation for the purposes of forwarding it onto Council. That is consistent on how we interpret Section 7-7-4 over the years.

In response to Councilman Russell regarding the fast track of the ordinance amendments, City Attorney Oast said that staff has followed the process outlined in the City Code. As far as other interest groups being able to comment, he wasn't aware that that opportunity was ever denied. The Planning staff usually do that kind of outreach or not, depending on the nature of the ordinance.

In response to Councilman Russell, Ms. Daniel said that regarding the Planning & Zoning Commission, they had a quorum. Regarding their lack of support, they expressed their opinions and they had their vote. This type of amendment initiated by staff requires only to go to the Planning & Zoning Commission to get their opinion before it is brought before City Council. Other types of amendments, if rejected by the Planning & Zoning Commission are not brought to the Council. This type of amendment is. Her position in proposing these amendments was that staff heard Council's intent and concerns, and felt it was important to give Council the opportunity to speak toward that in preservation of their intent. This does not stop anything, but gives staff the opportunity to look at something and if it was essentially the same project that the Council had considered before, staff would say that needs to wait one year. If it is substantially different, the project would go forward. Regarding the separation requirements, the amendment is correcting something that was not intended. In terms of quick action, since it came to their attention, she felt it was worthwhile to bring it forward for Council's attention.

When Councilman Russell felt that 1500 feet is a big space, Ms. Daniel pointed out that that was the requirement adopted in 1997 until it changed in 2009.

Councilman Russell felt it would have been helpful to have the minutes of the Planning & Zoning Commission discussion for their review.

In response to Councilwoman Manheimer regarding the first amendment, City Attorney Oast said that since the UDO was adopted in 1997, we have a few other land use processes to use – not only the conditional use permit, but conditional zoning, which did not exist at the time the original language was put in place.

Councilman Bothwell belt both amendments bring more consistency to the UDO. The provision in place regarding resubmission of a denial conditional zoning seems to be the will of the Council. He didn't think that Council thought the same project would reemerge in a different form through a different avenue before the one-year. Regarding the separation requirement, we are just reverting back to what was adopted in the original UDO.

Councilman Smith felt we work hard to streamline a more predictable process for builders in Asheville. This understandable and equitable process was to make it predictable for builders, neighborhoods and Council. Everyone needs to trust in the process.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Vice-Mayor Newman moved to adopt Ordinance No. 3947, amending the development review procedures regarding resubmission of a denied conditional use. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman felt it was a mistake to do too much when the economy is down or do too much when building is booming. He felt Council needs to think of the long term policy to encourage the right kind of pattern of development. He felt Council has done a number of different policies that have been very pro-growth for Asheville, but he felt these amendments are positive clarifications to safeguard the areas that are more residential.

Mayor Bellamy raised questions concerning a public hearing on the same night as adoption of the original UDO in 1997 regarding a zoning vested rights request. City Attorney Oast said that the process was one available in our Code and is authorized by law. It is a mechanism by which Council can recognize a vested right in a certain site specific development plan. That has not occurred here. The approval by the TRC was conditional and he is not sure if we are talking about the same thing.

Mayor Bellamy felt that when the UDO amendments were adopted in 2009, Council felt like it was the right thing to do and it had gone through the proper channels as far as public outreach. She felt that regarding the project discussed tonight, the developer felt the project was different enough not have to wait the one-year. She felt that the amendment adopted in 2009, which included residential, is now being utilized by a developer. Her concern is that the amendment is still not clear to what we feel is wrong as it relates to the project talked about. If the City is sued, that will be more taxpayer dollars to defend something still not clear. She also felt that the ordinance was fast-tracked to Council. She wondered if a mediator could talk to the developer and neighborhood to see if there can be a win/win solution and then address this issue with the normal template we use having input from other groups. Sounds like the neighborhood is saying that they support development, but not at 100 units. Developers are saying that they have property and they want to develop it. She felt we have gone against our normal process in building trust with the community.

Councilman Davis was concerned with these amendments on the rush to get it to Council. He wondered about the definition of substantial difference. He would rather these amendments go through the normal process for public outreach.

Councilwoman Manheimer wanted to be known as a community that is somewhat predictable for the business community because that is fair. She also didn't want to drive away people that have money and time and great things to invest in Asheville. However, she feels the amendment is to enforce the spirit of the law and not just the letter of the law.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell, carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

City Attorney Oast noted that because the ordinance was not adopted by 2/3 vote of Council, this ordinance will need to come back to Council at their next meeting for the second and final reading.

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Vice-Mayor Newman moved to adopt Ordinance No. 3948, amending the development review procedures regarding separation requirements. This motion was seconded by Councilman Bothwell.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell, carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

City Attorney Oast noted that because the ordinance was not adopted by 2/3 vote of Council, this ordinance will need to come back to Council at their next meeting for the second and final reading.

In response to Mayor Bellamy, Ms. Daniel said that between now and the second reading she would do outreach to various groups and report back to Council.

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At 7:39 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. UPDATE AND PREVIEW OF PLANS FOR THE VISITORS CENTER IN PACK SQUARE PARK

Mr. Guy Clerici, Chairman of the Pack Square Conservancy Board, said that they have received a grant from the Buncombe County Tourism Development Authority which will allow them to complete the downsized pavilion. The grant covers not only construction, but landscape architecture work and finishing the mid-park area entirely. The size of the pavilion has been reduced to 60% in order to reduce the impact of that site, maintain the view corridors, etc. He outlined the changes from the original building, noting that the pavilion is now 1,300 sq. ft. compared to the original building of 4,600 sq. ft. The building is also intended to provide the City means of adding if necessary in the future or taken away. They have incorporated a lot of the use of the park into this design.

Mr. Charles Krekelberg, project designing architect, using the site plan, explained the building's current design. It is now a support building that supports the use of the park. On the left side there are four unisex restrooms on a central corridor and a rinse-off area. In the middle is a covered breezeway. On the right side is the Visitor's Center, a toilet facility and three offices for the Pack Square Conservancy. From the Visitor's Center desk, there will be visual connection of the restrooms and rinse off area. The building is surrounded by landscaping, allowing tents to be located in the Park area that may support the amphitheatre or a significant event taking place in the Park.

In response to Councilman Bothwell, Mr. Krekelberg said that the rinse off water was not required to be heated, noting that limiting use was the goal.

When City Attorney Oast said that under our agreement that established the Pack Place Conservancy in 2001, City Council does retain approval of the design elements of the park.

Councilwoman Manheimer was unaware that a vote was to be taken at this meeting and that the report was only an update. Therefore, she asked for a motion to recuse her from voting due to a conflict of interest. Councilman Russell moved to recuse Councilwoman Manheimer from voting in this matter. This motion was seconded by Councilman Smith and carried unanimously.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Russell moved to approve the downsized design elements of the pavilion. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being excused).

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-29 - RESOLUTION TO IMPLEMENT DISCOUNTED TRANSIT TICKET AND PASS PROGRAM TO SERVE PERSONS EXPERIENCING HOMELESSNESS

Homeless Initiative Coordinator Amy Sawyer said that this is the consideration of a resolution to provide Agencies serving persons experiencing homelessness with discount transit tickets and passes for distribution to those persons, effective now through the remainder of this fiscal year.

For several years the Homeless Coalition and other community networks such as BEACON (the Buncombe Emergency Assistance Coordinating Network) have recognized that transportation is one of the biggest unmet needs in the community, and a barrier to obtaining and maintaining housing,

A key way agencies assist people asking for help with transportation is to offer people bus tickets and passes. Over time, agencies have independently approached the City of Asheville seeking free or discounted tickets and passes to varying degrees of success. Agencies have also worked with their donors to provide people with transportation aid when possible. However, the support has been intermittent and often only partially meets the need of any one household.

To gain consistent access to bus tickets and passes for a greater number of people, the Homeless Coalition, which represents a collective of over 40 different agencies and groups, voted to create a plan and make a collective request to the City of Asheville. The goal would be to access affordable bus tickets and passes for people experiencing homelessness or at imminent risk of experiencing homelessness in the community.

Subsequently, the Homeless Coalition developed a transportation subcommittee to review the need, availability, and possible solutions to accessing bus passes and bus tickets for people experiencing homelessness or at imminent risk of experiencing homelessness. This Transportation Subcommittee met with the City of Asheville Transportation Department to discuss bus fee/rate structures and options.

As a result, the Transportation Department has included in their Fiscal Year 2011-12 budget a proposal that agencies would be able to purchase tickets at the discounted rate currently available only to people with documented disabilities. This rate is one-half the market rate. If approved by City Council as part of the upcoming year's budget, this would go into effect July, 2011 (at the onset of the new fiscal year).

The Homeless Coalition and Homeless Initiative Advisory Committee support the Transportation Department's proposal to offer discounted passes to agencies on behalf of people experiencing homelessness or at imminent risk of experiencing homelessness. The Coalition has developed a process for purchasing bus tickets at the discounted rate.

The Homeless Coalition and Homeless Initiative Advisory Committee, however, see that this is an immediate need. To that end, the Homeless Initiative Advisory Board approached the Housing and Community Development Committee (HCD) at their January 21, 2011, meeting to explore whether the discount could be made available now.

After hearing the proposal, and getting feedback regarding its financial implications, the HCD Committee endorsed unanimously bringing this proposal before the entire Council.

The Homeless Coalition is also working with a team of community members who are independently working to raise funds to offset the cost of tickets and passes. "Bus Pass it On" is looking for donations and to partner with local businesses in this effort.

These changes directly support the City's Strategic Operating Goals as follows: (1) *Affordable:* this program would enhance the affordability of Asheville Transit's bus pass program; and would support initiatives to end chronic homelessness;

Pros:

- Directly assist persons experiencing homelessness access housing, jobs and services;
- Existing organizations are in place to operate this programs and ensure that the purposes for which the transit discounts are used are appropriate;

Con:

- Service agencies will need to raise the funds to purchase the discounted passes.

The Transit Division indicates that the proposal does not have a measurable fiscal impact. No change in costs results because the proposal does not affect schedules, personnel and or other costs of delivery of transit services. It may result in an increase in revenue, depending on demand.

City staff recommends City Council adopt the resolution to support the immediate implementation of the discounted bus pass program to serve persons who are homeless, effective to the end of this fiscal year.

Vice-Mayor Newman, Chair of the Housing & Community Development Committee, spoke in support of the resolution and responded to Councilman Bothwell on how the prices were determined.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 11-29. This motion was seconded by Councilman Smith and carried unanimously.

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B. DISCUSSION OF EARLY VOTING SITES FOR 2011 CITY COUNCIL ELECTION

Mayor Bellamy said that the Buncombe County Board of Elections is in the process of preparing their budget for 2011-12 and has asked if City Council will want early voting sites for their election this year.

City Clerk Burleson provided Council the following information to assist Council in their decision: (1) In 2009, City Council requested by Buncombe County Board of Elections to add four additional early voting locations one week before the general election on November 3, 2009. They were located at Parks & Recreation on Gashes Creek Road, North Asheville Branch Library, West Asheville Branch Library and South Buncombe Branch Library. Out of the total cost for the November election ($122,786), approximately $39,406 were costs associated with the early voting sites. This is a conservative estimate. There were 3,357 City voters who took advantage of the early voting sites; (2) The City of Asheville will have 37 normal polling places in October and then again in November. If remote sites are opened in November, the Board of Elections will have to provide ballots for all voters for all municipalities, per the State Board of Elections; (3 The City must notify the Board of Elections 90 days before the election in order for them to submit a plan of implementation to the State Board of Elections for approval. Generally, the sooner we let the Board of Elections know about remote sites the better; (4) While the Board of Elections will certainly aim to provide the desired location for the one-stop sites, ultimately the final specific decision lies with the County Board of Elections and the State Board of Elections. Many factors have to be considered in these decisions; (5) Citizens will indeed always have the opportunity to vote early at the downtown office at 35 Woodfin Street for the full time period; and (6) A cost guideline would be $1,000 per day per site. This is an estimate since there are many line items that are significantly affected by the number of sites opened, i.e., training, advertising, travel, number of employees, overtime, etc.

City Council requested additional information to be made available at the March 8 meeting before a determination is made. Said information includes: how many people took advantage of early voting in 2007 when it was only located at the Board of Elections; how many

people took advantage of the early voting site in 2009 at the Board of Elections building only; and, will A-B Tech share in the cost of the general election since they will have a question on our ballot.

C. RESOLUTION NO. 11-30 - RESOLUTION APPOINTING A CHAIRMAN TO THE CIVIL SERVICE BOARD

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Larry Harris currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

The current members of the Civil Service Board include: Chairman Larry Harris, Jacquelyn Hallum, Alan Coxie, Virginia Robinson and Marvin Rosen.

It was the recommendation of the Boards & Commissions Committee to reappoint Larry Harris to serve an additional year as Chairman of the Civil Service Board.

Councilwoman Manheimer disclosed that Mr. Harris is a partner in her law firm; however, City Attorney Oast has advised her that that would not disqualify her from voting in this matter.

Councilman Russell moved to reappoint Larry Harris to serve an additional year as Chairman of the Civil Service Board. This motion was seconded by Councilman Bothwell and carried unanimously.

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D. RESOLUTION NO. 11-31 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Robert Oast Sr. and Parker Andes, as members on the Tree Commission, expired on December 31, 2010. Both individuals are not eligible to serve another term.

On January 25, 2011, City Council instructed the City Clerk to arrange interviews for Debbie Emmons and Mike Kenton.

Councilman Smith moved to appoint Debbie Emmons and Mike Kenton to each serve a three-year term respectfully, terms to expire December 31, 2013, or until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

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E. BOARDS & COMMISSIONS

Regarding the Asheville-Buncombe Fair Housing Commission, it was the consensus of Council to readvertise for the vacancies due to no interested applicants.

RESOLUTION NO. 11-32 – RESOLUTION RESCINDING RESOLUTION NO. 11-27 EXTENDING THE TERM OF LOUIS BISSETTE ON THE METROPOLITAN SEWERAGE DISTRICT

Vice-Mayor Newman said that at the January 25, 2011, City Council meeting, Resolution No. 11-27 was adopted extending the term of Mr. Louis Bissette on the Metropolitan Sewerage District (MSD) Board for six months, term to expire June 30, 2011. However, after City Attorney

review of the applicable statutes, it has been determined that City Council may not extend or shorten MSD terms. Mr. Bissette can, however, continue to serve until his successor has been appointed and qualified. Therefore, Resolution No. 11-27 will need to be rescinded.

Vice-Mayor Newman moved to adopt Resolution No. 11-32 to rescind Resolution No. 11-27. This motion was seconded by Councilman Russell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. CLAIMS

The following claims were received by the City of Asheville during the period of January 3-17, 2011: Jennifer White (Streets), Eric Velez (Water), Melanie Yeager (Fire), Brenda Farmer (Fire), Marc Murray (Streets), Debra Cochran (Streets), Linda Horton (Streets), Justin Wyatt (Police), Amanda Hyler (Transit), Mike Herron (Sanitation), Teresa Mosely (Water), Jeff Mayen (Streets), Pat McAfee (Sanitation), AT&T (Water) and Wayne Jewsbury (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

The following claims were received by the City of Asheville during the period of January 28-February 3, 2011: Chris Taylor (Water), Brent Edgerton (Sanitation), Terry Peterson (Streets), Robert Hudson (Parks & Recreation), Charter Communication (Water), Sara Wainwright (Water) and Emily Watford (Parks & Recreation. These claims have been referred to Asheville Claims Corporation for investigation.

Ms. Kyle Ross spoke about a Police Department lawsuit. City Attorney Oast noted that City Council cannot discuss personnel matters or matters in litigation. He also advised Ms. Ross and anyone else that he didn't believe speaking at a City Council meeting insulates anyone from causes of action based on libel or slander.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:25 p.m.

Magdalen Burleson — CITY CLERK

Jan Bellamy — MAYOR

Tuesday – February 22, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 22, 2011, AS "SPAY DAY"

Mayor Bellamy read the proclamation proclaiming February 22, 2011, as "Spay Day" in the City of Asheville. She presented the proclamation to Ms. Elaine Lite, representing Critter Magazine, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING MARCH, 2011, AS "WOMEN'S HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming March, 2011, as "Women's History Month" in the City of Asheville. She presented the proclamation to Ms. Debbie Metcalf, President of the Asheville National Organization for Women, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING MARCH, 2011, AS "DEVELOPMENTAL DISABILITIES AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming March, 2011, as "Developmental Disabilities Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Karen Harrington, Chairman of the Mayor's Committee on Disabilities, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL ANNUAL RETREAT HELD ON FEBRUARY 4, 2011; AND THE REGULAR MEETING HELD ON FEBRUARY 8, 2011

B. RESOLUTION NO. 11-33 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF REAL PROPERTY LOCATED OFF OF JANE STREET AND ADJACENT TO RIVERSIDE CEMETERY FROM BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of real property located off of Jane Street and adjacent to Riverside Cemetery, from Buncombe County.

In the fall of 2010 Buncombe County approached city staff with an offer to transfer a small residential parcel of land to the City of Asheville. The property is the subject of numerous complaints from an adjacent homeowner over illicit behavior allegedly taking place on the property and dangerous overgrowth. The 0.11 acre property (PIN # 963993508400000) is wooded and undeveloped and sits adjacent to Riverside Cemetery. It is residentially zoned. The county acquired this property through tax foreclosure and offered to transfer the property at no cost to the city.

Acquisition of the property would allow the Parks, Recreation, and Cultural Arts Department to preserve additional wooded acreage on the eastern side of Riverside Cemetery and further buffer it from surrounding residential uses.

This action would comply with the City Council 2010-11 Strategic Operating Plan in that it would promote environmental sustainability (Green and Sustainable category). This action would also comply with Goal 18 of the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it would preserve significant natural and cultural resources and increase park acreage (Strategy #1, "City Wide" Action step A and C).

This item has been reviewed by the Parks Recreation Advisory Board at the meeting held on February 14, 2011, and they recommended approval of this item.

Pros:

- Acquisition of the property would increase open space in the city.
- Acquisition of the property would buffer the cemetery from surrounding residential uses which will help preserve its serene character.

Cons:

- The lot is overgrown with invasive/exotic species, which is the cause of concern for at least one adjacent homeowner. Upon acceptance of the property, the city would have to perform select clearing.
- The property contains some trees with weighty, ominous limbs protruding over Gray Street, which is the cause of concern for at least one adjacent homeowner. Upon acceptance of the property, the city would have to perform select limbing.

Clearing and limbing will require resources in the form of staff time and equipment. These costs will be absorbed within the existing budget.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a 0.11 acre parcel of land, adjacent to Riverside Cemetery, from Buncombe County for the purpose of preserving Riverside Cemetery and increasing open space acreage.

RESOLUTION BOOK NO. 33 – PAGE 341

C. RESOLUTION NO. 11-34 - RESOLUTION TO SUPPORT FRENCH BROAD RIVERKEEPER WORK ON THE SOUTHERN PORTION OF THE FRENCH BROAD RIVER PADDLE TRAIL

Summary: The consideration of a resolution to support French Broad Riverkeeper work on the southern portion of the French Broad River Paddle Trail, a cooperative effort within the Regional Riverfront.

The French Broad River Paddle Trail is a community led effort to establish a continuous paddling and camping trail along the length of the French Broad River. RiverLink- an appointing

partner in the Asheville Area Riverfront Redevelopment Commission- has started community engagement work in parts of Buncombe and in Madison counties. In a separate but not unconnected effort, The French Broad Riverkeeper program and the Western North Carolina Alliance- as staffed by Hartwell Carson- is securing campsites throughout the southern section of the trail, which includes parts of Buncombe County.

The French Broad Riverkeeper is requesting that City Council consider supporting the community's efforts to create the entire French Broad River Paddle Trail, and specifically requests that Asheville City Council support the French Broad Riverkeeper program's request for grant funds to support construction of some of the campsites in the southern section. The activities supported by a successful grant application include improving and adding river access points and establishing paddle-in campsites which would allow visitors to spend a few days paddling down the river and camping at well maintained facilities. Proposed campsites include public and privately owned land. One proposed campsite is owned by the City of Asheville. City staff is currently investigating the feasibility of utilizing the land, which is located outside the Wilma Dykeman RiverWay Master Plan area, as a paddle in (only) campsite. The Asheville Area Riverfront Redevelopment Commission (AARRC) – a partnership between the City of Asheville, The Town of Woodfin, Buncombe County, RiverLink, The Council of Independent Business Owners, The Asheville Area Chamber of Commerce/Economic Development Coalition and the River District Design Review Committee- were scheduled to consider a similar resolution of support for this project on February 10, 2011, however their meeting was cancelled due to inclement weather. The AARRC will consider this matter at their rescheduled meeting on February 17, 2011.

This action aligns with the City Council Strategic Goals as follows (1) Sustainable: Pursue a stronger riverfront redevelopment partnership (and dedicated office); (2) Green: Support open space preservation; and (3) Job Growth and Community Development: Partner in regional economic development strategies (including the HUB; continue partnership in the Economic Development Coalition);

Pro:

- City Council will support regional collaborative effort that aligns with strategic goals.

Con:

- None known.

By adopting this resolution, Council is not committing any funds to this project therefore there is no fiscal impact.

If City Council is amenable to the proposal, staff recommends they adopt a resolution to support French Broad Riverkeeper work on the southern portion of the French Broad River Paddle Trail, a cooperative effort within the Regional Riverfront.

RESOLUTION BOOK NO. 33 – PAGE 342

D. RESOLUTION NO. 11-35 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CONSTRUCTION OF REED CREEK GREENWAY, PHASE II BY SIX MONTHS

Summary: The consideration of a resolution authorizing the City Manager to extend the existing agreement between the City of Asheville and the N.C. Dept. of Transportation (NCDOT) for the construction of Reed Creek Greenway, Phase II by six months.

On February 12, 2008 City Council approved a resolution authorizing the City Manager to enter into an agreement with the NCDOT for up to $400,000 to construct Reed Creek Greenway, Phase II. The agreement was executed on April 4, 2008, and allowed a three-year time period for project completion. The completion date as prescribed by the agreement is April 14, 2011. Due to unforeseen delays in land acquisition, design, and the bid process, the greenway construction will not be complete within the three-year period. Staff requested a six-month extension to the existing agreement with NCDOT, which NCDOT has agreed contingent upon City Council approval.

This action complies with the Fiscal Year 2010-11 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, capital improvements. This action also complies with the Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

Pro:

- Extends the NCDOT agreement to allow the City an additional six months to complete Reed Creek Greenway, Phase II

Con:

- The extension will delay the completion of the greenway construction by six months beyond the original completion date of April 2011 as set forth in the original agreement.

There is no fiscal impact to this action.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with NCDOT to extend the current agreement between the City and the NCDOT for construction of the Reed Creek Greenway, Phase II by six months.

RESOLUTION BOOK NO. 33 – PAGE 343

E. RESOLUTION NO. 11-36 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DISASTER RECOVERY GROUP AND TREE SERVICE, INC., TO CONSTRUCT REED CREEK GREENWAY PHASE II

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Disaster Recovery Group and Tree Service, Inc. to construct Reed Creek Greenway Phase II for an amount not to exceed $615,000.

The City of Asheville is preparing to construct the second phase of Reed Creek Greenway located along Reed Creek and Broadway Avenue. Once complete the greenway will be a 0.30-mile multi-use trail that will extends between Cauble and Magnolia Street. The second phase will construct the section between Cauble and Catawba Street, and bring the greenway corridor to 50% completion.

The City advertised for bids for construction of the greenway. Staff determined Disaster Recovery Group and Tree Service, Inc. located at 556 Long Shoals Road, Arden, North Carolina is the lowest, responsive and responsible bidder. The base bid is $478,250 plus $20,000 for required code plantings not included in the base bid amount, and $116,750 to exercise a bid alternate to develop a corner park on a city-owned parcel adjacent to the greenway corridor.

This action complies with the Fiscal Year 2010-2011 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, and capital improvements. This action also

complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan. In addition, this action complies with the Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

Pros:

- Leverages the city's existing capital funds allocated for construction of Reed Creek Greenway.
- The contract amount is within the project budget.
- The project will extend the Reed Creek Greenway by 0.30 miles, bringing the total length of the corridor to approximately 0.5 miles.

Con:

- The additional greenway mileage will require maintenance resources.

The $615,000 to support the construction contract of Reed Creek Greenway Phase II is budgeted in the FY 2008-2009 capital improvement budget for Reed Creek Greenway Phase II. The budget is funded by a $400,000 grant from the North Carolina Department of Transportation which was accepted by City Council on February 12, 2008, and the remaining funds were appropriated by City Council as part of the FY 2008-2009 capital improvement budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Disaster Recovery Group and Tree Service, Inc. to construct Reed Creek Greenway Phase II for an amount not to exceed $615,000.

RESOLUTION BOOK NO. 22 – PAGE 344

F. RESOLUTION NO. 11-37 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY SANITARY SEWER EASEMENTS AT THE NEW RECREATION CENTER SITE AT 285 LIVINGSTON STREET AND AT 415 S. FRENCH BROAD TO THE METROPOLITAN SEWERAGE DISTRICT

Summary: The consideration of a resolution authorizing the Mayor to convey sanitary sewer easements at the new recreation center site at 285 Livingston Street and at 415 S. French Broad to the Metropolitan Sewerage District.

The Metropolitan Sewerage District (MSD) is preparing to relocate existing sanitary sewer lines within the property at 285 Livingston Street in order to accommodate future phases of the new recreation center development. Currently, the existing lines in the park are in poor condition and necessitate replacement. The existing 24", 8" and 6" lines within the property will be replaced with 30" and 12" ductile iron pipe. The relocation will enable future phases of the recreation center to be implemented as well as the proposed Town Branch Greenway. A portion of the easement also crosses within the parcel boundary of Fire Station 2 at 415 South French Broad Avenue. Fire Department staff have reviewed this alignment and noted that it will have no significant impact to the fire station.

MSD is requesting two permanent easements as follows: easement #1 containing approximately 40,882 square feet (0.94 acre) and easement #2 containing approximately 1,899 square feet (0.04 acres). The land area will be restored upon the completion of the work by MSD.

This action would comply with the City Council 2010-11 Strategic Operating Plan in that it would promote public health, safety and welfare by allowing adequate sewer service lines through city-owned property (Safety category).

This item has been reviewed the by Parks Recreation Advisory Board at the meeting held on February 14, 2011, and the Board recommended approval of the item.

Pros:

- Improved sanitary sewer service for the community
- Allows for implementation of future phases of recreation center
- Proposed line replaces the existing, poor line

Con:

- Easement is being dedicated

No monetary consideration involved in this conveyance.

City staff recommends that City Council adopt the resolution authorizing the Mayor to convey sanitary sewer easements at the new recreation center site at 285 Livingston Street and at 415 S. French Broad, identified as PINs # 964814039800000 and # 964814534100000, to the Metropolitan Sewerage District.

RESOLUTION BOOK NO. 33 – PAGE 345

G. RESOLUTION NO. 11-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR THE INSTALLATION OF AN ELECTRONIC TIME SYSTEM FOR THE ADMINISTRATIVE SERVICES AND PARKS DEPARTMENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., in an amount not to exceed $69,958, for the installation of an electronic time system for the Administrative Services and Parks departments.

The Administrative Services Department and the Parks, Recreation & Cultural Arts Department are working to streamline the timekeeping process with non-exempt employees. The new system will assist in advancing this process by automating the method for time entry by non-exempt employees. This automation will directly connect to the City's new MUNIS system and payroll.

For the Administrative Services Department, implementation of the timekeeping system will result in approximately 13 work hours gained annually since staff will spend less time manually verifying time cards and less time manually entering the data.

In the Parks, Recreation & Cultural Arts Department, implementation of the timekeeping system will result in approximately 370 work hours gained annually. Staff will spend less time verifying time cards and less time manually entering the data. The current process is very inefficient. Reporting staff payroll hours via a paper timecard requires approximately 20 supervisors to manually verify every timecard, making corrections when needed. These timecards are gathered from 22 different worksites, including community centers, athletic recreational facilities, park maintenance offices, etc. Three administrative support staff then enter the data from each time card into the MUNIS payroll system.

This system expands the existing timekeeping system that is currently in use at Public Works, Water, and other city departments. The system uses handprint recognition to ensure accurate timekeeping and eliminate false time card punching.

This action complies with the City Council Strategic Operating Plan's "Fiscal Responsibility" goal.

Pros:

- Provides a more efficient and accurate timekeeping system for the Administrative Services Department and the Parks, Recreation & Cultural Arts Department.
- Allows for fewer errors and creates less liability for the City organization than a manual, paper-based process.
- Centralizes data and interfaces smoothly with the City's core financial and HR systems, enabling better reporting for the City organization.

Con:

- Will require staff effort, project management, and expenditure of funds.

These funds are budgeted in departmental FY11 budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Cincinnati Systems, Inc., for the installation of an electronic time system for the Administrative Services and Parks departments.

RESOLUTION BOOK NO. 33- PAGE 346

H. RESOLUTION NO. 11-39 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE CONTRACT TO AUDIT ACCOUNTS WITH DIXON HUGHES PLLC FOR THE FISCAL YEAR 2009-10

Summary: The consideration of a resolution authorizing the Mayor to execute an amendment to the contract to audit accounts with Dixon Hughes PLLC for the fiscal year 2009-2010.

NC General Statute 159-34 requires local governments to have their accounts audited each fiscal year by a certified public accountant and confers upon the Local Government Commission (LGC) the authority to issue rules and regulations to ensure the quality and consistency of auditing services. The LGC has issued several rules in connection with the audit contract including:

- amendments to the audit contract be approved by a vote of the governing board in a public meeting
- financial statements submitted after December 1st require an amendment

On June 8, 2010, City Council approved a contract with Dixon Hughes PLLC, in the amount of $153,450 for auditing services for Fiscal Year 2009-2010. The contract includes certain estimates regarding compliance auditing of federal and state financial assistance programs and does not include auditing new major programs such as the American Recovery and Reinvestment Act of 2009 (ARRA Federal Stimulus). Additionally, the contract contains a completion date of October 31, 2010.

Dixon Hughes has submitted an amendment to the contract in the amount of $13,600 seeking additional compensation for required work not included in the original contract; such work relating to ARRA single audit compliance and consultation in connection with various compensation and fringe benefit tax matters. If approved, the total amount of the 2009-2010 contract would increase from $153,450 to $167,050. Funds are available in the Accounting Division of the Finance Department to cover this additional expenditure. This supplemental billing is not unusual. Dixon Hughes requested and received an additional $10,500 in connection with the 2008 audit contract.

The proposed amendment also contains a modification of the completion date of contained in the original contract of October 31, 2010 reflecting the delayed submission. This delay, including the factors contributing to the delay and efforts to ensure that such delays are

avoided in the future, was discussed extensively at the Council and Finance Committee meetings of January 25th. While the delay is unacceptable, some historical context may be helpful. The City has experienced delays in presenting the financial results on several occasions as follows:

FY2009 – Delivered to Council – January 12, 2010
FY2008 – Delivered to Council – February 10, 2009
FY2007 – Delivered to Council – January 8, 2008
FY2006 – Delivered to Council – December 12, 2006

Clearly, improving the timely submission of the audit report and keeping Council informed on that progress are on the "top" of the Finance Department and external auditors' priority list for the fiscal year 2011 audit report.

This action complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pros:

- Complies with the requirements of the Local Government Commission in connection with amending the audit contract
- Conforms to the terms and conditions of the audit contract

Con:

- Requires additional funding (resources are available.

The contract amendment with Dixon Hughes entails compensation in the amount of $13,600 to cover additional for required work not included in the original contract. This additional amount will be paid for with currently budgeted funds.

Staff recommends approval of a resolution authorizing the Mayor to execute an amendment to the contract to audit accounts with Dixon Hughes PLLC for the fiscal year 2009-2010.

RESOLUTION BOOK NO. 33 – PAGE 347

I. ORDINANCE NO. 3949 - BUDGET AMENDMENT TO THE MCCORMICK FIELD BUDGET FOR THE ASHEVILLE TOURISTS LEASE PAYMENT

Summary: The consideration of a budget amendment to the McCormick Field budget in the amount of $61,666 for the Asheville Tourists lease payment.

As part of the ten-year lease agreement between the City of Asheville and the DeWine Seeds-Silver Dollar Baseball for the Asheville Tourists at McCormick Field, a scheduled annual lease payment increase occurred from $125,000 to $140,000 effective July 1, 2010. In preparation for the FY 2010-2011 budget, the lease increase was not included in the budget. Funds will be used to support the operation and capital improvements to McCormick Field. The budget amendment is to correct the omission of the $15,000 from the McCormick Field budget.

In addition, the DeWine Seeds-Silver Dollar Baseball recently made an advance payment of $46,666 toward the FY 2011-2012 $140,000 lease payment to support the cost of restroom improvements at McCormick Field so the improvements can be completed prior to the opening of the Asheville Tourists 2011 season. The budget amendment is to add $46,666 to the McCormick Field budget to support the cost.

This action aligns with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city's long-term financial commitment to infrastructure

maintenance. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will increase the level of service to bring older facilities up to date before building new facilities.

Pro:

- Operations and facility improvements will address existing maintenance projects at McCormick Field.

Con:

- None

The allocation will increase the City's General Fund budget by $10,000 in the operating budget designated for McCormick Field, and increase the City's Capital Improvement budget designated for McCormick Field by $51,666.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget in the amount of $61,666 for McCormick Field operations and capital improvement.

ORDINANCE BOOK NO. 26 – PAGE 454

J. RESOLUTION NO. 11-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE U.S. DEPT. OF TRANSPORTATION FOR THE TIGER II PLANNING GRANT FOR THE EAST OF THE RIVERWAY MULTI-MODAL NEIGHBORHOOD

Summary: The consideration of a resolution authorizing the City Manager to enter into a Cooperative Agreement with the U.S. Dept. of Transportation for the TIGER II Planning Grant for the East of the Riverway Multi-Modal Neighborhood.

On October 20, 2010, the City was informed that it was awarded $850,000 of TIGER II Planning Grant funds from the US Department of Transportation (DOT) for the "East of the Riverway Multi-Modal Neighborhood." This award came in national competition for HUD and DOT funding for Sustainable Communities. The City received one of 33 TIGER II awards made nationally.

In summary, the funds will enable a partnership among the City, community residents, businesses, property owners and public, non-profit and private organizations to develop and bring plans for sustainable development to readiness. Specific planning activities will include:

- Final route planning, environmental assessment and construction drawings for the Town Branch and Clingman Forest Greenways;
- 2.7 mile section of the Wilma Dykeman Riverway brought to 75% construction drawing completion;
- Transportation Network Plan developed, including multi-modal transportation, road sections, complete streets and projected transit demand;
- Energy Plan, including an assessment of current energy use and an analysis of financing options for a community-based energy efficiency program;
- Transformational redevelopment of City properties will be explored through the development assessment of at least two city-owned properties in the target area;
- Significant public participation in all elements of the planning.

The City is required to provide a 20% match. This will be done through existing, already in place city staff, as in-kind match. The project will be managed within the Community

Development Division, guided by a team of city staff from involved departments. The project duration will be two years from the signing of the Cooperative Agreement.

This action complies with City Council's Strategic Operating Plan under the following goals: 1) *Affordable:* this program will explore opportunities to enhance affordability through innovative energy efficiency financing programs; explore opportunities to incentivize affordable housing development; ; 2) *Fiscal Responsibility*: will explore leverage of partnerships for pursuing capital improvement and infrastructure projects, and proactively pursue funding opportunities; 3) *Green:* will expand community education programs regarding sustainability, and integrate and implement a multi-modal transportation plan in this area; and 4) *Job Growth and Community Development:* Promote sustainable, high density infill growth, support the riverfront redevelopment partnership.

Pros:

- The practical partnerships being formed will lead to projects that are comprehensive and coordinated;
- Community residents, businesses and property owners will be directly involved in the planning activity;
- The activities will lead to "transformational investment" that will create new opportunities for people already living there, as well as incentivize new housing and economic development that will spur the sustainable reuse of existing property, including property now owned by the City;
- This grant will enhance the recommendations in the Wilma Dykeman Plan, and create opportunities for funding for implementation of the plan.

Cons:

- New resources can create expectations of immediate future funding; although HUD and other agencies have implied that this funding will be available, it will depend on the federal (and state and local) budget processes and constraints;
- New development brings inherent conflicts between competing interests. The success of any planning activity will be the ability to create win-win relationships.

Match requirements can be met in-kind through existing staff resources.

City staff recommends City Council adopt the resolution to execute the Cooperative Agreement with the US Department of Transportation.

RESOLUTION NO. 33 – PAGE 348

K. RESOLUTION NO. 11-41 - RESOLUTION AMENDING THE 2011 CITY COUNCIL MEETING SCHEDULE TO HOLD A WORKSESSION IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL ON (1) TUESDAY, MARCH 8, 2011, AT 3:30 P.M.; (2) TUESDAY, MARCH 22, 2011, AT 3:00 P.M.; AND (3) TUESDAY, APRIL 12, 2011, AT 3:00 P.M.

RESOLUTION BOOK NO. 33 – PAGE 349

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Newman and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. UPDATE FROM THE BLUE RIBBON HEALTHCARE TASK FORCE

Assistant City Manager Jeff Richardson introduced Mr. James Christian, representing the Task Force, who will be updating City Council on findings and recommendations of Healthcare Task Force.

He said that City Council appointed the following 5 members of the community to serve on the Healthcare Task Force: Mr. Jim Christian, Mr. Marty Stamey, Dr. Bruce Elliston, Mr. Bill Biddle and Ms. Vicki Banks. Council directed the group to provide final health fund recommendations by the onset of the Fiscal Year 2011–12 budget process (January – February, 2011). The Task Force was initially charged with:

- Evaluating best practices to determine the optimal range of health insurance related benefits afforded to employees
- Cost-for-service comparisons
- Employer-employee cost-share analysis
- Review of the Asheville Project Disease Management Program
- Other areas of interest

The City Council Finance Committee has reviewed and approved the recommendations.

Mr. Christian said that the Task Force convened four times between September and December to review and discuss all aspects of the City's benefits package. Our review included details on the current risk structure, healthcare funding levels, The Asheville Project Disease Management Program, health claim costs, medical and dental administrative costs, health Services on-site clinic costs, and health and wellness initiatives and incentives.

Task Force Defined Objective: Operate a sustainable Health Care Program that provides Access, Quality and Cost-effective medical care to the City of Asheville's employees, retirees and dependents. The Task Force's recommendation encompasses these three broad categories that, when combined, will improve the Health Care program of the City, provide for fiscally responsible spending and improve the health of the participants.

Access – Improving access to health care by removing barriers (cost and availability), encouraging preventive health care and wellness exams, and affiliating with health care providers/networks to offer expanded services and access to care.

- **Expansion of Employee Health Clinic** – Expansion of services involves acute care diagnosis and treatment by an on-site physician from the current 2 day per week to 5 days, expanded lab services and capabilities, disease management intervention for patients not yet enrolled in The Asheville Project program and current Asheville Project enrollees not compliant with evidence based medical norms. Potential savings also generated through decreased time out of work due to illness, improving health education for patients in all risk levels through preventive medical education, reduction in prescription drug cost through generic utilization and lower cost brand by prescribing physicians and reduction in cost per event for lab work. Details on the financial impact of Expansion of the Employee Health Clinic shown below under the Cost Category.

- **Coordination of Care with Physicians** located in the Community for Employees & Dependents by affiliating with networks and providers, encouraging all Medical Plan participants to find a primary care physician, and facilitating communication with providers through the use of Electronic Health Records. The Medication Therapy Management Program began in July 2010 to review Prescription Drug Utilization of

members on health plan is an example of Coordination of Care with pharmacists, physicians and members. Communication of recommendations to members and their Physicians for potential opportunities to reduce member and City costs through prescription drug changes is on-going.

Quality - Health Care that focuses on Prevention and Wellness will improve patient health and well-being.

- **Affiliate with Health Care providers** committed to provide quality care and that are committed to Prevention and Wellness Care.

- **Reward prevention/wellness** by creating a system of real rewards for participation in a Wellness Program. The Wellness Program presented by City staff offers financial rewards to participants for committing to basic biometric testing and healthy behaviors. The Wellness Program should provide incentives for modifying unhealthy behavior and educational opportunities to participants.

- **Preventive Care Services** should be covered by the Medical Plan for all members. The U.S. Preventative Services Task Force publishes a detailed recommendation of Preventive Care Services based on evidence-based medical standards of care. Medical Plan changes should be reviewed to ensure these recommendations will be covered.

- **Education and Communication** to all employees and retirees on the actual plan costs and cost saving information.
    - Provide information concerning advanced directives before illness begins and partner with Crescent Health Care to provide details upon diagnosis of life threatening illness.

Cost – The third part of our recommendation involves reducing the overall cost of the City's health insurance program and stabilizing the long-term financial health of the program. The key is to reduce costs and ensure the long-term viability of the fund while still providing Access to Quality health care. The City's current plan design and costs were benchmarked against other plans offered by private and public employers in North Carolina. The City's current Medical benefits and corresponding employee/retiree contributions require less employee expense than those offered through other employers. Modification of Plan designs to reduce costs and increases in employee and retiree contributions will bring the City's Medical benefits to be more in line with the plans reviewed.

- **Modify Plan Designs** to reduce cost to be more consistent to benefit plans offered by other Public and Private Employers in NC. The new plans should promote preventive care and wellness and provide incentive to utilize the City's Health Clinic.
    - Plan Design Changes effective 7/1/11: Estimated 14% decrease in claim cost for Fiscal year 2012, which will offset health care trend increase, estimated increase for Health Care Reform changes required by PPCA and increases in Reinsurance Premiums. The estimated reduction in claims is $1,647,000.

- **Increase Employee and Retiree Contribution** by utilizing an *alternate Contribution Strategy* which sets the City's Contribution at the same level for all plans offered.

    - Proposed changes increase the employee contributions and retiree contribution. Changes being considered would result in a savings of approximately $840,000. Calculation of Retiree contribution increase is based on the actual cost of the City's Retiree population, which is more than 2 times the cost for active employees. The recommended increases in Employee and Retiree contributions must be reviewed for legal compliance and policy objectives. Legal review is necessary due to changes in rating methodology and contribution strategy.

Modifying contribution levels to a more moderate increase for employees and retirees combined is equal to approximately $420,000 in annual costs.

- **Future Employee Retiree Health Insurance** – City staff and Consultants should perform a detailed analysis of the Retiree Health Insurance options for Future Employees. Medical claim costs, liability for future costs, and eligibility limitations should be reviewed and benchmarked with other public employers in North Carolina.

- **Cost Expansion of the Employee Health Clinic** reviewed by the Task Force is shown below. The recommendation is based on future projections of Cost Avoidance and the ability to provide Access to Quality Heath Care to Health Plan participants.

Expansion of Health Clinic	Feb 2011-June 2011	Fiscal Year 2012
Lease of space & construction costs	$52,500	$66,000
Addition of Physician Assistant 5 days per week	$41,670	$100,000
Current Health Services Budget	$113,310	$251,933
Additional nursing staff	$10,420	$25,000
Lab, Supplies & Equipment	$10,000	$10,000
Electronic Health Record System	$10,000	$17,000
Physician Occupational Costs	$33,330	$80,000
Total:	$271,230	$549,933
Cost with no change	$154,972	$371,933
Additional Costs	$116,258	$178,000
Estimated reduction in Medical Claims Cost	-$100,000	-$500,000
Additional Cost (1st year)	$16,258	
Cost Avoidance (year 2)		-$322,000

- **Margins and Reserve** - Priority should be given to stabilizing the Health Insurance Fund by rebuilding the Reserve Fund that will remain available to offset normal variances in claims costs from year to year (margin), unforeseen catastrophic claims, larger than expected Medical Inflation trends, Incurred But Not Reported Claim Liability and the impact of future Health Care legislative mandates.

    - Each year the City staff should work with their consultants utilizing sound underwriting methodology to determine an adequate level of margin and reserve based on the projected claim fund and reinsurance protection.
    - To ensure an appropriate level of margin and reserve in the fund, we suggest that the City's current level of funding remain the same for Fiscal Year 2012, despite benefit reductions and increases in Employee and Retiree contributions. Additional claim savings generated by the benefit changes, expansion of the Health Clinic and Employee and Retiree contribution changes should be used to stabilize the fund.
    - Funding should be reviewed and adjusted annually.

Ms. Kelley Dickens, Director of Human Resources, said that next steps include (1) the expansion of health care clinic - in progress; (2) communication/education on healthcare - in

progress; (3) Wellness Program – July 1, 2011; (4) plan design changes – July 1, 2011; (5) examine retiree insurance for future employees is in progress; (6) financial stability of Health Fund – reviewed annually/ongoing.

Staff is prepared to continue to implement the recommendations of the Task Force along with the direction received previously from City Council to offer domestic partner benefits.

On behalf of City Council, Mayor Bellamy thanked Mr. Christian and the Task Force members for their hard work in providing the framework for Council to consider during their budget process.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Mayor Bellamy said that the applicant has requested this public hearing be continued until March 8, 2011. Therefore, Councilman Davis moved to continue this public hearing until March 8, 2011. This motion was seconded by Councilman Smith and carried unanimously.

B. PUBLIC HEARING TO CONSIDER REZONING 103 N. BEAR CREEK ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3950 - ORDINANCE TO REZONE 103 N. BEAR CREEK ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 5:40 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 103 N. Bear Creek Road from Commercial Industrial District/Conditional Zoning to RM-16 Residential Single-Family High Density District. This public hearing was advertised on February 11 and 18, 2011.

He said that the subject property (2.28 acres) is located within the City limits on North Bear Creek Road, just north of the intersection with Deaverview Road. Surrounding properties to the north and west are residentially zoned (RS-8, RM-8, RM-16) and the properties to the south and east are zoned Commercial Industrial. The existing land uses follow the surrounding zoning with single-family and multi-family in the areas to the north and west, and commercial uses to the south and east.

The underlying zoning before the conditional zoning to Commercial Industrial was approved was RM-8, Residential Multi-family Medium Density district. The purpose of that district is to be a transitional area, with single-family and multi-family residential uses, between high density single family and multi-family areas. Some non-residential development is normally permitted to provide the basic elements of a balanced and attractive mixed-use residential area.

The prior Conditional Zoning / Commercial Industrial application (CI-CZ) was approved with a site development plan in 2006 and modified in 2007 for a preschool and K-12 school. Plans included two classroom buildings, site access and student drop-off areas. Some of the site grading has been competed and the existing home on the property is being used as a child day care home. The applicants have stated that they are pursuing a zoning change as a straight rezoning in order to satisfy a requirement from a bank financing the project to have a clear underlying zoning for the property that is not conditioned on a specific use and site plan.

The proposed zoning for the current application is for RM-16, Residential Multi-family High Density District. The purpose of this district is to permit a full range of high density multi-family uses along with limited institutional, public, and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the range of uses. No site plans or specific uses are required or submitted with an application for a straight rezoning, because the range of uses is limited only by the list of permitted uses and uses by right subject to special requirements.

As they are likely to be proposed for this property, we note that both child daycare centers and schools are uses by right subject to special requirements in the RM-16 district. Each use has specific requirements that cover lot size minimums, setbacks, activity spaces, drop-off areas and number of children allowed. The lot size of the property proposed for rezoning is sufficient to meet that requirement and any site plans will be reviewed for compliance with the use standards.

The staff believes that the RM-16 zoning provides an appropriate use buffer between the residentially zoned properties to the west and north and the commercially zoned properties to the south and east.

At their meeting on February 2, 2011, the Planning and Zoning Commission voted 5-0 to recommend approval of the zoning change.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The site provides an appropriate buffer for the residential districts to the north and west.
- The location is close to Patton Avenue and nearby residential areas providing convenient access.
- The site is on the Asheville Transit Route 15 for both outbound and inbound portions of the route.

Con: None noted.

Staff recommends approval of the rezoning request to RM-16 because a goal of the district is to act as a buffer between commercial uses and residential areas. The list of permitted uses in RM-16 district include some non-residential uses that can be expected in healthy diverse neighborhoods. The site is conveniently located to transportation corridors and the transit system.

Ms. Amica Venturi hoped Council would approve her request and submitted a letter of support from seven of her neighbors.

Mayor Bellamy closed the public hearing at 5:40 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 3950. This motion was seconded by Councilman Davis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER A CONDITIONAL ZONING REQUEST FOR INGLES MARKETS INC. LOCATED AT 153 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A NEW 105,175 SQUARE FOOT GROCERY STORE WITH ASSOCIATED CAR WASH, GAS STATION AND 32,060 SQUARE FEET OF ADDITIONAL RETAIL SPACE AND A SIGNAGE PLAN

Mayor Bellamy said that the applicant has requested this public hearing be continued until March 22, 2011, in order to have the full Council hear his request. She noted that Councilman Russell was ill and would not be in attendance at the meeting.

Mr. Bernard Arghiere was disappointed about the continuance request when people have made arrangements to be at this meeting.

Ms. Laura Piraino, representing the Executive Committee of the local Wenoca Sierra Club, was also disappointed on the continuance request.

Mr. Gene Ellison, representing Ingles Markets, requested this matter be continued until March 22 in order for his request to be heard by a full Council.

Vice-Mayor Newman moved to proceed with the public hearing. This motion was seconded by Councilman Smith.

Mayor Bellamy noted that normally Council would continue a public hearing to allow the applicant the opportunity to address a full Council. No one knew until today that Councilman Russell would not be in attendance. She felt the issues regarding the request would not change between now and March 22 and felt Council should allow the continuance request. The applicant has a large investment in our community and she felt it was important for them to be given the opportunity of presenting their case before a full Council.

City Attorney Oast said that it would take four votes to continue the public hearing.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to proceed with the public hearing carried on a 4-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

Mayor Bellamy said that there will be one combined public hearing, with two separate votes.

Mayor Bellamy opened the public hearing at 5:44 p.m.

Conditional Zoning

Urban Planner Nate Pennington said that this is the consideration of two ordinances (1) a conditional zoning ordinance from Highway Business District to Highway Business District/ Conditional Zoning for the development of a new 105,175 square foot grocery store with associated car wash, gas station and 32,060 square feet of additional retail space with modification requests to off-street parking, landscaping, retaining wall standards, open space, outdoor lighting and large retail development standards; and (2) a signage plan. This public hearing was advertised on February 11 and 18, 2011.

He said the applicant is requesting a Conditional Zoning for two parcels zoned HB (Highway Business) to HB-CZ (Highway Business – Conditional Zoning) for the redevelopment of an existing Ingles shopping center in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO).

The project site consists of two separate parcels comprising 31.595 acres according to the submitted site plans. The project proposes to retain the existing Ingles store (for conversion to an alternate retail use) and shops to the west of the site and construct a new Ingles store, future retail space, gas station/convenience store, car wash and four (4) commercial outparcels. The following list provides a breakdown of the existing shopping center and the proposed development:

Existing	
Ingles Store:	53,000 SF
Shopping Center:	47,053 SF
Pizza Hut:	2,535 SF
Suntrust Bank:	2,325 SF

Note: Shops along former Cooper Boulevard and the State Employment Credit Union (SECU) bank are to be demolished.

Proposed	
New Ingles Store:	105,175 SF
Future Retail:	32,060 SF
Car Wash:	2,280 SF
Gas Canopy/Convenience Store:	8,745 SF
Total Shopping Center:	**253,173 SF**

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c). Multi-tenant developments located in the Highway Business (HB) district are permitted up to 200,000 square feet; and developments may exceed the square footage cap by up to 50% if the project complies with the Supplemental Design Standards For Large Retail Structures (Big Box Standards) as listed in Section 7-16-2(b)(10) of the UDO. The applicant has elected to have this project reviewed as a Conditional Zoning as this process allows for added flexibility to vary from the mandatory requirements of the big box standards (see below section for Big Box Standards) with Council approval.

Phasing

The new Ingles store, gas station/convenience store, car wash and access drive are proposed to be built in one (1) phase. Some shifting of the parking lot layout will occur, however, to keep the existing Ingles open during construction of the new store. Development of the future retail area and outparcels is expected to be incremental and market driven.

Access

Primary access to the site is gained from an existing traffic light along Smoky Park Highway. A secondary entrance (currently Cooper Boulevard – see road closure section listed below) is proposed to be upgraded to allow for full access to the site. Additionally, a driveway is proposed to connect to the primary entrance to the adjacent Lowes home improvement store. The future outparcels will take access from this driveway.

Road Closure

Cooper Boulevard was the access to a former mobile home park on the vacant parcel to the north and east of the existing Ingles store site. That site is the location of the new Ingles store, future retail area and outparcels. The proposed site plan calls for the closure of the Cooper Boulevard to create a secondary entrance to the property. The City Council must approve the

closure of this right-of-way by City Council to accommodate this development. This request was recommended for approval by the Greenways Commission at their January 13, 2011, meeting (see below under section Required Reviews).

Parking

According to the site plan, 732 spaces are required inclusive of required Americans with Disabilities Act parking. Bike parking is dispersed throughout the site in front of the existing and new Ingles stores, to the side of the existing shops, and in front of the Pizza Hut restaurant. A modification request is being sought to authorize a reduction in the amount of required off-street parking (see Modifications section below).

Landscaping & Open Space

Significant landscaping will be required throughout the site, including street trees, parking lot landscaping, street buffer, building impact landscaping, dumpster/loading zone screening, and a Class "B" bufferyard at the rear of the property. That rear buffer separates the neighboring residential zoning designation (RS-4) from the commercial zoning designation (HB) of the subject property. The Class "B" buffer standards for "Big Box" developments require 150% of the plantings called for in a standard Class "B" buffer. A number of modification requests to the landscaping requirements are being sought (see Modifications section below).

The open space requirement for this type of development is 15% of the total site size; a total of 4.52 acres for this site. The applicant has elected to pay a fee in lieu of for the remaining portion of deficient open space - .22 acres as prescribed in Section 7-11-4(g) of the UDO.

Big Box Standards- Appendix 7-F (Supplemental Development Standards for Large Retail Structures)

As noted above, the overall size of the development requires that the project be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures (Big Box Standards). These development standards address building design, architectural compatibility with the surrounding area, landscaping, pedestrian safety and public enhancements. The standards are divided into two categories: 1) Required standards and 2) Optional design standards that are point based. In order to achieve full compliance with these standards the applicant must demonstrate that the project meets all the "required standards" and that the project has incorporated an adequate amount of "optional design standards" to accumulate a minimum of 150 points.

In regards to the proposed project, the applicant has fully demonstrated compliance with the optional design standards with an accumulated total of 160 points. However, several modification requests are being sought for two (2) of the required standards (see Modifications section below), including the façade standards. The applicant has provided a letter outlining their plan for proposed façade enhancements for the existing shopping center.

Signage

While signage is illustrated on the elevation drawings for this project, it is not part of this development review. Signage for the development will be reviewed in detail with the master sign package application following the public hearing on this project.

Modification Requests:

The applicant is requesting a total of 9 modifications to the site plan which must be approved by City Council. The staff supports 4 of the requests.

1. *Retaining Walls* – Section 7-10-5 of the UDO requires that foreground landscaping or attached vegetative screening be required for any retaining wall sections over 20 feet in height regardless of location relative to a public or private street. The applicant is proposing instead a 23-26 foot retaining wall behind outparcels #1 and #2; located above proposed detention pond #1. The wall will not be visible from the access drive connecting the outparcels to the Lowe's driveway or Smoky Park Highway. Given the difficulty in planting in such close proximity to the proposed detention pond, the **staff supports this request.**

2. *Off-Street Parking* – Section 7-11-2(c)(1) of the UDO requires a minimum number of off-street parking spaces based on land use. The Ingles shopping center development requires a total of 846 spaces. 732 spaces are provided resulting in a deficiency of 114 spaces or approximately 13% of the required total. The applicant has provided staff with reasonable justification for supporting the parking reduction based on the peak operating hours of the various retail and restaurant uses within the development, the **staff supports this request**.

3. *Parking Lot Landscaping* – Section 7-11-2(d)(4)c. of the UDO requires that when more than four trees are required in a parking lot with interior rows, 50% of the trees and shrubs must be planted in islands or medians located within the parking lot. The required amount of trees to be planted in islands and medians throughout this shopping center is 115 trees. The intent of this requirement is to break up large expanses of impervious surface with vegetation to help reduce urban heat island effect.

   The applicant is proposing to plant 70 trees throughout the parking lot resulting in a deficiency of 45 trees or 40% of the required total. As an alternative to this requirement, the applicant is proposing to plant the remainder of trees in other locations throughout the site. The reason given for requesting the modification is the applicant feels that their plan "creates an even distribution of trees though the proposed parking lot without reducing the parking space totals to below the City's minimum required." Those alternate locations would not, however, provide shade to the parking areas - a primary rationale for the requirement.

   The staff does not support this request as tree plantings in the alternate locations would not provide shade to the parking areas – a primary rationale for the requirement, and the reasons stated for requesting the modification have never before been accepted for requesting such a modification.

4. *Parking Lot Landscaping* – Section 7-11-3(d)(4)d. of the UDO requires that when more than four bays of parking are proposed, an interior island with an average width of 20 feet and a length equivalent to the length of the parking bay is required. This island must be planted and include a pedestrian walkway no less than five feet wide and placed in a location that enhances pedestrian circulation preferably leading directly to a building entrance or sidewalk. The intent for this requirement is to add shade in the parking area (thus reducing heat island impacts) in a larger island where trees will have better growth, and to provide a safer "refuge" for pedestrians. They are most often used by parents with small children, the elderly, and others who move slowly or wish to avoid vehicles in drive aisles.

   The applicant is instead proposing to wrap a sidewalk around the perimeter of eastern portion of the parking lot from Smoky Park Highway to the drive aisle in front of the stores. The reason stated for the requested modification is that "Ingles feels this request eliminates possible conflicts between pedestrians and automobiles."

   The staff does not support the request since the alternate sidewalk location does not

meet the primary intent of the standard. Staff notes that including the central island and sidewalk would result in a further reduction to the available parking spaces; however, additional spaces could be accommodated along the perimeter of the parking field or on one of the proposed outparcels. Further, the alternative sidewalk proposed would require approximately 710 linear feet of sidewalk while a central sidewalk would result in approximately 180 linear feet of sidewalk, thus further adding to impervious surface on the property. Also, the central island could support additional parking lot trees, offsetting the modification request. Additionally, the staff would support further reductions to the displaced parking given the large size of the new and existing parking lot.

Further, it is the belief of the staff that locating the sidewalk along the perimeter of the parking area would defeat the primary purpose of the standard, which is to provide safer pedestrian access into the parking areas; and added shade in the primary parking fields. Human nature being what it is, few are likely to take the time to go the perimeter and walk that much further to reach the store access. Further, installation of the required island would help the applicant meet the requirements of modification #'s 3 and 4 by providing additional areas for planting trees.

Finally, the staff also notes that multiple other "big box" retail developments approved in recent years have met this requirement without protest, including the Target store off of Tunnel Road, the Super Wal-Mart on Swannanoa River Road, and the recent renovation of the Wal-Mart store on Hendersonville Road. If this modification request is granted without reasons that establish its uniqueness, it would call into question the basis for the standard.

5. *Parking Lot Landscaping* – Section 7-11-3(d)(4)h. of the UDO requires that each parking space be located within 60 feet of a tree as measured from the trunk of the tree to the closest point of the parking space. The intent of this requirement is to provide shade to the parking area and reduce the urban heat island effect.

   While the required number of parking lot islands has been provided, eight (8) of the islands do not meet the parking lot tree requirement. The developer requests to provide only shrubs in these islands, creating a deficiency of 96 parking spaces that would not be within 60 feet of a tree, representing 13% of the total 732 spaces. The majority of these islands are located directly in front of the new Ingles store entrances. If installed and planted as required, the deficiency would decrease by 60 spaces to less than one-half percent.

   Additionally, the requirement for the large island noted in request #4 would also reduce this deficiency. The reasoning provided for not planting these trees reflects a general philosophy at odds with a basic intent of the landscaping standards: "The parking lot landscaping is designed to maximize visibility at both the vehicular and pedestrian levels."

   The staff does not support this request because it defeats the intent of the standard which is to provide for adequate shade and reduce the urban heat island effect. As with the previous request, if this modification request is granted without reasons that establish its uniqueness, it would call into question the basis for the standard. Further, planting larger, single trunk shade trees (rather than often chosen smaller ornamental trees) would alleviate any visibility concerns; as larger trees grow to create a canopy above the sight level of vehicles and pedestrians while providing the desired shading.

6. *Open Space* – Section 7-11-4(c) of the UDO requires that 15% of lot area be reserved for open space for developments that primarily include suburban open space amenities. Since the time of the Planning and Zoning Commission meeting, the applicant has worked with staff to identify areas of the property where open space can be provided.

The current plan reserves 4.52 acres of the required 4.74 acres of open space. The UDO provides a fee in lieu option if an applicant cannot meet some or the entire required amount of open space. The fees collected are used to purchase or to enhance recreational use of property necessary to implement features of the greenway master plan or the Parks and Recreation Master Plan of the City of Asheville. **Ingles has elected to pay this fee and therefore this modification request is no longer necessary.**

7. *Outdoor Lighting for Vehicular Canopies* – Section 7-11-10(k)(1) of the UDO requires that areas under a vehicular canopy have an average illuminance of 20 maintained footcandles. The intent of this requirement is to mitigate the negative light trespass that is emanated from vehicular canopies.

   The applicant is requesting an average of 80 maintained footcandles or 400% increase although the submitted photometric site plan indicates an average of 57.9 maintained footcandles which equates to a 289.5% increase. The stated reason for requesting the modification is that, "Ingles has created a prototypical fuel center that they feel meets the needs of their customers while providing utmost visibility and safety."

   Once again, the rationale for the request is at odds with the primary reasons for the regulation, and approving it without establishing elements that are unique to this particular location would call into question the basis for the regulation.

   At the Planning and Zoning Commission meeting, Ingles representatives noted that the canopy's footcandle output would somewhat diminish over time like other older similar canopies that have been installed at previous project locations. The staff recognizes that reasonable consideration could be given due to the deterioration of the lights over time but feels that the increase being requested by the applicant is excessive. The City of Asheville's footcandle output maximum for vehicular canopies are in line with other local communities in the area (see below).

Municipality	Footcandle (FC) Maximum
Asheville	20 FC
Black Mountain	24 FC
Brevard	10 FC
Fletcher	24 FC
Waynesville	15 FC
Weaverville	24 FC
Woodfin	20 FC

   The staff does not support the request for 80 FC as the existing 20 FC requirement reflects Asheville's commitment to efficient and appropriate lighting levels. [This standard comes directly from the Illuminating Engineering Society of North America (IESNA) recommendations and is a national standard, NOT a dark sky standard.] As with other requested modifications noted, to allow a modification, especially a modification so greatly in excess of our standards, and of other prevailing standards in the region, would call into question the basis for the lighting standards unless there were elements unique to the site. The staff does not believe that there are any elements unique to this site that warrant this great a variation from our regulations. 20 FC is an appropriate amount of light and neither the insurance industry nor the agencies regulating fuel dispensing require higher levels. Excessive illumination is designed to attract customers and, if granted, provides Ingle's an advantage over other fueling centers that meet the standards. The staff also notes that a recent replacement canopy on Long Shoals Rd. has complied with this new standard without protest.

Big Box Modification Requests:

8. *Required Standard #1* – Appendix 7-F of the UDO requires that if less than 25% of the parking is located to the side or rear of the building, then the parking area is to be buffered from the street with a 50-foot landscaped buffer that incorporates 150% of the plantings called for in a Class "B" buffer and includes a berm or wall with a minimum height of 42 inches. The applicant is requesting the elimination of this requirement due to the existing development on the site.

   The Big Box standards were primarily designed to address and mitigate the impacts a "new" large retail development has on surrounding and adjacent properties. Since its adoption, staff has had difficulty applying a number of the standards to "existing" developments undergoing renovation where the majority of property was already developed and in use. The landscape requirements in Appendix 7-F is somewhat outdated and has not been revised since the adoption of the City's current landscape ordinance which also incorporate many of the same standards. In lieu of the requirement noted above, the applicant proposes to meet the typical street tree and buffering from the street requirement along Smoky Park Highway and proposes installation of additional buffer plantings between the residential neighborhood and store at the rear of the site. **The staff feels that this proposal is more appropriate and in character with the existing development and therefore supports this request.**

9. *Required Standard #1* – Appendix 7-F of the UDO requires that outparcels shall meet the design standards set forth in this section and shall not incorporate drive through facilities. The applicant is seeking to have this requirement eliminated. **The staff supports this request** as the outparcels are setback more than 200 feet from Smoky Park Highway and are separated by an active Norfolk Southern rail line. Further, the outparcels are situated so that their ingress/egress is via the internal driveway that connects Ingles to Lowes, and will not create additional curb cuts along Smoky Park Highway.

In conclusion, while the staff found good reason to support four of the requested modifications, the staff found the remaining requests to be very problematic in both the degree to which they vary from the requirements and the nature of the reasons stated for requesting the modifications. These requests are deeply divergent from the required standards, and the reasons stated by the applicant are generally related to personal preference and standards of the company, not the standards adopted for the City or hardship inherent to this site. Unless the Council finds the situation at this location to be truly unique, approval of the requested modifications (particularly to the levels requested) would make it difficult to uphold the standards in other locations. The staff does not find elements at this location that make it unique enough to warrant significant divergence from the landscaping and lighting standards that are used throughout the city. If, however, the Council supports these modifications; they may wish to direct the staff to reconsider the basis of these standards.

This proposal was recommended for approval with conditions by the Technical Review Committee (TRC) on January 3, 2011. No members of the public were present to speak on this project and no comments have been received by staff. Susan Roderick (TRC representative for the Tree Commission) stated concern about the developer's proposal to provide fewer shade trees in the parking lot than required by the ordinance. She also stated a belief that the internal pedestrian walkway requirement provides a safer pedestrian connection and would also provide additional area for meeting the internal landscape requirements and prefers it over the alternative sidewalk location that wraps around the perimeter of the property.

It should be noted that the Alternative Compliance Sub-Committee of the Tree Commission has reviewed previous versions of the Ingles site when it was thought that the project would be reviewed under the purview of a Level II site plan review. Many of the same

modification issues/concerns were noted during these past reviews as noted by Ms. Roderick above.

The Greenway Commission considered the application for the permanent closure of Cooper Boulevard on January 13, 2011. Attention was focused on the existing dirt walking trail in the rear of the property connecting Old Starnes Cove Road to the rear of the existing Ingles store. The Commission, after some discussion, made the following motion unanimously approving the request for the permanent closure of Cooper Boulevard: "City staff shall research the feasibility of a permanent, multi-use, maintained trail connecting the neighborhood to the new Ingles Market development, and for the Planning & Zoning Commission and City Council to consider that research in their approval of the street closure and zoning modifications."

The Planning and Zoning Commission, at their regularly scheduled meeting on February 2, 2011, unanimously approved the project with all 9 modification requests. The Commission noted that they felt that the applicant presented valid points on why the modifications were being requested and that they felt that the requests were unique to the project. Reasons stated were generally related to the shape of the parking areas (being wider and shallower than many others), or a personal reluctance to use amenities like center pedestrian islands, or a concern about shade trees blocking vehicle visibility. Commissioners also noted that some sites are "not going to be able to meet the City's standards but may be able to achieve the same outcome in a different way" although no specific examples were given as to why this site was achieving those outcomes in other ways. The Commissioners stated that "they review each project that comes before them independently and make adjustments if they see fit." Additionally, it was the consensus of the Commission to request that a marked crosswalk be installed across Smoky Park Highway in front of the new proposed "Cooper Boulevard" entrance. The staff notes that there is currently a crosswalk across Smoky Park Highway at the Lowe's entrance.

Additionally, the Sustainable Advisory Committee on Energy & the Environment met on February 16 and voted to recommend: "Whereas properly landscaped parking lots provide environmental benefits to reduce heat island effect and whereas enforcing the city's existing lighting standards reduces light pollution therefore SACEE strongly supports staff's recommendation to deny the variance request from the Planning and Zoning Commission. SACEE is further concerned that allowing these variances will set a harmful precedent for permitting unsustainable development."

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use o permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   This project represents the redevelopment of the existing Ingles store and shopping center with an expansion onto an adjoining parcel that formerly housed a now demolished mobile home park.

The residential neighborhood to the rear of the property is separated from this project by existing trees and a Class "B" buffer of additional width and plantings to be installed by the developer as well as topography change of over 20 feet. The remaining portions of the property are surrounded by similar commercial developments along the Smoky Park Highway corridor.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and the residential nature of the property to the rear of the development will be buffered by additional vegetation, open space and the existing topographical elevation change.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The site is adjacent to the Lowes home improvement store to the east, auto sales and body shop to the west and a number of commercial uses along the Smoky Park Highway corridor including a motel, convenience store and the Asheville School campus. The proposed use is consistent with both the existing zoning and character of the Smoky Park Highway commercial corridor in which it is located and maintains sensitivity to the adjoining residential neighborhood along Old Starnes Cove Road through the use of mitigating factors including additional landscaping, open space and existing topography.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of this site is consistent with the goals of infill development along an established commercial corridor.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The site is located just off Smoky Park Highway (US 19-23) and is within approximately one (1) mile of an entrance to I-40. Although the City of Asheville transit route does not currently extend this far west, provisions are included for a bus stop location on Smoky Park Highway to accommodate future transit expansion. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Based on the development size, a traffic impact study for this development is required by City of Asheville ordinance. The traffic impact study has been received and reviewed by staff. No adverse traffic impacts occur on the adjacent roadways because the recommended mitigation elements are implemented. Further, as this development's entire street frontage borders a NCDOT facility, all recommendations will require their approval.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to redevelop and upgrade an existing developed site.

- The project will ultimately provide additional jobs to the local economy.
- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the shopping center making the development more compatible with the surrounding area.

Cons:

- Includes a significant number of modification requests that could be mitigated by designing the development in such a way that meets all applicable UDO requirements.
- Granting modification requests arising from a preference for maintaining standard prototypes could establish precedents for requests from future developments seeking such relief, and a dilution of the intent of the standards.

Staff recommends approval of the conditional zoning request as submitted by the applicant, including the modifications supported by staff. In addition to the standard conditions, staff recommends the following additional conditions as well: (1) A lot recombination of both subject parcels must be completed before zoning permit issuance; (2) Existing trail connecting the Old Starnes Cove Road neighborhood to the Ingles store will be required to clearly delineate surface with a pervious material such as mulch or gravel; (3) Façade enhancements to the existing shops within the center are required to be completed within 5 years of the Conditional Use Permit approval and shall be architecturally compatible in color and shall incorporate design elements in common with the Ingles structure; and (4) Future development of outparcels shall adhere to the design standards outlined in the Façade Renovation addendum provided by the applicant to ensure compatibility with the overall design of the structures within the development. Furthermore, staff requests that City Council consider the long term implications of approving modifications related to preference only, and do not achieve goals established by the City in the standards for review of these types of uses.

Signage Plan

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance to approve a signage plan for a new Ingles Store and proposed ancillary uses and existing shops located at 153 Smoky Park Highway. This public hearing was also advertised on February 11 and 18, 2011.

The proposed master signage plan is being reviewed concurrently with a Conditional Zoning application for the redevelopment of the site. The signs included in this proposal primarily address the signage for the new supermarket, gasoline sales/convenience store, and car wash facilities.

The Ingles development site also houses several other businesses each with a freestanding and attached sign (Pizza Hut, Suntrust, and State Employees Credit Union). In addition to the signs being requested to support the new development, Ingles is also proposing a new multi-tenant identification sign to replace the existing free standing signs on site. This sign will be located near the western entrance, closest to the existing shops.

The project site consists of approximately 31.6 acres, zoned Highway Business (HB), and is considered to be a multi-tenant development. The Unified Development Ordinance (UDO) currently allows multi-tenant developments one free-standing development or joint identification sign and also attached signage for each individual business within the development. Tenants within a multi-tenant development are not permitted to have separate freestanding signs.

The signage plan is divided into two categories: (1) signage for the new Ingles supermarket and proposed ancillary uses, and (2) signage for the existing businesses remaining on the site and signage for future development within the center and on the proposed outparcels.

Category Description and Analysis

1) New Development: Separate attached signage is requested for each separate service and includes:
   - Multiple signs for the principal Ingles supermarket
   - Attached signage for a convenience store (The i Market)
   - Attached signage for the retail gasoline sales (Gas Express)
   - Attached signage for the car wash (Laser Wash)

Along with this attached signage, Ingles is also requesting consideration of two separate free-standing pylon signs to be located along the street front for both the retail gasoline sales and the Ingles supermarket. Changeable copy panels are requested for both pylon signs.

Using exhibits, she reviewed the following table which provides information on each of the signs that is being requested:

Note: Multi-tenant signage allowance: One freestanding sign permitted for the development: 25-feet in height and up to 200 s.f. Attached signage: one square foot per one linear foot of building frontage (1:1 ratio) not to exceed district maximum of 200 s.f.

INGLES MARKET EXHIBIT 2A – 2B	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles (Store Sign) (Exhibit 2A)	201.95 s.f.	1 attached sign; not to exceed 200 s.f.	1.95 s.f.
American Owned	36.0 s.f.	Not allowed	# of signs and s.f. has been exceeded
Fresh Foods	29.46 s.f.	Not allowed	"
Starbuck's	16.0 s.f.	Not allowed	"
Café	**8.48 s.f.	Not allowed unless not visible from the R.O.W.	"
Pharmacy Drive-Thru	*13.13 s.f.	Wayfinding/directional	allowed
Free-standing Pylon (Exhibit 2B)	180.26 s.f.	1 sign @ 200 s.f.	Permitted and Complies

GAS CENTER EXHIBIT: 3A - D	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Gas Express, canopy (Exhibit: 3A)	36.6 s.f.	Not allowed; not a separate tenant	# of signs and s.f. has been exceeded
Ingles, canopy (Exhibit: 3A)	21.0 s.f.	Not allowed; not a separate tenant	"
The i Market (Exhibit: 3B)	16.37 s.f.	Minimum of 25 s.f. or 1:1 ratio	Permitted and Complies
Wash Express and Laser Wash (Exhibit: 3C)	33.86 s.f. 4.32 s.f	Minimum of 25 s.f. or 1:1 ratio	Permitted and Complies
Free-standing Pylon (Exhibit: 3D)	112.0 s.f.	(1) Joint identification sign per development.	Number of free-standing signs have been exceeded.

** The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. ** There is also a precedent for exempting the Café*

sign when reduced in size so as not to be visible from the public right-of-way or adjacent properties.

The proposed plan for the grocery store exceeds the number of attached signs allowed as it is proposing five separate signs instead of the one to two normally allowed. The attached signage also exceeds the total allowed square footage of the district maximum (291.89 s.f. instead of 200 s.f.).

The gas center (that includes the convenience store, gas pumps and car wash) must also comply with the multi-tenant signage allowance. Compliance with that standard would limit the attached signage to only the convenience store and carwash and would not permit a freestanding pylon sign since only one joint identification sign is permitted per development.

2) Signage for existing businesses and shops (Exhibit 4):

A total of 4 single tenant freestanding signs exist on the Ingles development site including: the existing Ingles sign, Pizza Hut, Suntrust, and the State Employees Credit Union. Currently, the Ingles development consists of two separate parcels that would have permitted at least two of the freestanding identification signs. There is also precedent for allowing businesses located on lease parcels to obtain separate single tenant signage as long as the lease area is constructed to meet all of the UDO design standards as if it were located on its own parcel.

Ingles is proposing to remove all of the existing freestanding signs within the development and replace them with one joint identification sign that will provide advertisement at the street for the other businesses located within the shopping center. The sign would comply with the height and size standards permitted for a multi-tenant development (25-feet tall, 200 s.f) and would also reduce the visual clutter and distraction that multiple free standing signs (located within close proximity to one another) can create for motorists traveling on the highway.

The Conditional Zoning application that is associated with this review is conditioned upon Ingles recombining the two parcels into one lot. This is a standard requirement when there are not enough parking spaces within a multi-tenant development to support all of the uses on the property (when calculated separately for compliance) and when other infrastructure on the site is used in common (ingress/egress, sidewalks, etc.). This requirement also eliminates the need for separate cross access and shared parking agreements between business uses.

As noted in the Conditional Zoning report, staff supports the applicant's request to allow for a reduced parking requirement to support the various uses on site. This, however, creates unique challenges in applying fair and equitable signage for the existing and future uses and development that may occur on the site. Because the existing development falls short of providing the number of required parking spaces the lot must be recombined into one parcel. This, however, eliminates the option for existing tenants to maintain their current "single tenant" status as they can no longer comply with all of the design standards for a business located on a separate parcel or lease area.

Additionally, unlike other recent Ingles developments, the site cannot be subdivided (or re-subdivided) to accommodate the features included in the new Ingles prototype development that includes not only a supermarket but also a gas station with convenience store and car wash. The prior signage plan approvals that Ingles received were supported because the gas center uses could be located on a separate parcel from the supermarket and the signs could have been permitted as single-tenant signs by right (with exception to the larger sizes that were approved). It is also not unusual for the primary business, Ingles, to request a separate free-standing sign with a changeable copy component for advertising the various uses within the store and special sales on products.

The stated purpose of allowing the consideration of a separate signage plan is as follows:

The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.

In the context of the significant number of applications for signs received daily by the City, we feel that the site presents unique site conditions and constraints that warrant the special consideration allowed. Staff also feels that a precedent for Ingles has been set through the approval of two other sign packages that were substantially similar to the signage included in this report.

Pros:

- Provides clear and recognizable signage to a large grocery retailer.
- Allows for the removal of multiple signs within close proximity to one other and replaces them with a more compliant sign option;
- Allows for equitable signage opportunities for the existing retail center and future uses
- Reduces visual clutter by removing multiple signs that may lead to distracted motorists along a corridor

Con:

- Exceeds existing standards without creatively addressing pedestrian-orientation or way-finding

Staff recommends that the signage plan for the Ingles development located at 153 Smoky Park Highway be approved as submitted with the following conditions: (1) All signs shall meet the HB zoning district setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Window films shall be limited to image displays only; films that incorporate any form of commercial advertisement or trademark must be counted towards the development's signage requirements which are not included in this application; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mr. Ellison said that Ingles has been working on this good plan for over 5 years. They began with 9 modification requests and have worked their way down to only 4 modification requests. Regarding the parking lot trees, they are in 87% compliance in a small parking lot that has a unique shape. He noted that in the parking lot there will be 330 large canopy trees, 146 small deciduous trees, 135 evergreen trees for a total of 611 trees. While there is a shortage in the parking area, they believe they are addressing those issues by the number of canopy trees around it. Regarding the parking island, Ingles feels that it is safer to build the wrap around sidewalk. They received a letter from Asheville School in support of the alternate wrap around sidewalk. He feels that safety of the public is the issue and with the sidewalk around the lot, it will reduce the battle between pedestrians and cars. They are not trying to dodge the requirements, but have found some alternative ways to meet the requirements. He quoted comments from the Planning & Zoning Commission February 2, 2011, meeting in which the Commissioners unanimously approved all modifications noting that they were unique to the site. Ingles has worked with the neighbors and they have made adjustments to the plan based on community input. This $20 Million project has many economic benefits to Asheville, including increase in jobs, payment of more taxes, etc. Regarding the lighting issue, he again said the issue is safety. He explained that the superior Ingles fuel center canopy design allows the light to remain on their property. He said that every Ingles store with a gas station in western North Carolina has a standard of 100 maintained footcandles; however, they are requesting 80 maintained footcandles. He urged Council to approve the conditional zoning request with modifications.

Even though the following individuals were supportive of the conditional zoning request of Ingles, they did not support the four variances not supported by City staff for the various reasons, some being, but are not limited to: properly landscaped parking lots provide environmental

benefits to reduce heat island effect; the City's existing lighting standards reduces light pollution; allowing these variances will set a harmful precedent for permitting unsustainable development; and the internal pedestrian walkway requirement provides a safer pedestrian connection:

Mr. Bernard Arghiere
Mr. Bob Gale, Chairman of the Tree Commission
Mr. Kenneth Fulford
Ms. Laura Piraino, Executive Committee of the local Wenoca Sierra Club
Ms. Raelin Hansen
Ms. Susan Roderick, Asheville Greenworks
Ms. Lisa McWherter, Executive Committee member for the local Sierra Club Chapter
Mr. Steve Rasmussen
Mr. James Judd (opposed also to signage plan)

Mayor Bellamy closed the public hearing at 6:48 p.m.

Councilman Bothwell moved to adopt an ordinance for the conditional zoning of the project identified as Ingles Markets, Inc., located at 153 Smoky Park Highway from Highway Business District to Highway Business District/Conditional Zoning to allow for the development of a new 105,175 square foot grocery store with associated car wash, gas station and 32,060 square feet of additional retail space, and approval of the modification requests only supported by City staff (not the three parking lot standards modifications or the outdoor lighting for vehicular canopies modification), subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) A lot recombination of both subject parcels must be completed before zoning permit issuance; (7) Existing trail connecting the Old Starnes Cove Road neighborhood to the Ingles store will be required to clearly delineate surface with a pervious material such as mulch or gravel; (8) Façade enhancements to the existing shops within the center are required to be completed within 5 years of the Conditional Use Permit approval and shall be architecturally compatible in color and shall incorporate design elements in common with the Ingles structure; (9) Future development of outparcels shall adhere to the design standards outlined in the Façade Renovation addendum provided by the applicant to ensure compatibility with the overall design of the structures within the development; and (10) that the City's standards be met regarding the three parking lot landscaping requirements and the outdoor lighting for vehicular canopies outlined above by City staff. This motion was seconded by Vice-Mayor Newman.

City Attorney Oast said that because this is a conditional zoning, any conditions imposed by City Council must have mutual consent by the applicant. If there is no mutual consent by the applicant, then the conditional zoning project fails and cannot be brought back to Council for one year, unless there are significant changes (if the ordinance to be considered on second reading by City Council later in the meeting passes.)

Mr. Ellison advised Council that he did not have the authority to consent to the condition regarding the four variance requests not recommended by City Council. He suggested Council continue the matter in the hopes of working towards approval of the variances requested.

City Attorney Oast suggested Council continue the matter to a date certain to see if the applicant will agree to the conditions incorporated into the motion. This will also allow staff to

meet with Ingles representatives and hopefully come to some agreement. If the matter is continued, Council could continue the public hearing and take further comment on new information only related to the parking lot landscaping requirements and the outdoor lighting issue.

It was the consensus of Council that Ingles is an outstanding corporate citizen and they hope that staff and the applicant can work out a compromise on the four remaining modification requests.

Councilman Bothwell withdrew his motion. He then moved to continue the public hearing on the conditional zoning request to March 22, 2011. This motion was seconded by Vice-Mayor Newman and carried unanimously.

Councilman Smith moved to continue the public hearing regarding the signage plan for a new Ingles Store and proposed ancillary uses and existing shops to March 22, 2011. This motion was seconded by Councilman Davis and carried unanimously.

D. PUBLIC HEARING TO CONSIDER CLOSING COOPER BOULEVARD

Because the public hearing to consider closing Cooper Boulevard relates to the conditional zoning request for Ingles Markets Inc. located at 153 Smoky Park Highway, Councilman Smith moved to continue the public hearing to March 22, 2011. This motion was seconded by Councilman Davis and carried unanimously.

At 7:15 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3947 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING RESUBMISSION OF A DENIED CONDITIONAL USE

ORDINANCE NO. 3948 - ORDINANCE TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CHANGES TO DEVELOPMENT REVIEW PROCEDURES REGARDING SEPARATION REQUIREMENTS

Due to a recent conflict of interest, Councilwoman Manheimer asked to be recused from participating in discussions of Ordinance Nos. 3947 and 3948. Vice-Mayor Newman moved to recuse Councilwoman Manheimer from participating in these matters. This motion was seconded by Councilman Bothwell and carried unanimously.

Councilwoman Manheimer then left the Chamber.

City Attorney Oast advised Council that in order for the ordinances to pass, they will require four votes in favor.

Planning & Development Director Judy Daniel said that on February 8, the City Council voted 4-3 to adopt two changes to the Unified Development Ordinance addressing the decisions of the City Council, and separation requirements for developments in or adjoining residential areas. A 4-3 votes requires a second vote, set for February 22. During the discussion of these amendments, the Council requested that the staff get additional comments on them from several organizations including (but not limited to) the Council of Independent Business Owners (CIBO) and the Coalition of Asheville Neighborhoods (CAN).

The first amendment establishes that if the Council denies a conditional use or conditional zoning application, a project that is essentially the same (or substantially similar) may not be submitted under any approval process within one year of the Council action.

> **Conditional Use approvals, resubmission of denied applications**: No application for approval of a ~~conditional use~~ development project (conditional use, site plan, project plan) under any approval process (Level I, Level II, or Level III), shall be filed with or accepted by the planning and development department if that project ~~which~~ is identical or substantially similar to a conditional use or conditional zoning application which has been denied by the city council within one year of the final action by the city council denying the request.

The second amendment modifies the threshold for Level II vs. Level III review of a site plan, affecting properties under the same ownership in residential areas, establishing (as was the standard in the Unified Development Ordinance (UDO) until modifications in 2009) that to be reviewed as a Level II, the projects must not contain multiple structures less than 1,500 feet apart.

> **Level II Site plan review process**: Properties not adjoining or fronting single-family zoning, that are within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. Properties adjoining or fronting single-family zoning, located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.

This change does not affect properties in commercial areas (as was the intent of the modification in 2009) and such properties in residential areas can still move forward as Level III projects.

The staff presented the changes at the CIBO meeting on Friday, February 11. Their overall comments were very negative about the proposed changes. There were a number of comments, most feeling that changing the process is a bad idea, especially given the current economic conditions. The tone and content were very much the same as expressed by a CIBO representative and a representative of the Board of Realtors at the Council meeting on February 8.

The staff met with CAN representatives on Monday evening, February 14. Their overall comments were very much in support of the proposed changes. There were several comments on both amendments. On the first amendment most reflected a feeling that the process needed to be changed so that if the Council did not approve a project, it could not return as essentially the same or slightly modified within a year. On the second amendment most reflected a feeling that distance requirements should be wider in or adjoining residential neighborhoods; and projects under the same ownership that are proposing structures within 1500 feet of each other should go to the Council for approval.

Councilman Davis said that he did not support the ordinances on first reading because he felt it was a reaction and came forward out of our normal policy of doing business; however, the amendments are good and in consideration of neighborhoods and he would support them at this time.

Mayor Bellamy concurred with Councilman Davis in that these amendments will help developments going forward so when Council denies a project, they will have that decision stand for one year.

Vice-Mayor Newman moved to adopt Ordinance No. 3947 on its second and final reading. This motion was seconded by Councilman Smith and carried unanimously (with Councilwoman Manheimer excused).

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Vice-Mayor Newman moved to adopt Ordinance No. 3948 on its second and final reading. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer excused).

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Councilwoman Manheimer returned to the Chamber.

C. CONSIDERATION OF SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT'S RECOMMENDATION REGARDING THE TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY FOR THE CITY OF ASHEVILLE

Vice-Mayor Newman explained that the City Council Planning & Economic Development Committee discussed the "transformational projects" economic incentive policy at their meeting earlier this week. They asked the HCD Committee to have some further discussion about the affordability requirements as well, and so they had additional discussion at our HCD Committee on February 17.

The HCD Committee felt that we are getting closer to agreement about the key elements of this policy but that we would benefit from having a little more time to flesh out the policy details. It is our understanding that the issue may be scheduled for Council consideration at our next meeting. We wanted to request consideration for scheduling this at the meeting after next in order to provide a little more time to work out these details before it comes back to full Council.

Councilman Bothwell moved to delay consideration of this item until the March 8, 2011, meeting. This motion was seconded by Councilman Smith and carried unanimously.

D. STATE LEGISLATIVE UPDATE

City Attorney Oast said that the North Carolina General Assembly convened for the 2011 regular session on January 26. Almost immediately, bills were introduced in both chambers that would, if enacted, place a moratorium on involuntary annexation by cities. The bills would also stay annexations in progress, including those currently under review by the courts. This legislative stay would apply to Asheville's annexation of the Biltmore Lake area, which is currently pending in the North Carolina Court of Appeals. Council has been supplied with information from the North Carolina League of Municipalities and other sources regarding the progress of the bills in legislature. Additionally, we are receiving updates from League staff, and will pass them along as we receive them.

On a related note, local bills were introduced to repeal recently completed annexations by some cities.

Other bills for general legislation have been introduced that would have some effect on municipal operations. House Bill 111 would permit the carrying of concealed weapons in local government parks. House Bill 95 would clarify certain aspects of railroad corridors, and would have some effect on municipal subdivision and zoning processes. House Bill 36 would prohibit State and local government contracts with contractors who employ illegal immigrants, and require contractors to verify and certify the legal status of their employees.

We have not noted any local bills of particular interest to Asheville (other than the annexation repeal bills described above), but the pace of local bill introduction should pick up next month. A local bill has been introduced to authorize Alleghany County to collect an additional three percent room and occupancy tax. (H.B. 96).

City Attorney Oast said that he received a call from the Buncombe County Attorney who said a bill had been introduced – An Act to Authorize Brunswick County to Require the Payment of Delinquent Property Taxes Before Recording Deeds Conveying Property. The Buncombe County Commissioners have expressed an interest in having Buncombe County added to that bill and they have asked if the City would support them in that request.

Councilwoman Manheimer moved to support Buncombe County being added to the following bill: "An Act to Authorize Brunswick County to Require the Payment of Delinquent Property Taxes Before Recording Deeds Conveying Property." This motion was seconded by Councilman Davis and carried unanimously.

Councilman Smith moved to discourage the state legislature to support House Bill 129 – bill "Level Playing Field Local Government Competition Act" which would prohibit or limit the ability of local governments to provide broadband or any other communication services or systems. This motion was seconded by Councilman Bothwell.

After a brief discussion, Councilman Smith withdrew his motion.

It was the consensus of Council for City Attorney Oast to provide information to Council on this bill and if no concerns are raised to place the resolution on the March 8, 2011, consent agenda.

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A NEGOTIATED PURCHASE AGREEMENT WITH THE ASHEVILLE HOCKEY LEAGUE AND AWARD THE SALE OF THE ASHEVILLE CIVIC CENTER ICE RINK AND ALL RELATED EQUIPMENT

Administrative Services Director Lauren Bradley said that this is the consideration of resolution authorizing the City Manager to enter into a negotiated purchase agreement with the Asheville Hockey League and award the sale of the Asheville Civic Center ice rink and all related equipment.

On December 14, 2010, Asheville City Council delayed consideration of a resolution authorizing the City Manager to award sale of Civic Center ice rink and equipment to the highest bidder in order to provide time for staff to explore options for privately negotiating a sale of the equipment to the Asheville Hockey League (AHL).

After the December 14 meeting, staff completed legal research regarding the disposal of the equipment. Normally, personal property with a value in excess of $30,000 cannot be disposed of by private sale and negotiation. Advertised bids would be required. However, GS 160A-279 provides an exception to this rule. This statute authorizes a City to dispose of property by private sale to a non-profit agency that is carrying out a public purpose. Conveyance of the property is conditioned on the use of the property for a public purpose. Based on this research, staff concluded that the AHL could meet the requirements of the statute and carry out a public purpose by allowing public access to the rink and equipment.

At the January 25, 2011, Finance Committee meeting, representatives from the Asheville Hockey League presented staff with a plan for putting the ice rink into use. The Finance

Committee directed staff to review the proposal and discuss options for negotiating a sale of the ice rink and equipment for City Council consideration.

After the January 25 Finance Committee meeting, staff met with AHL representatives to review the plan and determine mutually acceptable terms by which the ice rink and equipment could be conveyed to the league. These terms would be summarized in an agreement between the City and AHL and would include:

- AHL will provide an up-front payment to the City for the purchase of the ice rink and associated equipment in the amount of $15,000 with one payment of $5,000 at the execution of the agreement and the remaining $10,000 paid by May 31;
- The ice rink would be operational and open to the public within three years. If the ice is not open within three years, the City would have the right to exercise a reversion clause;
- AHL would agree to move the equipment out of the Civic Center by May 31, and would have a signed contract with a contractor to remove the equipment as well as evidence of a reserved storage space no later than May 1, and;
- The City would require as exhibits to the agreement a bio of AHL board members and others who would be involved to demonstrate that the group has the background and experience to operate the ice rink.

The purchase price was negotiated based on the AHL's estimates for moving and repairing the ice rink, which is estimated by the league to be $57,000-$85,000.

The Finance Committee was updated on progress at its February 8, 2011, meeting, where the Committee voted to move the item forward for City Council consideration at its February 22, 2011 meeting.

The consideration of this action does not specifically relate to the City's Strategic Plan.

Pros of the negotiated sale:

- Allows the ice rink and equipment to remain in the Asheville community for public use.
- Supports the City's goal to partner with outside groups and agencies to provide recreational programming.
- Provides a certain date and specified sale amount by which the rink will be disposed.

Cons of the negotiated sale:

- AHL plans for utilizing the rink and equipment are still somewhat conceptual and will rely on fundraising; therefore, implementation is not guaranteed.
- The value of the rink and equipment has been estimated by staff to be around $100,000. The negotiated purchase price is below this amount and could result in the loss of additional revenue generated through a competitive bid process.

A negotiated sale to the AHL would result in $15,000 in revenue. A competitive disposal process could yield a higher amount of revenue for the Civic Center Fund; however, this potential loss of revenue could be offset by the benefit of putting the ice rink and equipment into public use for the Asheville community. It also recognizes the capital investment AHL will have to make in order to make the ice rink operational in Asheville.

Staff is seeking City Council consideration of a resolution authorizing the City Manager to enter into a negotiated agreement with the Asheville Hockey League for the sale of the Civic Center ice rink and all related equipment. If City Council is not supportive of the negotiated sale, staff would further seek City Council's consideration of resolution authorizing the City Manager to award the ice rink and all related equipment to the highest sealed bidder.

The following individuals spoke in support of the City entering into an agreement with Asheville Hockey League for various reasons, some being, but are not limited to: the public and economic value of an ice rink in town and the great recreational opportunity for Asheville:

Mr. Hutch Kerns, President of Asheville Hockey League
Mr. Jim Delany, Youth Director of Ice Hockey with Asheville Hockey League
Mr. Dean Pistor
Current Active In-Line Youth Commissioner
Three young hockey players
Ms. Julie Pratt

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 11-42. This motion was seconded by Councilman Davis and carried unanimously.

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B. RECEIVE AND CONSIDER PROPOSAL FOR FORMATION OF MILLS RIVER WATERSHED PROTECTION PROGRAM

Mr. Jere Brittain, Mills River resident and conservation landowner, said there have been concerns over the past several years about maintaining the quality of the water that flows through the community. He invited the City of Asheville to name a member to the Board of Directors of the Mills River Partnership.

Mr. Shaun Moore, Watershed Coordinator with the Henderson County Soil and Water Conservation District, highlighted the importance of this drinking water supply and history of the Mills River Project.

Mr. Kieran Roe, Executive Director of Carolina Mountain Land Conservancy, explained that the informal Mills River Partnership is now attempting to form a formal non-profit. He then invited the City of Asheville to participate in the revitalization of water supply restoration and protect efforts in the Mills River drinking water supply watershed by appointing a representative to serve on the Mills River Partnership Board of Directors.

In response to Mayor Bellamy, Mr. Roe said that the first meeting of the Board is March 2, however, if it takes the City longer to name a representative perhaps the City could send a representative to the first meeting. He will meet with City Manager Jackson to discuss how the City can be more engaged in the process.

In response to Mayor Bellamy, City Manager Jackson felt that staff needed at least 60-90 days to evaluate the structure, funding recommendations, etc. of this request. He said that City staff can report back to Council in 30 days with an interim report. At this point, this is a lot of information that needs to be considered from a policy standpoint, including the proposal which is to establish this as a perpetually funded entity with fees to be charged to water rate payers.

Mayor Bellamy requested this be reviewed, prior to coming back to Council on March 22, by the City Council Planning & Economic Development Committee or the City Council Finance Committee.

City Manager Jackson said there has been a lot of good work done to evaluate the needs for watershed protection and we want to be on board with that. It is important to protect this watershed and to play a role. At this point in time, he and the Water Resources Director are not

in the position to say that with 1 out of 13 seats on a non-profit board is meaningful for our level of investment in this process.

C. RESOLUTION NO. 11-43 - RESOLUTION IN SUPPORT OF FULL EQUALITY FOR ALL ASHEVILLE CITIZENS

The resolution being considered outlined the following final actions requested by City Council: The Asheville City Council act to affirm and protect the equal rights of all its citizens by (1) Extending the city's employment discrimination clause to include "sexual orientation", "gender", and "gender identity or expression"; (2) Enacting an anti-bullying ordinance for all city institutions and grounds; (3) Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships; and (4) Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage.

Councilman Smith was honored to bring this forward to City Council and thanked the various individuals and groups who have been important in this process.

The following individuals spoke in support of the resolution for various reasons, but mainly due to equal rights for all:

Rev. Joe Hoffman, Senior Pastor of First Congregational United Church of Christ, on behalf of People of Faith for Just Relationships
Ms. Angel Chandler
Mr. Juan Oyola
Mr. T.J. Thomasson
Mr. Chris Oaks
Ms. Yvonne Cook-Riley
Mr. James Sheeler
Mr. Wes Heath
Ms. Ashley Arrington
Mr. Simon Thompson
Mr. Alan Robinson
Mr. David Spicer
Ms. Carmen Ramos-Kennedy
Mr. Alan Ditmore
Mr. Craig White
Mr. James Dye
Mr. Aixa Wilson
Ms. Leslie Boyd
Mr. Monroe Gilmore, Coordinator of WNC Citizens for an End to Institutional Bigotry
Ms. Jennifer Thornberg
Ms. Heather Talley
Founder of Justice for All
Mr. Robert Wells
Ms. Vivian Gold
Ms. Allison Shad

The following individuals spoke in opposition of the resolution for various reasons, but mainly due to religious and financial reasons:

Rev. Wendell Runion
Mr. Randy Bray
Mr. Tom Ascik
Pastor Larry Sprouse, Oak Ridge Baptist Church

Pastor Jerry Young
Mr. Meredith Hunt
Ms. Leslee Kulba
Mr. Donald Fleming
Rev. David Hall
Mr. Ricky Parham
Mr. Sam Taylor
Taxpayer in Asheville
Mr. Phillip Wilson

NOTE: Information before City Council from Staff Report from Assistant City Manager Jeff Richardson: "A community group has formally requested the Asheville City Council to adopt a resolution at the February 22 council meeting 'in support of full equality for all Asheville citizens.'

Pursuant to this request, the City Manager requested staff to provide analysis and any applicable guidance for consideration with this draft resolution. This draft resolution is intended to affirm and protect the equal rights of all citizens through the four steps outlined below. Staff has provided analysis and/or operational steps with each of the four steps as follows:

1. Extending the city's employment discrimination clause to include sexual orientation, gender, and gender identity or expression.

Staff Review: The city's EEO policy which was originally passed in 1994, does include language to address sexual orientation as a protection:

> "Every employment related decision the City makes shall be on the basis of merit without regard to an individual's race, color, creed, religion, national origin, sex (including pregnancy) age, disability, sexual orientation or familial status except when being a member of a particular group is deemed to be a bona fide occupational qualification."

Research indicates some employers have included this language as outlined, mostly in the private sector. Legal review suggests that 'at will' status in the City of Asheville remain as is, meaning that this language, if adopted, would only affect employees covered under the City's personnel ordinance.

2. Enacting an anti-bullying ordinance for all city institutions and grounds.

Staff Review: The City's Ethics Policy appears in line with the goals of this language as stated, 'the policy intent is to foster trust and respect among city employees and the public by creating an environment in which citizens and employees feel valued, safe, and welcome.' The City's Workplace Violence Policy is in line with anti-bullying policies in that it requires employees to treat each other with respect and consideration and to maintain a workplace free of intimidation and violence. In addition, the Parks and Recreation Department has adopted a *Discipline and Behavioral Management Policy* for youth programs that outlines in detail behavioral expectations to include threatening behavior. Staff feels that current policies as outlined adequately address the intent of the proposed language in the resolution and no further edits are necessary to existing city policies. If Council adopts the ordinance and directs Staff to include additional language addressing anti-bullying in City of Asheville parks on supplementary signage, Staff should anticipate that the fiscal impact would be between $3,000 to $4,000 based on the costs of the signage stating the City's anti-smoking policy outlined in the December 2010 Staff Report. Staff suggests that if signs are needed for informing citizens of the anti-bullying policy that the posts supporting the City's anti-smoking policy for recreation areas and facilities be utilized.

3. Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships.

Staff Review: Chapel Hill and Carrboro are the two N.C. cities that currently provide this service. Chapel Hill enacted this registry in 1995, and it is operated in the City Clerk's Office. Chapel Hill offers this service to same sex and opposite sex domestic partners and has registered partners all over the U.S. at a fee of $50. Over the 16 year history, Chapel Hill reported 141 domestic partner registrations. City staff is prepared to administer this service upon the direction of city council accordingly and if adopted, staff would like to recommend a fee structure accordingly.

4. Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage.

Staff Review: Regarding applicable city policies: 1) Sick Leave: does currently enable employees to use sick leave for domestic partners under the term of 'significant other,' which is defined as any person with whom the employee has cohabitated and shares an intimate relationship regardless of marital status. 2) Bereavement Leave: does allow leave for employee's significant other. 3) FMLA: this federal law does not provide benefits to domestic partners. While the city could extend FMLA leave benefits for domestic partners, this would be in addition (over and above) to the employee's leave entitlement under federal law. 4) Extended Medical Leave: does not indicate leave could be used for the care of a domestic partner and this section would need modification if this resolution is passed. Nepotism Policy: does currently address domestic partners in the Immediate Relative definition to include significant other.

This action aligns with City Council's Strategic Operating Plan in the *Job Growth and Community Development* Goal: "Enhance diversity throughout the City as an organization so that the workforce more closely resembles the community, especially in the area of public safety.

Section three, *Creating a Domestic Partner Registry*, requires administrative and operational oversight of the program. A proposed fee structure offsets the cost of the program, however, it is difficult to determine total cost of the program until ample time has passed to study volume of requests is analyzed compared to revenue collected. Staff recommends differential fee for non-city and non-state residents. The fiscal impact of additional signage addressing the City's anti-bullying policy would be between $3,000 to $4,000 based on the costs of the signage stating the City's anti-smoking policy outlined in the December 2010 Staff Report.

Staff analysis is intended to show operational impact to the City of Asheville. Staff is prepared to take steps to implement policy changes as directed through City Council action."

In response to Councilman Smith, Assistant City Manager Jeff Richardson said that the last fall City Council directed staff to look at same sex domestic partner health insurance benefits. Council asked staff for guidance on an implementation date. After analysis, staff reported that they would be prepared, in conjunction with the budget process, to bring back any issues with the domestic partner health insurance implementation within an expected implementation of July 1, 2011. Beginning in March, Council will begin looking at pieces of the budget process including compensation and benefits. At this point, staff is not recommending any General Fund transfer to the Health Fund next year. We are preparing for the domestic partner health insurance roll-out July 1, 2011.

Councilman Smith said Council's job isn't to prefer one religious view over another and it's clear that there are all sorts of strongly held beliefs around these issues. Nothing Council does at this meeting will restrict you from believing that which you choose to believe. We have a responsibility to address the equality, safety and opportunity of all our Asheville citizens. This is about justice.

Councilman Smith moved to adopt Resolution No. 11-43. This motion was seconded by Councilman Bothwell.

In response to Mayor Bellamy, Councilman Smith reviewed each of the four points in the resolution as follows:

(1) Extending the city's employment discrimination clause to include "sexual orientation", "gender", and "gender identity or expression." Councilman Smith said that City's employment discrimination clause would broaden this to include "gender identity or expression."

(2) Enacting an anti-bullying ordinance for all city institutions and grounds. Councilman Smith said that this would be for within City institutions and on City grounds, e.g, parks.

When Mayor Bellamy asked how "bullying" would be defined, Councilman Smith said that the was using the language in the School Violence Prevention Act.

Mayor Bellamy felt it was important that Council have the opportunity to review the definition of "bullying" to be clear on what exact language Council is being asked to vote in support of.

Councilman Smith felt Council is only providing general policy direction for staff and they would return to Council with details of implementation.

Mayor Bellamy agreed that staff could be given direction; however, before we adopt the resolution with that provision in it, Council and the community should be clear on what the language means.

(3) Creating a Domestic Partner Registry to recognize same-sex relationships for the purposes of providing documentation and offering a mechanism through which hospitals, businesses, and other entities will have the opportunity to recognize these relationships. Councilman Smith said the Registry would be in City Hall. Using Chapel Hill as a model, domestic partners from anywhere are able to register through their city process. This same Registry would be used to register those City employees who would be applying for same sex domestic partner benefits.

Mayor Bellamy felt the Register of Deeds Office seems like the more logical place for this Registry as it is the location of all the vital records impacting our community. In addition, the Register of Deeds Office has several employees to handle the additional workload, whereas, we have one and will have to add one.

City Attorney Oast said it's his understanding of what can be recorded in the Clerk of Court's Office or the Register of Deeds Office is regulated to a large degree, or perhaps entirely, by state law. He would ask the County and let Council know.

(4) Endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage. Councilman Smith said that we as a city cannot offer marriage, but this is an acknowledgement that same sex couples should be afforded those rights. This resolution states that City Council endorses the capability of same sex couples to execute the responsibilities and believe they should be afforded those rights. This is the most we can offer today. This is a way to tell everyone in our

community that we stand together with them towards a broader equality.

When Mayor Bellamy asked if this is an endorsement of same sex marriage, Councilman Smith said that it is saying that same sex couples are capable of exercising the responsibilities of civil marriage and that we as a Council endorse them being able to marry.

Councilman Bothwell pointed out that the City's budget is balanced every year. He also said that his is an ordained minister and when he marries couples, he is clear in his counseling and in his ceremony that the only reason government cares about marriage at all is property.

Councilman Davis felt that it is common sense that we don't discriminate. That should not be tolerated. Regarding the anti-bullying ordinance, he was concerned about our enforcement abilities along with the lack of definition. He voted against the domestic partner health insurance package because he did not know the financial implications. With the domestic partner insurance being implemented, there will need to be a Registry with a fee attached. Regarding the fourth request, City Council does not have the ability to offer civil marriages, so when you take religion and government out of the issue, then you are talking about rights for people. He felt that people should be treated equal and he will support the resolution for that reason.

Vice-Mayor Newman felt that what we are doing is part of a larger effort to create equality in our country. He is proud that our country took the step last year to repeal the "Don't Ask, Don't Tell" legislation that prevented gay men and women from serving in our armed forces and protecting the country that they love. The steps we are taking tonight will make a difference to people's lives in Asheville in practical ways. He believed that ultimately the goal in terms of these equality issues is that if there are two adults who decide they want to commit their lives to one another that they will be able to get married and the government will not be able to stand in their way. The steps we are taking tonight will at least say for the elected officials from Asheville, North Carolina, that is what we believe is the direction we should be going in. We don't have the legal authority to make it happen, but we want to raise our voice in support of doing everything that is within our power to go in that direction.

Councilwoman Manheimer was proud to vote on something that brings more equality and justice to this issue.

Because of the importance of this issue, Mayor Bellamy asked that prior to City Council voting on this resolution that staff be allowed to bring back language that is clear to all parties in our community on just what we are enacting. She said the resolution could be placed on the March 8 agenda.

Vice-Mayor Newman supported the City enacting an anti-bullying ordinance, but he agreed with Mayor Bellamy that the language in the policy is important.

Councilman Bothwell felt that the resolution is the intent to create an anti-bullying ordinance and item 4 could be constructed as a legislative instruction.

Mayor Bellamy said that this policy is significant and it will create fear in the minds of some people because it's not clear. Since we are making policy it needs to be clear. She recalled some incidents of being ignored because the individual made the assumption about her feelings about people who are gay, lesbian, transgender, etc. based upon some comments from the dais. She has never had a malicious thought toward gay, homosexuals, queers, transgenders, lesbians, etc. in our community. Because she did not vote for the domestic partner benefits she was demonized. In 2010 she was threatened and told to go back to Africa. Asheville, North Carolina, is her hometown where she grew up and graduated from a local high school. So, to say discrimination is going to go away because City Council adopts this resolution

is not true. She is not against people having equal rights. She knows what it's like to be discriminated against. If we keep rushing to get policy passed, just because we have the votes, then we continue to divide our community. It would behoove us to have leaders who unite not divide. Although she supports the rights of individuals, it is unfortunate that she can't say that she doesn't agree in same sex marriage and not be condemned. Her belief is that marriage is between a man and a woman. But, she also believes that all North Carolinians should have a right to vote on the issue. She didn't believe the Registry should be located in City government. That is not what we do. If we believe something should be done, it should be done right. If we are going to recognize individuals who are in a committed relationship, then the documents should be held in the right place in our government that recognizes those forms. She could not say, with a clear conscious, that she wouldn't want the significant other of her lesbian cousin at her death bed. She believed individuals who are about to die should have the right to have whomever they want at their bedside or to leave their money to whoever they want to leave it to. But she can't say that she supports gay marriage. If we are saying that in the resolution, she would have to vote against it. The first three issues (with some modifications) she could support. The fourth issue, if stated by Councilman Smith, is endorsing gay marriage, she could not support that. We need to be clear on how we define bullying, where it applies, how it is enforced and the penalties. She represents, whether people like her or not, all citizens of Asheville. Again, she asked for staff to have time to flesh this out so it is clear on what we are and are not approving.

Councilman Smith sees the resolution as providing broad policy direction. If an anti-bullying ordinance comes back to Council and it looks to threaten free speech, he would be the first to send it back to staff. The intent of the anti-bullying ordinance is to diminish fear and increase safety.

Vice-Mayor Newman asked for a friendly amendment in item 2 to read "Ask City staff to research policies related to protecting public safety related to bullying activities." Councilman Smith and Councilman Bothwell accepted the friendly amendment.

Vice-Mayor Newman said that in terms of item 3 regarding the Domestic Partner registry, he agreed that it would be logical to have the Registry at the Register of Deeds office. However, that is not something under City Council's control. If we think it is the right thing to have in the community, then the City Clerk's Office is the only place we can do it. That is the only option for us.

When Mayor Bellamy asked if Councilman Smith would not honor her request to give staff two weeks to flesh out the resolution, Councilman Smith said that with no disrespect, he hoped that the friendly amendment regarding the anti-bullying ordinance will give Council clarity. The other items seem to be straightforward in the staff report from Mr. Richardson.

Councilman Smith called the question.

The amended motion made by Councilman Smith and seconded by Councilman Bothwell and carried on a 5-1 vote, with Mayor Bellamy voting "no".

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gillian Kerns was proud that Council did what they said when they ran for Council.

Mr. Alan Ditmore spoke about methods to stop climate change.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:53 p.m.

Magdalen Bourdeson
CITY CLERK

Amy M Bellamy
MAYOR

Department of Cultural Resources
Division of Archives and Records
Collections Services Section

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